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98TH CONGRESS AND 99TH CONGRESS, FIRST SESSION

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TO
TITLE 42—THE PUBLIC HEALTH AND WELFARE

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*3. The President.
*4. Flag and Seal, Seat of Government, and the States.
*5. Government Organization and Employees; and Appendix.
†6. [Surety Bonds.]
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*This title has been enacted as law. However, any Appendix to this title has not been enacted as law.
†This title was enacted as law and has been repealed by the enactment of Title 31.
‡This title has been eliminated by the enactment of Title 10.

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PREFACE

This third supplement to the 1982 edition of the United States Code has been prepared and published pursuant to section 285b of Title 2 of the Code. It contains the additions to and changes in the general and permanent laws of the United States enacted during the Ninety-eighth Congress and the Ninety-ninth Congress, First Session. This supplement together with the 1982 edition establishes prima facie those laws in effect on January 20, 1986, except that Titles 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 37, 38, 39, 44, 46, and 49 have been revised, codified, and enacted into positive law and the text thereof is legal evidence of the laws therein contained. Pending preparation of supplemental codification bills, various sections of former Titles 46 and 49 (not included in the original codifications) are set out in the Appendixes to those Titles and retain their prior section numbers.

This supplement was prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts and cooperation.

Thomas P. O'Neill Jr.
M.C.

Speaker of the House of Representatives

WASHINGTON, D.C., *January 20, 1986.*

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5A. Exemption of Navy or Coast Guard Vessels From Certain Navigation Rules [Repealed].
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12. River and Harbor Improvements Generally.
13. Mississippi River Commission.
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15. Flood Control.
16. Lighthouses.
17. National Ocean Survey.
18. Longshore and Harbor Workers' Compensation.
19. Saint Lawrence Seaway.
20. Pollution of the Sea by Oil.
21. International Regulations for Preventing Collisions at Sea [Repealed].
22. Sea Grant Colleges and Marine Science Development.
23. Pollution Control of Navigable Waters [Omitted or Transferred].
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25. Ports and Waterways Safety Program.
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12. Reserve Officers Association.
13. National Academy of Sciences.
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21. National Safety Council.
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24. Sons of Union Veterans of the Civil War.
25. The Foundation of the Federal Bar Association.
26. The National Fund for Medical Education.
27. Legion of Valor of the United States of America, Inc.
28. National Music Council.
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30. Presidential Inaugural Ceremonies.
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33. The Congressional Medal of Honor Society of the United States of America.
34. Military Order of the Purple Heart of the United States of America.
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36. Big Brothers—Big Sisters of America.
37. Jewish War Veterans, U.S.A., National Memorial, Inc.
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40. National Woman's Relief Corps, Auxiliary to the Grand Army of the Republic.
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8. Emergency Public Works and Construction Projects.
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10. Management and Disposal of Government Property.
11. Real Property Transactions by Military Departments [Repealed].
12. Construction, Alteration, and Acquisition of Public Buildings.
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14. Safety Standards for Motor Vehicles.
15. Government Losses in Shipment.
16. General Services Administration.
17. Alaska Communications Disposal.
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3A. Cancer [Repealed].
4. Viruses, Serums, Toxins, Antitoxins, etc. [Repealed].
5. Maternity and Infancy Welfare and Hygiene [Repealed].
6. The Children's Bureau.
6A. Public Health Service.
7. Social Security.
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8. Low-Income Housing.
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8C. Open-Space Land [Omitted].
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10. Federal Security Agency [Transferred or Omitted].
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31. Public Works Acceleration Program.
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35. Programs for Older Americans.
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38. Public Works and Economic Development.
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42. Narcotic Addict Rehabilitation.
43. Department of Health and Human Services.
44. Department of Housing and Urban Development.
45. Fair Housing.
46. Justice System Improvement.
47. Juvenile Delinquency Prevention and Control [Omitted].
48. Guarantees for Financing New Community Land Development [Repealed or Omitted].
49. National Housing Partnerships.
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52A. Joint Funding Simplification [Repealed].
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54. Cabinet Committee on Opportunities for Spanish-Speaking People [Omitted].
55. National Environmental Policy.
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59. National Urban Policy and New Community Development.
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62. Intergovernmental Personnel Program.
63. Lead-Based Paint Poisoning Prevention.
64. Public Service Employment Programs [Omitted].
65. Noise Control.
66. Domestic Volunteer Services.
67. Child Abuse Prevention and Treatment and Adoption Reform.
68. Disaster Relief.
69. Community Development.
70. Manufactured Home Construction and Safety Standards.
71 Solar Energy.
72. Juvenile Justice and Delinquency Prevention.
73. Development of Energy Sources.
74. Nonnuclear Energy Research and Development.
75. Programs for Persons With Developmental Disabilities.
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77. Energy Conservation.
78. National Petroleum Reserve in Alaska.
79. Science and Technology Policy, Organization and Priorities.
80. Public Works Employment.
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84. Department of Energy.
85. Air Pollution Prevention and Control.
86. Earthquake Hazards Reduction.
87. Water Research and Development [Repealed or Transferred].
88. Uranium Mill Tailings Radiation Control.
89. Congregate Housing Services.
90. Neighborhood and City Reinvestment, Self-Help and Revitalization.
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96. Biomass Energy and Alcohol Fuels.
97. Acid Precipitation Program and Carbon Dioxide Study.
98. Ocean Thermal Energy Conversion Research and Development.
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100. Wind Energy Systems.
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103. Comprehensive Environmental Response, Compensation, and Liability.
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14. Grants of Desert Lands to States for Reclamation.
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22. Rights-of-Way and Other Easements in Public Lands.
23. Grants of Swamp and Overflowed Lands.
24. Drainage Under State Laws [Repealed].
25. Unlawful Inclosures or Occupancy; Obstructing Settlement or Transit.
25A. Lands Held Under Color of Title.
26. Abandoned Military Reservations [Repealed].
27. Public Lands in Oklahoma.
28. Miscellaneous Provisions Relating to the Public Lands.
29. Submerged Lands.
30. Administration of Public Lands [Repealed or Omitted].
31. Department of the Interior.
32. Colorado River Basin Project.
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35. Federal Land Policy and Management.
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3. Government Printing Office.
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17. Distribution and Sale of Public Documents.
19. Depository Library Program.
21. National Archives and Records Administration.
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23. National Archives Trust Fund Board.
25. National Historical Publications and Records Commission.
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29. Records Management by the Archivist of the United States and by the Administrator of General Services.
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4. Care of Animals in Transit.
5. Government-Aided Railroads.
6. Mediation, Conciliation, and Arbitration in Controversies Between Carriers and Employees [Repealed or Omitted].
7. Adjustment Boards and Labor Boards [Repealed].
8. Railway Labor.
9. Retirement of Railroad Employees.
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11. Railroad Unemployment Insurance.
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Subtitle II—Vessels and Seamen

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5. Discriminating Duties and Reciprocal Privileges.
6. Regulation as to Vessels Carrying Steerage Passengers.
8. Limitation of Vessel Owner's Liability.
11. Officers and Crews of Vessels.
12. Regulation of Vessels in Domestic Commerce.
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14. Inspection of Steam Vessels.
15. Transportation of Passengers and Merchandise by Steam Vessels.
17. Regulation of Fishing Voyages.

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20. Suits in Admiralty by or Against Vessels or Cargoes of United States.
21. Death on the High Seas by Wrongful Act.
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23. Shipping Act.
23A. Intercoastal Shipping.
24. Merchant Marine Act, 1920.
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25. Ship Mortgages.
26. Home Port of Vessels.
27. Merchant Marine Act, 1936.
28. Carriage of Goods by Sea.
32. Construction Assistance for Fishing Vessels [Omitted].
34. Safe Containers for International Cargo.
35. Maritime Administration.
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2. Submarine Cables.
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5. The Philippine Islands [Omitted, Repealed, or Transferred].
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9. Samoa, Tutuila, Manua, Swains Island, and Trust Territory of the Pacific Islands [Transferred].
10. Territorial Provisions of a General Nature.
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12. The Virgin Islands.
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117. Enforcement: Investigations, Rights, and Remedies.
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2. Legislation Supplementary to "Interstate Commerce Act" [Repealed, Transferred, or Omitted].
3. Termination of Federal Control [Repealed or Transferred].
4. Bills of Lading.
5. Inland Waterways Transportation.
6. Air Commerce.
7. Coordination of Interstate Railroad Transportation [Repealed].
8. Interstate Commerce Act, Part II; Motor Carriers [Repealed or Transferred].
9. Civil Aeronautics [Repealed, Omitted, or Transferred].
10. Training of Civil Aircraft Pilots [Omitted or Repealed].
11. Seizure and Forfeiture of Carriers Transporting, etc., Contraband Articles.
12. Interstate Commerce Act, Part III; Water Carriers [Repealed].
13. Interstate Commerce Act, Part IV; Freight Forwarders [Repealed].
14. Federal Aid for Public Airport Development [Repealed or Transferred].
15. International Aviation Facilities.
16. Development of Commercial Aircraft [Omitted].
Chap.
17. Medals of Honor for Acts of Heroism.
18. Airways Modernization [Repealed].
19. Interstate Commerce Act, Part V; Loan Guaranties [Repealed].
20. Federal Aviation Program.
21. Urban Mass Transportation.
22. High-Speed Ground Transportation [Omitted or Repealed].
23. Department of Transportation [Repealed in Part].
24. Natural Gas Pipeline Safety.
25. Aviation Facilities Expansion and Improvement [Repealed in Part].
26. Hazardous Materials Transportation Control [Repealed].
27. Hazardous Materials Transportation.
28. National Transportation Safety Board.
29. Hazardous Liquid Pipeline Safety.
30. Abatement of Aviation Noise.
31. Airport and Airway Improvement.
32. Commercial Motor Vehicles.
33. Public Airports.
34. Motor Carrier Safety.
35. Commercial Space Launch.

TITLE 50—WAR AND NATIONAL DEFENSE

1. Council of National Defense.
2. Board of Ordnance and Fortification [Repealed].
3. Alien Enemies.
4. Espionage [Repealed or Transferred].
4A. Photographing, Sketching, Mapping, etc., Defensive Installations [Repealed].
4B. Disclosure of Classified Information [Repealed].
4C. Atomic Weapons and Special Nuclear Materials Information Rewards.
5. Arsenals, Armories, Arms, and War Material Generally.
6. Willful Destruction, etc., of War or National-Defense Material [Repealed].
7. Interference with Homing Pigeons Owned by United States [Repealed].
8. Explosives; Manufacture, Distribution, Storage, Use, and Possession Regulated [Repealed].
9. Aircraft [Omitted, Repealed, or Transferred].
10. Helium Gas.
11. Acquisition of and Expenditures on Land for National-Defense Purposes [Repealed, Omitted, or Transferred].
12. Vessels in Territorial Waters of United States.
13. Insurrection.
14. Wartime Voting by Land and Naval Forces [Repealed].
15. National Security.
16. Defense Industrial Reserves.
17. Arming American Vessels [Repealed].
18. Air-Warning Screen.
19. Guided Missiles.

TITLE 50—WAR AND NATIONAL DEFENSE—Continued

Chap.
20. Wind Tunnels.
21. Abaca Production [Omitted].
22. Uniform Code of Military Justice [Repealed or Omitted].
22A. Representation of Armed Forces Personnel Before Foreign Judicial Tribunals [Repealed].
23. Internal Security.
24. National Defense Facilities [Repealed].
25. Armed Forces Reserve [Repealed or Omitted].
26. Gifts for Defense Purposes.
27. Reserve Officer Personnel Program [Repealed or Omitted].
28. Status of Armed Forces Personnel Appointed to Service Academies [Repealed].
29. National Defense Contracts.
30. Federal Absentee Voting Assistance [Transferred].
31. Advisory Commission on Intergovernmental Relations [Transferred, See Chapter 53 of Title 42].
32. Chemical and Biological Warfare Program.
33. War Powers Resolution.
34. National Emergencies.
35. International Emergency Economic Powers.
36. Foreign Intelligence Surveillance.

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE

Proclamations, Executive Orders, Joint Resolutions and Treaties Respecting War, Neutrality and Peace.

Trading With the Enemy Act of 1917.

Soldiers' and Sailors' Civil Relief Act of 1918 [Omitted].

Selective Draft Act of 1917 [Omitted or Repealed].

Selective Training and Service Act of 1940 [Omitted or Repealed].

Office of Selective Service Records.

Service Extension Act of 1941 [Repealed].

Army Reserve and Retired Personnel Service Law of 1940 [Omitted].

Military Selective Service Act.

Soldiers' and Sailors' Civil Relief Act of 1940.

First War Powers Act, 1941 [Repealed, Omitted, or Transferred].

Second War Powers Act, 1942 [Repealed or Omitted].

Exportation Restrictions on Certain Articles [Repealed or Omitted].

Requisition of Military Equipment, Materials and Supplies [Omitted].

Territorial Use of Army and Extension of Service Period [Omitted, Transferred, or Repealed].

Civilian Protection From War Hazards [Omitted].

Decorations, etc., for Merchant Marine [Repealed].

Use of Public Lands for War Purposes [Repealed].

Miscellaneous Provisions Affecting Military Establishment [Omitted, Repealed, or Transferred].

Photographing, Mapping or Other Representation of Military or Defense Properties [Omitted].

Exemption of Certain Articles From Import Duties and Taxes [Omitted or Repealed].

Temporary Appointments, Promotions, etc., of Navy, Marine Corps, and Coast Guard Officers [Omitted or Repealed].

Jurisdiction of Prizes and Prize Proceedings [Transferred].

Certain Allowance Assistance for Civilian and Military Personnel [Repealed or Omitted].

Free Entry of Gifts From Members of Armed Forces [Omitted].

Free Postage for Armed Forces Personnel [Omitted].

Emergency Price Control Act of 1942 [Omitted].

Stabilization Act of 1942 [Omitted].

Extension of Sugar Controls [Omitted].

Missing Persons Act [Repealed].

Small Business Mobilization Act [Omitted, Transferred, or Repealed].

War and Defense Contract Acts [Omitted or Repealed].

National Emergency and War Shipping Acts.

Farm Labor Supply Appropriation Act, 1944 [Omitted].

War Overtime Pay Act of 1943 [Repealed].

Training of Nurses Through Grants to Institutions [Omitted].

Civilian Reemployment of Members of Merchant Marine [Repealed].

War Labor Disputes Act [Omitted].

Voluntary Enlistments in the Regular Military Establishment [Repealed].

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE—Continued

Women's Army Corps [Repealed].

United Nations Relief and Rehabilitation Administration [Omitted].

Temporary Appointments of Army Nurse Corps Members, etc., as Officers of Army of the United States [Omitted].

Disposal of Materials on Public Lands [Omitted].

Surplus Property Act of 1944.

War Mobilization and Reconversion Act of 1944 [Omitted].

Fleet Admiral of the Navy and General of the Army [Repealed].

Disposal of Censored Mail [Omitted].

Disbursing Officers' Additional Functions [Transferred].

General of the Marine Corps [Omitted].

Admiral in the Coast Guard [Omitted].

Exception of Navy or Coast Guard Vessels From Certain Navigation Rules [Transferred].

Sale of Surplus War-Built Vessels.

Rehabilitation of Philippines [Omitted].

Return and Interment of Persons Buried Outside United States [Repealed].

Veterans' Emergency Housing Program [Repealed or Omitted].

Naval Vessels as Atomic Targets [Omitted].

Admission of Alien Fiancées Into United States [Omitted].

Military Assistance to Philippine Republic [Omitted].

Naval Aid to China [Omitted].

Naval Aid to Foreign Nations [Omitted].

Housing and Rent Acts.

Stabilization of Economy and Commodity Prices.

Domestic Rubber-Producing Industry [Omitted].

Disposal of Government-Owned Rubber-Producing Facilities.

Displaced Persons, Refugees and Orphans [Omitted].

American-Japanese Evacuation Claims.

Medical Care for Philippine Veterans [Repealed].

War Claims.

Micronesian War and Postwar Claims [Omitted].

Export Controls [Omitted].

Alien Property Damage Claims [Omitted].

Defense Production Act of 1950.

Domestic Minerals Program Extension.

Domestic Tungsten, Asbestos, Fluorspar and Columbium-Tantalum Purchase Programs [Omitted].

Dependents Assistance Act of 1950 [Omitted or Repealed].

Civil Defense.

Emergency Food Aid to India [Omitted].

Korean Combat Pay [Repealed].

World War II License Agreements.

Emergency Ship Repair Program [Omitted].

Export Regulation.

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

This title was enacted by act June 25, 1948, ch. 646, § 1, 62 Stat. 869

Title Referred to in Other Sections

This title is referred to in title 9 section 4; title 11 section 105; title 12 sections 2244, 2254; title 16 sections 18i, 558c, 742*l*, 3375; title 22 sections 2702, 4606; title 29 section 1706; title 42 sections 233, 3789h, 5055, 8220, 8433; title 48 sections 1424-4, 1614, 1694, 1694c.

PART I—ORGANIZATION OF COURTS

Chap. Sec.
6. **Bankruptcy judges** 151

Amendments

1984—Pub. L. 98-353, title I, § 104(b), July 10, 1984, 98 Stat. 342, added item for chapter 6.

1978—Pub. L. 95-598, title II, § 201(b), Nov. 6, 1978, 92 Stat. 2660, directed amendment of analysis of chapters comprising part I by adding item for chapter 6 "Bankruptcy courts", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 1—SUPREME COURT

§ 1. Number of justices; quorum

Short Title of 1984 Amendments

Pub. L. 98-620, title IV, § 404, Nov. 8, 1984, 98 Stat. 3361, provided that: "This subtitle [subtitle B, §§ 404 to 411 of Pub. L. 98-620, amending sections 85, 90, 93, 112, 124, and 126 of this title and enacting provisions set out as notes under sections 85, 90, 93, and 124 of this title] may be cited as the 'Federal District Court Organization Act of 1984'."

Pub. L. 98-620, title IV, prec. § 412, Nov. 8, 1984, 98 Stat. 3362, provided that: "This subtitle [subtitle C, §§ 412 to 416 of Pub. L. 98-620, enacting section 798 of this title, amending section 1292 of this title, section 1071 of Title 15, Commerce and Trade, section 1337 of Title 19, Customs Duties, and sections 142 to 144 of Title 35, Patents, and enacting provisions set out as notes under section 713 of this title and section 142 of Title 35] may be cited as the 'Technical Amendments to the Federal Courts Improvement Act of 1982'."

For short title of Pub. L. 98-353 as the Bankruptcy Amendments and Federal Judgeship Act of 1984, see section 1 of Pub. L. 98-353, set out as a note under section 151 of this title.

§ 5. Salaries of justices

Salary Increases

1985—Salaries of the Chief Justice and Associate Justices increased to $108,400 and $104,100, respectively, effective on the first day of the first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1984—Salaries of the Chief Justice and Associate Justices increased to $104,700 and $100,600, respectively, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

CHAPTER 3—COURTS OF APPEALS

§ 44. Appointment, tenure, residence and salary of circuit judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

Circuits	Number of Judges
District of Columbia	12
First	6
Second	13
Third	12
Fourth	11
Fifth	16
Sixth	15
Seventh	11
Eighth	10
Ninth	28
Tenth	10
Eleventh	12
Federal	12.

[See main edition for text of (b) to (d)]

(As amended July 10, 1984, Pub. L. 98-353, title II, § 201(b), 98 Stat. 346.)

Amendments

1984—Subsec. (a). Pub. L. 98-353 altered number of permanent circuit judgeships in named circuits as follows:

Circuits	*Former*	*New*
District of Columbia	11	12
First	4	6
Second	11	13
Third	10	12
Fourth	10	11
Fifth	14	16
Sixth	11	15
Seventh	9	11
Eighth	9	10
Ninth	23	28
Tenth	8	10
Eleventh	12	12
Federal	12	12

Nomination to Federal Judgeship on Nondiscriminatory Basis

Section 211 of Pub. L. 98-353 provided that: "It is the sense of the Congress that the President, in selecting individuals for nomination to the Federal judgeships created by this Act [see Short Title of 1984 Amendment note set out under section 151 of this title], shall give due consideration to qualified individuals without regard to race, color, sex, religion, or national origin."

Salary Increases

1985—Salaries of circuit judges increased to $83,200 effective on the first day of the first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1984—Salaries of circuit judges increased to $80,400 effective on the first day of the first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

Additional Judges

Section 201(a) of Pub. L. 98-353 provided that:

"(1) Subject to the provisions of paragraph (2), the President shall appoint, by and with the advice and consent of the Senate, two additional circuit judges for the first circuit court of appeals, two additional circuit judges for the second circuit court of appeals, two additional circuit judges for the third circuit court of appeals, one additional circuit judge for the fourth circuit court of appeals, two additional circuit judges for the fifth circuit court of appeals, four additional circuit judges for the sixth circuit court of appeals, two additional circuit judges for the seventh circuit court of appeals, one additional circuit judge for the eighth circuit court of appeals, five additional circuit judges for the ninth circuit court of appeals, two additional circuit judges for the tenth circuit court of appeals, and one additional circuit judge for the District of Columbia circuit court of appeals.

"(2) The President shall appoint, by and with the advice and consent of the Senate, no more than 11 of such judges prior to January 21, 1985."

CHAPTER 5—DISTRICT COURTS

§ 85. Colorado

Colorado constitutes one judicial district.

Court shall be held at Boulder, Denver, Durango, Grand Junction, Montrose, Pueblo, and Sterling.

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 409, 98 Stat. 3362.)

Amendments

1984—Pub. L. 98-620 added Boulder to the places for holding court in Colorado.

Effective Date of 1984 Amendment

Section 411 of Pub. L. 98-620 provided that:

"(a) The amendments made by this subtitle [subtitle B, §§ 404 to 411 of Pub. L. 98-620, amending sections 85, 90, 93, 112, 124, and 126 of this title and enacting provisions set out as notes under sections 1, 90, 93, and 124 of this title] shall take effect on January 1, 1985.

"(b) The amendments made by this subtitle shall not affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on the effective date of this subtitle [Jan. 1, 1985]."

§ 90. Georgia

Georgia is divided into three judicial districts to be known as the Northern, Middle, and Southern Districts of Georgia.

Northern District

(a) The Northern District comprises four divisions.

(1) The Gainesville Division comprises the counties of Banks, Barrow, Dawson, Fannin, Forsyth, Gilmer, Habersham, Hall, Jackson, Lumpkin, Pickens, Rabun, Stephens, Towns, Union, and White.

Court for the Gainesville Division shall be held at Gainesville.

(2) The Atlanta Division comprises the counties of Cherokee, Clayton, Cobb, De Kalb, Douglas, Fulton, Gwinnett, Henry, Newton, and Rockdale.

Court for the Atlanta Division shall be held at Atlanta.

(3) The Rome Division comprises the counties of Bartow, Catoosa, Chattooga, Dade, Floyd, Gordon, Murray, Paulding, Polk, Walker, and Whitfield.

Court for the Rome Division shall be held at Rome.

(4) The Newnan Division comprises the counties of Carroll, Coweta, Fayette, Haralson, Heard, Meriwether, Pike, Spalding, and Troup.

Court for the Newnan Division shall be held at Newnan.

Middle District

[*See main edition for text of* (b)]

Southern District

(c) The Southern District comprises six divisions.

(1) The Augusta Division comprises the Counties of Burke, Columbia, Glascock, Lincoln, McDuffie, Richmond, Taliaferro, Warren, and Wilkes.

Court for the Augusta Division shall be held at Augusta.

(2) The Dublin Division comprises the counties of Dodge, Johnson, Laurens, Montgomery, Telfair, Treutlen, and Wheeler.

Court for the Dublin Division shall be held at Dublin.

(3) The Savannah Division comprises the counties of Bryan, Chatham, Effingham, Evans, Liberty, Screven, and Tattnall.

Court for the Savannah Division shall be held at Savannah.

(4) The Waycross Division comprises the counties of Atkinson, Bacon, Brantley, Charlton, Coffee, Pierce, and Ware.

Court for the Waycross Division shall be held at Waycross.

(5) The Brunswick Division comprises the counties of Appling, Camden, Glynn, Jeff Davis, Long, McIntosh, and Wayne.

Court for the Brunswick Division shall be held at Brunswick.

(6) The Statesboro Division comprises the counties of Bulloch, Candler, Emanuel, Jefferson, Jenkins, and Toombs.

Court for the Statesboro Division shall be held at Statesboro.

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 408(a)-(c), 98 Stat. 3362.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-620, § 408(a), added Fannin, Gilmer, and Pickens to the counties comprising the Gainesville Division of the Northern District.

Subsec. (a)(2). Pub. L. 98-620, § 408(b), struck out Fannin, Gilmer, and Pickens from the counties comprising the Atlanta Division of the Northern District.

Subsec. (c)(6). Pub. L. 98-620, § 408(c), substituted "Statesboro" for "Swainsboro" in three places.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 408(d) of Pub. L. 98-620 provided that: "The amendments made by this section [amending this section] shall apply to any action commenced in the United States District Court for the Northern District of Georgia on or after the effective date of this subtitle [Jan. 1, 1985], and shall not affect any action pending in such court on such effective date."

Amendment by Pub. L. 98-620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98-620, set out as a note under section 85 of this title.

§ 91. Hawaii

CANTON AND ENDERBURY ISLANDS; SOVEREIGNTY OF KIRIBATI

By a treaty of friendship, TIAS 10777, which entered into force Sept. 23, 1983, the United States recognized the sovereignty of Kiribati over Canton Island and Enderbury Island.

§ 93. Illinois

Illinois is divided into three judicial districts to be known as the Northern, Central, and Southern Districts of Illinois.

Northern District

(a) The Northern District comprises two divisions.

(1) The Eastern Division comprises the counties of Cook, Du Page, Grundy, Kane, Kendall, Lake, La Salle, and Will.

Court for the Eastern Division shall be held at Chicago.

(2) The Western Division comprises the counties of Boone, Carroll, De Kalb, Jo Daviess, Lee, McHenry, Ogle, Stephenson, Whiteside, and Winnebago.

Court for the Western Division shall be held at Freeport and Rockford.

Central District

(b) The Central District comprises the counties of Adams, Brown, Bureau, Cass, Champaign, Christian, Coles, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Kankakee, Knox, Livingston, Logan, McDonough, McLean, Macoupin, Macon, Marshall, Mason, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Warren, and Woodford.

Court for the Central District shall be held at Champaign/Urbana, Danville, Peoria, Quincy, Rock Island, and Springfield.

Southern District

[*See main edition for text of* (c)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 406(a), (c), 98 Stat. 3361.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-620, § 406(a)(1), struck out De Kalb and McHenry from the counties comprising the Eastern Division of the Northern District.

Subsec. (a)(2). Pub. L. 98-620, § 406(a)(2), added De Kalb and McHenry to the counties comprising the Western Division of the Northern District.

Subsec. (b). Pub. L. 98-620, § 406(c), added Champaign/Urbana to the places for holding court in the Central District.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 406(b) of Pub. L. 98-620 provided that: "The amendments made by subsection (a) of this section [amending subsec. (a) of this section] shall apply to any action commenced in the United States District Court for the Northern District of Illinois on or after the effective date of this subtitle [Jan. 1, 1985], and shall not affect any action pending in such court on such effective date."

Amendment by Pub. L. 98-620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98-620, set out as a note under section 85 of this title.

§ 98. Louisiana

Louisiana is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of Louisiana.

Eastern District

(a) The Eastern District comprises the parishes of Assumption, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Tammany, Tangipahoa, Terrebonne, and Washington.

Court for the Eastern District shall be held at New Orleans, and Houma.

Middle District

[*See main edition for text of* (b)]

Western District

[*See main edition for text of* (c)]

(As amended July 10, 1984, Pub. L. 98-353, title II, § 203(b), 98 Stat. 350.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 inserted ", and Houma" after "New Orleans".

§ 112. New York

New York is divided into four judicial districts to be known as the Northern, Southern, Eastern, and Western Districts of New York.

Northern District

[*See main edition for text of* (*a*)]

Southern District

[*See main edition for text of* (*b*)]

Eastern District

(c) The Eastern District comprises the counties of Kings, Nassau, Queens, Richmond, and Suffolk and concurrently with the Southern District, the waters within the counties of Bronx and New York.

Court for the Eastern District shall be held at Brooklyn, Hauppauge, and Hempstead (including the village of Uniondale).

Western District

[*See main edition for text of* (*d*)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 405, 98 Stat. 3361.)

Amendments

1984—Subsec. (c). Pub. L. 98-620 added Hauppauge to the list of places for holding court in the Eastern District.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98-620, set out as a note under section 85 of this title.

§ 124. Texas

Texas is divided into four judicial districts to be known as the Northern, Southern, Eastern, and Western Districts of Texas.

Northern District

[*See main edition for text of* (*a*)]

Southern District

(b) The Southern District comprises seven divisions.

(1) The Galveston Division comprises the counties of Brazoria, Chambers, Galveston, and Matagorda.

Court for the Galveston Division shall be held at Galveston.

(2) The Houston Division comprises the counties of Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris, Madison, Montgomery, San Jacinto, Walker, Waller, and Wharton.

Court for the Houston Division shall be held at Houston.

(3) The Laredo Division comprises the counties of Jim Hogg, La Salle, McMullen, Webb, and Zapata.

Court for the Laredo Division shall be held at Laredo.

(4) The Brownsville Division comprises the counties of Cameron and Willacy.

Court for the Brownsville Division shall be held at Brownsville.

(5) The Victoria Division comprises the counties of Calhoun, DeWitt, Goliad, Jackson, Lavaca, Refugio, and Victoria.

Court for the Victoria Division shall be held at Victoria.

(6) The Corpus Christi Division comprises the counties of Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, and San Patricio.

Court for the Corpus Christi Division shall be held at Corpus Christi.

(7) The McAllen Division comprises the counties of Hidalgo and Starr.

Court for the McAllen Division shall be held at McAllen.

Eastern District

[*See main edition for text of* (*c*)]

Western District

[*See main edition for text of* (*d*)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 407(a), 98 Stat. 3362.)

Amendments

1984—Subsec. (b). Pub. L. 98-620, § 407(a)(1), substituted "seven" for "six" in provisions preceding par. (1).

Subsec. (b)(4). Pub. L. 98-620, § 407(a)(2), struck out references to Hidalgo and Starr counties from the counties comprising the Brownsville Division of the Southern District.

Subsec. (b)(7). Pub. L. 98-620, § 407(a)(3), added par. (7).

Effective Date of 1984 Amendment

Section 407(b) of Pub. L. 98-620 provided that: "The amendments made by subsection (a) of this section [amending this section] shall apply to any action commenced in the United States District Court for the Southern District of Texas on or after the effective date of this subtitle [Jan. 1, 1985], and shall not affect any action pending in such court on such effective date."

Amendment by Pub. L. 98-620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98-620, set out as a note under section 85 of this title.

§ 126. Vermont

Vermont constitutes one judicial district.

Court shall be held at Bennington, Brattleboro, Burlington, Montpelier, Rutland, Saint Johnsbury, and Windsor.

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 410, 98 Stat. 3362.)

Amendments

1984—Pub. L. 98-620 added Bennington to the list of places for holding court in Vermont.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98-620, set out as a note under section 85 of this title.

§ 131. Wyoming

Wyoming and those portions of Yellowstone National Park situated in Montana and Idaho constitute one judicial district.

Court shall be held at Casper, Cheyenne, Evanston, Lander, Jackson, and Sheridan.

(As amended July 10, 1984, Pub. L. 98-353, title II, § 203(a), 98 Stat. 350.)

AMENDMENTS

1984—Pub. L. 98-353 inserted "Jackson," after "Lander,".

§ 133. Appointment and number of district judges

The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows:

Districts	Judges
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	8
Arkansas:	
Eastern	3
Western	1
Eastern and Western	2
California:	
Northern	12
Eastern	6
Central	22
Southern	7
Colorado	7
Connecticut	6
Delaware	4
District of Columbia	15
Florida:	
Northern	3
Middle	9
Southern	15
Georgia:	
Northern	11
Middle	3
Southern	3
Hawaii	3
Idaho	2
Illinois:	
Northern	20
Central	3
Southern	3
Indiana:	
Northern	4
Southern	5
Iowa:	
Northern	1
Southern	2
Northern and Southern	1
Kansas	5
Kentucky:	
Eastern	4
Western	4
Eastern and Western	1
Louisiana:	
Eastern	13
Middle	2
Western	6
Maine	2
Maryland	10
Massachusetts	11
Michigan:	
Eastern	15
Western	4
Minnesota	7
Mississippi:	
Northern	3
Southern	5
Missouri:	
Eastern	5
Western	5
Eastern and Western	2
Montana	3
Nebraska	3
Nevada	4
New Hampshire	2
New Jersey	14
New Mexico	4
New York:	
Northern	4
Southern	27
Eastern	12
Western	3
North Carolina:	
Eastern	3
Middle	3
Western	3
North Dakota	2
Ohio:	
Northern	10
Southern	7
Oklahoma:	
Northern	2
Eastern	1
Western	4
Northern, Eastern, and Western	2
Oregon	5
Pennsylvania:	
Eastern	19
Middle	5
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	8
South Dakota	3
Tennessee:	
Eastern	4
Middle	3
Western	4
Texas:	
Northern	10
Eastern	6
Southern	13
Western	7
Utah	4
Vermont	2
Virginia:	
Eastern	9
Western	4

Districts	Judges
Washington:	
Eastern	3
Western	6
West Virginia:	
Northern	2
Southern	4
Wisconsin:	
Eastern	4
Western	2
Wyoming	2.

(As amended July 10, 1984, Pub. L. 98-353, title II, § 202(e), 98 Stat. 348.)

Amendments

1984—Pub. L. 98-353 altered number of permanent district judgeships in named districts as follows:

State	*Former*	*New*
Alabama:		
Northern	7	7
Middle	3	3
Southern	2	3
Alaska	2	3
Arizona	8	8
Arkansas:		
Eastern	3	3
Western	1	1
Eastern and Western	2	2
California:		
Northern	12	12
Eastern	6	6
Central	17	22
Southern	7	7
Colorado	6	7
Connecticut	5	6
Delaware	3	4
District of Columbia	15	15
Florida:		
Northern	3	3
Middle	9	9
Southern	12	15
Georgia:		
Northern	11	11
Middle	2	3
Southern	3	3
Hawaii	2	3
Idaho	2	2
Illinois:		
Northern	16	20
Central	3	3
Southern	2	3
Indiana:		
Northern	4	4
Southern	5	5
Iowa:		
Northern	1	1
Southern	2	2
Northern and Southern	1	1
Kansas	5	5
Kentucky:		
Eastern	4	4
Western	3	4
Eastern and Western	1	1
Louisiana:		
Eastern	13	13
Middle	2	2
Western	5	6
Maine	2	2
Maryland	9	10
Massachusetts	10	11
Michigan:		
Eastern	13	15
Western	4	4
Minnesota	5	7
Mississippi:		
Northern	2	3
Southern	3	5
Missouri:		
Eastern	4	5
Western	5	5
Eastern and Western	2	2
Montana	2	3
Nebraska	3	3
Nevada	3	4
New Hampshire	2	2
New Jersey	11	14
New Mexico	4	4
New York:		
Northern	3	4
Southern	27	27
Eastern	10	12
Western	3	3
North Carolina:		
Eastern	3	3
Middle	3	3
Western	3	3
North Dakota	2	2
Ohio:		
Northern	9	10
Southern	6	7
Oklahoma:		
Northern	2	2
Eastern	1	1
Western	3	4
Northern, Eastern, and Western	2	2
Oregon	5	5
Pennsylvania:		
Eastern	19	19
Middle	5	5
Western	10	10
Puerto Rico	7	7
Rhode Island	2	3
South Carolina	8	8
South Dakota	3	3
Tennessee:		
Eastern	3	4
Middle	3	3
Western	3	4
Texas:		
Northern	9	10
Eastern	4	6
Southern	13	13
Western	6	7
Utah	3	4
Vermont	2	2
Virginia:		
Eastern	8	9
Western	4	4
Washington:		
Eastern	2	3
Western	5	6
West Virginia:		
Northern	2	2
Southern	4	4
Wisconsin:		
Eastern	4	4
Western	2	2
Wyoming	1	2

Additional Judgeships

Section 202(a)-(d) of Pub. L. 98-353 provided that:

"(a) Subject to the provisions of subsection (c), the President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the southern district of Alabama, one additional district judge for the district of Alaska, five additional district judges for the central district of California, one additional district judge for the district of Colorado, one additional district judge for the district of Connecticut, one additional district judge for the district of Delaware, three additional district judges for the southern district of Florida, one additional district judge for the middle district of Georgia, one additional district judge for the district of Hawaii, four additional district judges for the northern district of Illinois, one additional district judge for the southern district of Illinois, one additional district judge for the western district of Kentucky, one additional district judge for the western district of Louisiana, one additional district judge for the district of Maryland, one additional district judge for the district of Massachusetts, two additional district judges for the eastern district of Michigan, one additional district judge for the district of Minnesota, one additional district judge for the northern district of Mississippi, two additional district judges for the southern district of Mississippi, one additional district judge for the eastern district of Missouri, one additional district judge for the district of Montana, one additional district judge for the district of Nevada, three additional district judges for the district of New Jersey, one additional district judge for the northern district of New York, two additional district judges for the eastern district of New York, one additional district judge for the southern district of Ohio, one additional district judge for the western district of Oklahoma, one additional district judge for the district of Rhode Island, one additional district judge for the eastern district of Tennessee, one additional district judge for the western district of Tennessee, one additional district judge for the northern district of Texas, two additional district judges for the eastern district of Texas, one additional district judge for the western district of Texas, one additional district judge for the district of Utah, one additional district judge for the eastern district of Virginia, one additional district judge for the eastern district of Washington, one additional district judge for the western district of Washington, and one additional district judge for the district of Wyoming.

"(b) Subject to the provisions of subsection (c) the President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the western district of Arkansas, one additional district judge for the northern district of Illinois, one additional district judge for the northern district of Indiana, one additional district judge for the district of Massachusetts, one additional district judge for the western district of New York, one additional district judge for the eastern district of North Carolina, one additional district judge for the northern district of Ohio, and one additional district judge for the western district of Washington. The first vacancy in each of the offices of district judge authorized by this subsection, occurring five years or more after the effective date of this Act [probably means July 10, 1984], shall not be filled.

"(c) For the judgeships created in subsections (a) and (b), the President shall appoint, by and with the advice and consent of the Senate, no more than twenty-nine of such judges prior to January 21, 1985.

"(d) The existing district judgeship for the district of Minnesota and the existing district judgeship for the northern district of Ohio, heretofore authorized by section 2 of the Act of October 20, 1978 (Public Law 95-486, 92 Stat. 1631) [set out below], shall, as of the effective date of this Act [probably means July 10, 1984], be authorized under section 133 of title 28, United States Code, and the incumbents of those offices shall henceforth hold their offices under section 133, as amended by this Act."

§ 135. Salaries of district judges

Salary Increases

1985—Salaries of district judges increased to $78,700 effective on the first day of the first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1984—Salaries of district judges increased to $76,000 effective on the first day of the first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

CHAPTER 6—BANKRUPTCY JUDGES

Sec.
151. Designation of bankruptcy courts.
152. Appointment of bankruptcy judges.
153. Salaries; character of service.
154. Division of business; chief judge.[1]
155. Temporary transfer of bankruptcy judges.
156. Staff; expenses.
157. Procedures.
158. Appeals.

Prior Provisions

A prior chapter 6, consisting of sections 151 to 160, which was added by Pub. L. 95-598, title II, § 201(a), Nov. 6, 1978, 92 Stat. 2657, as amended by Pub. L. 97-164, title I, § 110(d), Apr. 2, 1982, 96 Stat. 29, and which related to bankruptcy courts, did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy. Chapter 6 read as follows:

CHAPTER 6—BANKRUPTCY COURTS

Sec.
151. Creation and composition of bankruptcy courts.
152. Appointment of bankruptcy judges.
153. Tenure and residence of bankruptcy judges.
154. Salaries of bankruptcy judges.
155. Chief judge; precedence of bankruptcy judges.
156. Division of business among bankruptcy judges.
157. Times of holding court.
158. Accommodations at places for holding court.
159. Vacant judgeship as affecting proceedings.
160. Appellate panels.

§ 151. Creation and composition of bankruptcy courts

(a) There shall be in each judicial district, as an adjunct to the district court for such district, a bankruptcy court which shall be a court of record known as the United States Bankruptcy Court for the district.

(b) Each bankruptcy court shall consist of the bankruptcy judge or judges for the district in regular active service. Justices or judges designated and assigned shall be competent to sit as judges of the bankruptcy court.

(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a bankruptcy court with respect to any action, suit or proceeding may be exercised by a single bankruptcy judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other bankruptcy judges.

§ 152. Appointment of bankruptcy judges

The President shall appoint, by and with the advice and consent of the Senate, bankruptcy judges for the several judicial districts. In each instance, the President shall give due consideration to the recommended nominee or nominees of the Judicial Council of the Circuit within which an appointment is to be made.

§ 153. Tenure and residence of bankruptcy judges

(a) Each bankruptcy judge shall hold office for a term of 14 years, but may continue to perform the duties of his office until his successor takes office, unless such office has been eliminated.

(b) Removal of a bankruptcy judge during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability. Removal shall be by the judicial council of the circuit or circuits in which the bankruptcy judge serves, but removal may not occur unless a majority of all the judges of such circuit council or councils concur in the order of removal. Before any order of removal may be entered, a full specification of the charges shall be furnished to the bankruptcy judge, and he shall be accorded an opportunity to be heard on the charges. Any cause for removal of any bankruptcy judge coming to the knowledge of the Director of the Administrative Office of the United States Courts shall be reported by him to the chief judge of the circuit or circuits in which he serves, and a copy of the report shall at the same time be transmitted to the circuit council or councils and to the bankruptcy judge.

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[1] So in original. Does not conform to section catchline.

(c) Each bankruptcy judge shall reside in the district or one of the districts for which he is appointed, or within 20 miles of his official station.

(d) If the public interest and the nature of the business of a bankruptcy court require that a bankruptcy judge should maintain his abode at or near a particular part of the district the judicial council of the circuit may so declare and may make an appropriate order. If the bankruptcy judges of such a district are unable to agree as to which of them shall maintain his abode at or near the place or within the area specified in such an order the judicial council of the circuit may decide which of them shall do so.

§ 154. Salaries of bankruptcy judges

Each judge of a bankruptcy court shall receive a salary at an annual rate of $50,000, subject to adjustment under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), and section 461 of this title.

§ 155. Chief judge; precedence of bankruptcy judges

(a) In each district having more than one judge the bankruptcy judge in regular active service who is senior in commission and under seventy years of age shall be the chief judge of the bankruptcy court. If all the bankruptcy judges in regular active service are 70 years of age or older the youngest shall act as chief judge until a judge has been appointed and qualified who is under 70 years of age, but a judge may not act as chief judge until he has served as a bankruptcy judge for one year.

(b) The chief judge shall have precedence and preside at any session which he attends.

Other bankruptcy judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) A judge whose commission extends over more than one district shall be junior to all bankruptcy judges except in the district in which he resided at the time he entered upon the duties of his office.

(d) If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as a bankruptcy judge, he may so certify to the chief judge of the court of appeals for the circuit in which the bankruptcy judge serves, and thereafter the bankruptcy judge in active service next in precedence and willing to serve shall be designated by the chief judge of the court of appeals as the chief judge of the bankruptcy court.

(e) If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the bankruptcy judge in active service, present in the district and able and qualified to act, who is next in precedence.

(f) Service as a referee in bankruptcy or as a bankruptcy judge under the Bankruptcy Act shall be taken into account in the determination of seniority of commission under this section.

§ 156. Division of business among bankruptcy judges

The business of a bankruptcy court having more than one judge shall be divided among the judges as provided by the rules and orders of the court.

The chief judge of the bankruptcy court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

If the bankruptcy judges in any district are unable to agree upon the adoption of rules or orders for that purpose the judicial council of the circuit shall make the necessary orders.

§ 157. Times of holding court

(a) The bankruptcy court at each designated location shall be deemed to be in continuous session on all business days throughout the year.

(b) Each bankruptcy court may establish by local rule or order schedules of court sessions at designated places of holding court other than the headquarters office of the court. Such schedules may be pretermitted by order of the court.

(c) Bankruptcy court may be held at any place within the territory served, in any case, on order of the bankruptcy court, for the convenience of the parties, on such notice as the bankruptcy court orders.

§ 158. Accommodations at places for holding court

Court shall be held only at places where Federal quarters and accommodations are available, or suitable quarters and accommodations are furnished without cost to the United States. The foregoing restrictions shall not, however, preclude the Administrator of General Services, at the request of the Director of the Administrative Office of the United States Courts, from providing such court quarters and accommodations as the Administrator determines can appropriately be made available at places where court is authorized by law to be held, but only if such court quarters and accommodations have been approved as necessary by the judicial council of the appropriate circuit.

§ 159. Vacant judgeship as affecting proceedings

When the office of a bankruptcy judge becomes vacant, all pending process, pleadings and proceedings shall, when necessary, be continued by the clerk until a judge is appointed or designated to hold such court.

§ 160. Appellate panels

(a) If the circuit council of a circuit orders application of this section to a district within such circuit, the chief judge of each circuit shall designate panels of three bankruptcy judges to hear appeals from judgments, orders, and decrees of the bankruptcy court of the United States for such district. Except as provided in section 293(b) of this title, a panel shall be composed only of bankruptcy judges for districts located in the circuit in which the appeal arises. The chief judge shall designate a sufficient number of such panels so that appeals may be heard and disposed of expeditiously.

(b) A panel designated under subsection (a) of this section may not hear an appeal from a judgment, order, or decree entered by a member of the panel.

(c) When hearing an appeal, a panel designated under subsection (a) of this section shall sit at a place convenient to the parties to the appeal.

COURTS DURING TRANSITION

Pub. L. 95-598, title IV, § 404, Nov. 6, 1978, 92 Stat. 2683, as amended by Pub. L. 98-249, § 1(b), Mar. 31, 1984, 98 Stat. 116; Pub. L. 98-271, § 1(b), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98-299, § 1(b), May 25, 1984, 98 Stat. 214; Pub. L. 98-325, § 1(b), June 20, 1984, 98 Stat. 268; Pub. L. 98-353, title I, § 121(b), July 10, 1984, 98 Stat. 345, which provided that, for purposes of Pub. L. 95-598, which enacted Title 11, Bankruptcy, and the amendments made by Pub. L. 95-598, the courts of bankruptcy as defined under section 1(10) of former Title 11, created under section 11(a) of former Title 11, and existing on Sept. 30, 1979, continue to be courts of bankruptcy during the transition period beginning Oct. 1, 1979, and ending July 9, 1984, made provision for extension of the term of office of referees in bankruptcy serving on Nov. 6, 1978, and for such a referee to have the title of United States bankruptcy judge, established for each State a merit screening committee to pass on qualifications of such a referee and determine if the term of such a referee should be extended, and set forth the rules and provisions applicable to United States bankruptcy judges during the transition period, was repealed by Pub. L. 98-353, title

I, §§ 114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

Transition Study

Pub. L. 95-598, title IV, § 406, Nov. 6, 1978, 92 Stat. 2686, as amended by Pub. L. 98-249, § 1(c), Mar. 31, 1984, 98 Stat. 116; Pub. L. 98-271, § 1(c), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98-299, § 1(c), May 25, 1984, 98 Stat. 214; Pub. L. 98-325, § 1(c), June 20, 1984, 98 Stat. 268; Pub. L. 98-353, title I, § 121(c), July 10, 1984, 98 Stat. 346, which provided that during the transition period, Oct. 1, 1979, to July 9, 1984, the Director of the Administrative Office of the United States Courts make continuing studies and surveys in the judicial districts to determine the number of bankruptcy judges needed after July 9, 1984, to provide for the expeditious and effective administration of justice, their regular places of offices, and the places where the court was to be held, and that the Director report to the judicial councils of the circuits and the Judicial Conference of the United States his recommendations, the judicial councils advise the Conference of their recommendations, and the Conference recommend to the Congress and the President, before Jan. 3, 1983, the number of bankruptcy judges needed after July 9, 1984, and the locations at which they were to serve, was repealed by Pub. L. 98-353, title I, §§ 114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

Judicial Administration During Transition

Pub. L. 95-598, title IV, § 407, Nov. 6, 1978, 92 Stat. 2686, which provided that the Director of the Administrative Office of the United States Courts appoint a committee of not fewer than seven United States bankruptcy judges to advise the Director with respect to matters arising during the transition period or that are relevant to the purposes of the transition period, and directed that during the transition period, the chief judge of each circuit summon at least one bankruptcy judge from each judicial district within the circuit to the judicial conference of such circuit called and held under section 332 of this title, was repealed by Pub. L. 98-353, title I, §§ 114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

Extension and Termination of Term of Office of Bankruptcy Judge Serving on June 27, 1984

Section 121(e) of Pub. L. 98-353 provided that: "The term of office of any bankruptcy judge who was serving on June 27, 1984, is extended to and shall expire at the end of the day of enactment of this Act [July 10, 1984]."

[Section 121(e) of Pub. L. 98-353 effective June 27, 1984, see section 122(c) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.]

For prior extensions of the term of office of bankruptcy judges see:

Pub. L. 98-325, § 2, June 20, 1984, 98 Stat. 268.
Pub. L. 98-299, § 2, May 25, 1984, 98 Stat. 214.
Pub. L. 98-271, § 2, Apr. 30, 1984, 98 Stat. 163.
Pub. L. 98-249, § 2, Mar. 31, 1984, 98 Stat. 116.

Chapter Referred to in Other Sections

This chapter is referred to in title 11 section 105; title 18 section 6001.

§ 151. Designation of bankruptcy courts

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

(Added Pub. L. 98-353, title I, § 104(a), July 10, 1984, 98 Stat. 336.)

Effective Date

Section 122 of title I of Pub. L. 98-353 provided that:

"(a) Except as otherwise provided in this section, this title and the amendments made by this title [enacting this chapter and sections 1408 to 1412 and 1452 of this title, amending sections 372, 634, 957, 1334, 1360, and 1930 of this title, sections 8331, 8334, 8336, 8339, 8341, and 8344 of Title 5, Government Organization and Employees, and section 105 of Title 11, Bankruptcy, enacting provisions set out as notes preceding section 151 of this title and under sections 151 to 153, 634, and 1334 of this title and section 8331 of Title 5, amending provisions set out as notes preceding sections 151 and 1471 of this title and section 101 of Title 11, and repealing provisions set out as notes preceding sections 151 and 1471 of this title] shall take effect on the date of the enactment of this Act [July 10, 1984].

"(b) Section 1334(c)(2) of title 28, United States Code, and section 1411(a) of title 28, United States Code, as added by this Act, shall not apply with respect to cases under title 11 of the United States Code that are pending on the date of enactment of this Act [July 10, 1984], or to proceedings arising in or related to such cases.

"(c) Sections 108(b) [enacting provisions set out as a note under section 634 of this title], 113 [amending provisions set out as a note preceding section 101 of Title 11, Bankruptcy], and 121(e) [enacting provisions set out as a note preceding section 151 of this title] shall take effect on June 27, 1984."

Short Title of 1984 Amendment

Section 1 of Pub. L. 98-353 provided: "That this Act [enacting this chapter and sections 1408 to 1412 and 1452 of this title and sections 557 to 559 and 1113 of Title 11, Bankruptcy, amending sections 44, 98, 131, 133, 371, 372, 634, 957, 1334, 1360, and 1930 of this title, sections 8331, 8334, 8336, 8339, 8341, 8344, 8701, 8706, 8714a, and 8714b of Title 5, Government Organization and Employees, and sections 101 to 103, 105, 108, 109, 303, 321, 322, 326 to 330, 342, 343, 345, 346, 349, 350, 361 to 363, 365, 366, 501 to 503, 505 to 507, 509, 510, 521 to 525, 541 to 550, 552 to 555, 702 to 704, 707, 723 to 728, 741, 745, 752, 761, 763 to 766, 901 to 903, 921, 922, 927, 943, 945, 1102, 1103, 1105 to 1108, 1112, 1121, 1123 to 1127, 1129, 1141, 1142, 1144 to 1146, 1166, 1168 to 1171, 1173, 1301, 1302, 1304, 1307, 1322, 1324 to 1326, 1328, 1329, 15103, and 151302 of Title 11, enacting provisions set out as notes preceding section 151 of this title and under sections 44, 133, 151 to 153, 371, 634, 1334, and 2075 of this title, sections 8331 and 8706 of Title 5, and preceding section 101 of Title 11 and under sections 101, 365, and 1113 of Title 11, amending provisions set out as notes preceding sections 151, 581, and 1471 of this title and section 101 of Title 11, repealing provisions set out as notes preceding sections 151 and 1471 of this title, amending Rules 2002 and 3001 of the Bankruptcy Rules, set out in the Appendix to this title, and amending Official Bankruptcy Form No. 1 in the Appendix of Forms] may be cited as the 'Bankruptcy Amendments and Federal Judgeship Act of 1984'."

Separability of Provisions

Section 119 of Pub. L. 98-353 provided that: "If any provision of this Act [see Short Title of 1984 Amendment note above] or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby."

§ 152. Appointment of bankruptcy judges

(a)(1) The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

Districts	Judges
Alabama:	
Northern	5
Middle	2
Southern	2
Alaska	1
Arizona	4
Arkansas:	
Eastern and Western	2
California:	
Northern	7
Eastern	4
Central	12
Southern	3
Colorado	4
Connecticut	2
Delaware	1
District of Columbia	1
Florida:	
Northern	1
Middle	2
Southern	3
Georgia:	
Northern	4
Middle	2
Southern	1
Hawaii	1
Idaho	1
Illinois:	
Northern	8
Central	2
Southern	1
Indiana:	
Northern	2
Southern	4
Iowa:	
Northern	1
Southern	1
Kansas	3
Kentucky:	
Eastern	1
Western	2
Louisiana:	
Eastern	2
Middle	1
Western	2
Maine	2
Maryland	2
Massachusetts	4
Michigan:	
Eastern	4
Western	2
Minnesota	4
Mississippi:	
Northern	1
Southern	2
Missouri:	
Eastern	3
Western	3
Montana	1
Nebraska	1
Nevada	2
New Hampshire	1
New Jersey	5
New Mexico	2
New York:	
Northern	2
Southern	7
Eastern	6
Western	3
North Carolina:	
Eastern	2
Middle	2
Western	1
North Dakota	1
Ohio:	
Northern	8
Southern	7
Oklahoma:	
Northern	1
Eastern	1
Western	2
Oregon	4
Pennsylvania:	
Eastern	3
Middle	2
Western	3
Puerto Rico	2
Rhode Island	1
South Carolina	1
South Dakota	1
Tennessee:	
Eastern	2
Middle	2
Western	2
Texas:	
Northern	4
Eastern	1
Southern	3
Western	2
Utah	2
Vermont	1
Virginia:	
Eastern	3
Western	3
Washington:	
Eastern	1
Western	4
West Virginia:	
Northern	1
Southern	1
Wisconsin:	
Eastern	3
Western	2
Wyoming	1.

(3) Whenever a majority of the judges of any court of appeals cannot agree upon the ap-

pointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

(4) The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts. The United States court of appeals for the circuit within which such a territorial district court is located may appoint bankruptcy judges under this chapter for such district if authorized to do so by the Congress of the United States under this section.

(b)(1) The Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed.

(c) Each bankruptcy judge may hold court at such places within the judicial district, in addition to the official duty station of such judge, as the business of the court may require.

(d) With the approval of the Judicial Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any district adjacent to or near the district for which such bankruptcy judge was appointed.

(e) A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.

(Added Pub. L. 98-353, title I, § 104(a), July 10, 1984, 98 Stat. 336.)

EXTENSION AND TERMINATION OF TERM OF OFFICE OF BANKRUPTCY JUDGE AND PART-TIME BANKRUPTCY JUDGE SERVING ON JULY 10, 1984; PRACTICE OF LAW BY PART-TIME BANKRUPTCY JUDGE

Section 106 of Pub. L. 98-353 provided that:

"(a) Notwithstanding section 152 of title 28, United States Code, as added by this Act, the term of office of a bankruptcy judge who is serving on the date of enactment of this Act [July 10, 1984] is extended to and expires four years after the date such bankruptcy judge was last appointed to such office or on October 1, 1986, whichever is later.

"(b)(1) Notwithstanding section 153(a) of title 28, United States Code, as added by this Act, and notwithstanding subsection (a) of this section, a bankruptcy judge serving on a part-time basis on the date of enactment of this Act [July 10, 1984] may continue to serve on such basis for a period not to exceed two years from the date of enactment of this Act [July 10, 1984].

"(2) Notwithstanding the provisions of section 153(b) of title 28, United States Code, a bankruptcy judge serving on a part-time basis may engage in the practice of law but may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Judicial Conference of the United States may promulgate appropriate rules and regulations to implement this paragraph."

APPOINTMENT TO FILL VACANCIES; NOMINATIONS; QUALIFICATIONS

Section 120 of Pub. L. 98-353 provided that:

"(a)(1) Whenever a court of appeals is authorized to fill a vacancy that occurs on a bankruptcy court of the United States, such court of appeals shall appoint to fill that vacancy a person whose character, experience, ability, and impartiality qualify such person to serve in the Federal judiciary.

"(2) It is the sense of the Congress that the courts of appeals should consider for appointment under section 152 of title 28, United States Code, to the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment.

"(b) The judicial council of the circuit involved shall assist the court of appeals by evaluating potential nominees and by recommending to such court for consideration for appointment to each vacancy on the bankruptcy court persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference of the United States. In the case of the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, such potential nominees shall include the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment and the judicial council determines that such judge is qualified under subsection (c) of this section to continue to serve. Such potential nominees shall receive consideration equal to that given all other potential nominees for such position.

"(c) Before transmitting to the court of appeals the names of the persons the judicial council for the circuit deems best qualified to fill any existing vacancy, the judicial council shall have determined that—

"(1) public notice of such vacancy has been given and an effort has been made, in the case of each such vacancy, to identify qualified candidates, without regard to race, color, sex, religion, or national origin,

"(2) such persons are members in good standing of at least one State bar, or the District of Columbia bar, and members in good standing of every other bar of which they are members,

"(3) such persons possess, and have a reputation for, integrity and good character,

"(4) such persons are of sound physical and mental health,

"(5) such persons possess and have demonstrated commitment to equal justice under law,

"(6) such persons possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes, and

"(7) such persons demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States bankruptcy judge."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 158, 372 of this title; title 5 section 8331.

§ 153. Salaries; character of service

(a) Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361) as adjusted by section 461 of this title, to be paid at such times as the Judicial Conference of the United States determines.

(b) A bankruptcy judge may not engage in the practice of law and may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Conference may promulgate appropriate rules and regulations to implement this subsection.

(c) Each individual appointed under this chapter shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of the office of bankruptcy judge.

(Added Pub. L. 98-353, title I, § 104(a), July 10, 1984, 98 Stat. 338.)

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in subsec. (a), is section 225 of Pub. L. 90-206, title II, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

CONTINUATION OF SALARIES OF BANKRUPTCY JUDGES IN EFFECT ON JUNE 27, 1984

Section 105(a) of Pub. L. 98-353 provided that: "The salary of a bankruptcy judge in effect on June 27, 1984, shall remain in effect until changed as a result of a determination or adjustment made pursuant to section 153(a) of title 28, United States Code, as added by this Act."

PART-TIME BANKRUPTCY JUDGES

For provision that notwithstanding subsecs. (a) and (b) of this section, a bankruptcy judge serving on a part-time basis on July 10, 1984, may continue to serve on such basis for two years from such date, and may engage in the practice of law, see section 106 of Pub. L. 98-353, set out as a note under section 152 of this title.

SALARY INCREASES

1985—Salaries of bankruptcy judges increased to $68,400 effective on the first day of the first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1984—Salaries of bankruptcy judges (full-time) and bankruptcy judges (part-time) (maximum rate) increased to $66,100 and $33,100, respectively, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

1982—Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to $63,600 and $31,800, respectively, effective on the first day of the first pay period beginning on or after Oct. 1, 1982, by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12387 further provided that pursuant to section 101(e) of Pub. L. 97-276 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1982, which was $58,500 for bankruptcy judges and referees in bankruptcy (full-time), and $30,600 for referees in bankruptcy (part-time) (maximum rate).

Maximum rate payable to bankruptcy judges after Dec. 17, 1982, increased from $58,500 to $63,600, see Pub. L. 97-377, title I, § 129(b)-(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of Title 5.

1981—Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to $61,200 and $30,600, respectively, effective on the first day of the first pay period beginning on or after Oct. 1, 1981, by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12330 further provided that pursuant to section 101(c) of Pub. L. 97-51 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1981, which was $51,167.50 for bankruptcy judges and referees in bankruptcy (full-time), and $25,583.75 for referees in bankruptcy (part-time) (maximum rate).

1980—Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to $58,400 and $29,200, respectively, effective on the first day of the first pay period beginning on or after Oct. 1, 1980, by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12248 further provided that pursuant to section 101(c) of Pub. L. 96-369 funds are not available to pay a salary which exceeds the rate in effect on Sept. 30, 1980, which was $51,167.50 for bankruptcy judges and referees in bankruptcy (full-time), and $25,583.75 for referees in bankruptcy (part-time) (maximum rate).

For limitations on use of funds for period Oct. 1, 1980 through June 5, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96-369 and section 101(c) of Pub. L. 96-536, set out as notes under section 5318 of Title 5.

1979—Salaries of bankruptcy judges increased to $53,500 effective on the first day of the first applicable pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12165 further provided that pursuant to Pub. L. 96-86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the applicable rate payable for such position or office in effect on Sept. 30, 1978, which was $51,167.50 for bankruptcy judges.

§ 154. Division of businesses; chief judge

(a) Each bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court.

(b) In each district court having more than one bankruptcy judge the district court shall designate one judge to serve as chief judge of such bankruptcy court. Whenever a majority of the judges of such district court cannot agree upon the designation as chief judge, the chief judge of such district court shall make such designation. The chief judge of the bankruptcy court shall ensure that the rules of the bankruptcy court and of the district court are observed and that the business of the bankruptcy court is handled effectively and expeditiously.

(Added Pub. L. 98-353, title I, § 104(a), July 10, 1984, 98 Stat. 339.)

§ 155. Temporary transfer of bankruptcy judges

(a) A bankruptcy judge may be transferred to serve temporarily as a bankruptcy judge in any judicial district other than the judicial district for which such bankruptcy judge was appointed upon the approval of the judicial council of each of the circuits involved.

(b) A bankruptcy judge who has retired may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a bankruptcy judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference of the United States, subject to the restrictions on the payment of an annuity in subchapter III of chapter 83 of title 5.

(Added Pub. L. 98-353, title I, § 104(a), July 10, 1984, 98 Stat. 339.)

§ 156. Staff; expenses

(a) Each bankruptcy judge may appoint a secretary, a law clerk, and such additional assistants as the Director of the Administrative Office of the United States Courts determines to be necessary.

(b) Upon certification to the judicial council of the circuit involved and to the Director of the Administrative Office of the United States Courts that the number of cases and proceedings pending within the jurisdiction under section 1334 of this title within a judicial district so warrants, the bankruptcy judges for such district may appoint an individual to serve as clerk of such bankruptcy court. The clerk may appoint, with the approval of such bankruptcy judges, and in such number as may be approved by the Director, necessary deputies, and may remove such deputies with the approval of such bankruptcy judges.

(c) Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

(Added Pub. L. 98-353, title I, § 104(a), July 10, 1984, 98 Stat. 339.)

§ 157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interest for the purposes of confirming a plan under chapter 11 or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(Added Pub. L. 98-353, title I, § 104(a), July 10, 1984, 98 Stat. 340.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 158 of this title.

§ 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(2) No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district.

(3) A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.

(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(Added Pub. L. 98-353, title I, § 104(a), July 10, 1984, 98 Stat. 341.)

REFERENCES IN TEXT

The Bankruptcy Rules, referred to in subsec. (c), are set out in the Appendix to Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title.

CHAPTER 7—UNITED STATES CLAIMS COURT

§ 172. Tenure and salaries of judges

SALARY INCREASES

1985—Salaries of judges increased to $70,200 effective on the first day of the first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1984—Salaries of judges set at $67,800 effective on the first day of the first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

CHAPTER 11—COURT OF INTERNATIONAL TRADE

§ 252. Tenure and salaries of judges

SALARY INCREASES

1985—Salaries of judges increased to $78,700 effective on the first day of the first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1984—Salaries of judges increased to $76,000 effective on the first day of the first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

§ 291. Circuit judges

[*See main edition for text*]

(June 25, 1948, ch. 646, 62 Stat. 900; July 28, 1953, ch. 253, § 2, 67 Stat. 226; Sept. 3, 1954, ch. 1263, § 39(b), 68 Stat. 1240; July 9, 1956, ch. 517, § 1(a), 70 Stat. 497; Aug. 25, 1958, Pub. L. 85-755, § 2, 72 Stat. 848; Nov. 6, 1978, Pub. L. 95-598, title II, § 202, 92 Stat. 2660; Apr. 2, 1982, Pub. L. 97-164, title I, § 108, 96 Stat. 28.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-598 directed the amendment of subsec. (c) by adding "or bankruptcy" after "to hold a district", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 292. District judges

[*See main edition for text*]

(June 25, 1948, ch. 646, 62 Stat. 901; July 28, 1953, ch. 253, § 3, 67 Stat. 226; Sept. 3, 1954, ch. 1263, § 39(c), 68 Stat. 1240; July 9, 1956, ch. 517, § 1(b), 70 Stat. 497; July 14, 1956, ch. 589, § 2, 70 Stat. 532; Aug. 25, 1958, Pub. L. 85-755, § 3, 72 Stat. 848; July 29, 1970, Pub. L. 91-358, title I, § 172(e), 84 Stat. 591; Nov. 6, 1978, Pub. L. 95-598, title II, §§ 203, 204, 92 Stat. 2660; Oct. 10, 1980, Pub. L. 96-417, title V, § 501(7), 94 Stat. 1742; Apr. 2, 1982, Pub. L. 97-164, title I, § 109, 96 Stat. 28.)

Amendments

1978—Subsecs. (b), (d). Pub. L. 95-598 directed the amendment of subsec. (b) by substituting "to hold a district court or a bankruptcy court" for "to hold a district court" and the amendment of subsec. (d) by substituting "in a bankruptcy court, district court, or court of appeals" for "either in a district court or court of appeals", which amendments did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 293. Judges of the Court of International Trade

(a)[1] The Chief Justice of the United States may designate and assign temporarily any judge of the Court of International Trade to perform judicial duties in any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises.

(June 25, 1948, ch. 646, 62 Stat. 901; July 14, 1956, ch. 589, § 3(a), 70 Stat. 532; Aug. 25, 1958, Pub. L. 85-755, § 4, 72 Stat. 848; Nov. 6, 1978, Pub. L. 95-598, title II, § 205, 92 Stat. 2660; Oct. 10, 1980, Pub. L. 96-417, title I, § 102, title V, § 501(8), 94 Stat. 1727, 1742; Apr. 2, 1982, Pub. L. 97-164, title I, § 110(a), (b), 96 Stat. 29.)

Amendments

1982—Pub. L. 97-164, § 110(b), substituted "the Court of International Trade" for "other courts" in section catchline.

Subsec. (a). Pub. L. 97-164, § 110(a)(1), (2), redesignated subsec. (b) as (a). Former subsec. (a), which authorized the Chief Justice to designate and assign judges of the Court of Claims or the Court of Customs and Patent Appeals to serve temporarily on the other of these two courts or in a court of appeals or district court of any circuit in times of necessity, was struck out.

Subsec. (b). Pub. L. 97-164, § 110(a)(2), (3), redesignated subsec. (e), as that subsec. was to have become effective pursuant to Pub. L. 95-598, as subsec. (b). Former subsec. (b) redesignated (a). See 1978 Amendment note below.

Subsecs. (c), (d). Pub. L. 97-164, § 110(a)(1), struck out subsecs. (c) and (d) which related, respectively, to the authority of the chief judge of the Court of Customs and Patent Appeals to designate and assign temporarily any judge of the Court of Customs and Patent Appeals to serve as a judge of the Court of International Trade and to the authority of the chief judge of the Court of International Trade to designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Customs and Patent Appeals or the Court of Claims.

Subsec. (e). Pub. L. 97-164, § 110(a)(3), redesignated subsec. (e), as that subsec. was to have become effective pursuant to Pub. L. 95-598, as subsec. (b). See 1978 Amendment note below.

1980—Subsec. (b). Pub. L. 96-417, § 102(a), redesignated the Customs Court as the Court of International Trade and authorized performance of judicial functions in a court of appeals.

Subsec. (c). Pub. L. 96-417, § 501(8), redesignated the Customs Court as the Court of International Trade.

Subsec. (d). Pub. L. 96-417, § 102(b), redesignated the Customs Court as the Court of International Trade and authorized temporary assignments to the Court of Claims of judges of the Court of International Trade upon presentation of a certificate of necessity by the chief judge of the Court of Claims.

1978—Subsec. (e). Pub. L. 95-598 directed the amendment of this section by adding subsec. (e) relating to temporary assignments of bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 294. Assignment of retired Justices or judges to active duty

[*See main edition for text*]

(June 25, 1948, ch. 646, 62 Stat. 901; July 9, 1956, ch. 517, § 1(c), 70 Stat. 497; Aug. 29, 1957, Pub. L. 85-219, 71 Stat. 495; Aug. 25, 1958, Pub. L. 85-755, § 5, 72 Stat. 849; Nov. 6, 1978, Pub. L. 95-598, title II, § 206, 92 Stat. 2660.)

Amendments

1978—Subsecs. (c), (d). Pub. L. 95-598 directed the amendment of subsec. (c) by substituting "district or bankruptcy judge" for "or district" and the amendment of subsec. (d) by substituting ", district judge or bankruptcy judge" for "or district judge", which amendments did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Section Referred to in Other Sections

This section is referred to in section 46 of this title; title 26 section 3121; title 42 section 409.

§ 295. Conditions upon designation and assignment

[*See main edition for text*]

(June 25, 1948, ch. 646, 62 Stat. 901; Sept. 3, 1954, ch. 1263, § 39(d), 68 Stat. 1240; July 14, 1956, ch. 589, § 3(b), 70 Stat. 532; Aug. 25, 1958, Pub. L. 85-755, § 6, 72 Stat. 850; Nov. 6, 1978, Pub. L. 95-598, title II, § 207, 92 Stat. 2660.)

Amendments

1978—Pub. L. 95-598 directed the amendment of section by substituting "district, or bankruptcy" for "or district", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES

§ 331. Judicial Conference of the United States

[*See main edition for text*]

(June 25, 1948, ch. 646, 62 Stat. 902; July 9, 1956, ch. 517, § 1(d), 70 Stat. 497; Aug. 28, 1957, Pub. L. 85-202, 71 Stat. 476; July 11, 1958, Pub. L. 85-513, 72 Stat. 356; Sept. 19, 1961, Pub. L. 87-253, §§ 1, 2, 75 Stat. 521; Nov. 6, 1978, Pub. L. 95-598, title II, § 208, 92 Stat. 2660; Oct. 15,

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[1] There is no subsec. (b).

1980, Pub. L. 96-458, § 4, 94 Stat. 2040; Apr. 2, 1982, Pub. L. 97-164, title I, § 111, 96 Stat. 29.)

AMENDMENTS

1978—Pub. L. 95-598 directed the amendment of section by inserting references to bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 332. Judicial councils of circuits

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-598 directed the amendment of subsec. (d) by inserting "and bankruptcy judges" after "The district judges", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

Sec.	
371.	Retirement on salary; retirement in senior status.

AMENDMENTS

1984—Pub. L. 98-353, title II, § 204(b), July 10, 1984, 98 Stat. 350, substituted "Retirement on salary; retirement in senior status" for "Resignation or retirement for age" in item 371.

§ 371. Retirement on salary; retirement in senior status

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his lifetime, continue to receive the salary of the office.

(c) The age and service requirements for retirement under this section are as follows:

Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

(As amended July 10, 1984, Pub. L. 98-353, title II, § 204(a), 98 Stat. 350.)

AMENDMENTS

1984—Pub. L. 98-353 substituted "Retirement on salary; retirement in senior status" for "Resignation or retirement for age" in section catchline.

Subsec. (a). Pub. L. 98-353 amended subsec. (a) generally, substituting "may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired" for "who resigns after attaining the age of seventy years and after serving at least ten years continuously or otherwise shall, during the remainder of his lifetime, continue to receive the salary which he was receiving when he resigned".

Subsec. (b). Pub. L. 98-353 amended subsec. (b) generally, substituting "may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his lifetime, continue to receive the salary of the office" for "may retain his office but retire from regular active service after attaining the age of seventy years and after serving at least ten years continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years continuously or otherwise. He shall, during the remainder of his lifetime, continue to receive the salary of the office. The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires".

Subsecs. (c), (d). Pub. L. 98-353 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 204(c) of Pub. L. 98-353 provided that: "The amendments made by this section [amending this section] shall apply with respect to any justice or judge of the United States appointed to hold office during good behavior who retires on or after the date of enactment of this Act [July 10, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 294, 372, 376 of this title; title 5 sections 8701, 8714a, 8714b; title 26 section 3121; title 42 section 409.

§ 372. Retirement for disability; substitute judge on failure to retire; judicial discipline

[See main edition for text of (a) and (b)]

(c) *[See main edition for text of (1) to (5)]*

(6) Upon receipt of a report filed under paragraph (5) of this subsection, the judicial council—

[See main edition for text of (A)]

(B) shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit, including, but not limited to, any of the following actions:

[See main edition for text of (i) to (vi)]

(vii) ordering such other action as it considers appropriate under the circumstances, except that (I) in no circumstances may the council order removal from office of any judge appointed to hold office during good behavior, and (II) any removal of a magistrate shall be in accordance with section 631 of this title and any removal of a bankruptcy judge shall be in accordance with section 152 of this title; and

[See main edition for text of (C), (7) to (17)]

(As amended July 10, 1984, Pub. L. 98-353, title I, § 107, 98 Stat. 342.)

AMENDMENTS

1984—Subsec. (c)(6)(B)(vii). Pub. L. 98-353 substituted "section 152" for "section 153".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 294, 331, 376, 604 of this title; title 5 section 8701.

§ 373. Judges in Territories and Possessions

ELECTION, RECALL, STATUS, COMPENSATION, CONDUCT, AND TERMINATION OF SENIOR JUDGES

Pub. L. 98-454, title X, § 1002, Oct. 5, 1984, 98 Stat. 1745, provided that:

"(a) Any judge or former judge who is receiving, or will upon attaining the age of sixty-five years be entitled to receive, payments pursuant to section 373 of title 28, United States Code[,] may elect to become a senior judge of the court on which he served while on active duty.

"(b) The chief judge of a judicial circuit may recall any such senior judge of his circuit, with the judge's consent, to perform in the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands such judicial duties and for such periods of time as the chief judge may specify.

"(c) Any act or failure to act by a senior judge performing judicial duties pursuant to this section shall have the same force and effect as if it were the act or failure to act of a judge on active duty; but such senior judge shall not be counted as a judge of the court on which he is serving for purposes of the number of judgeships authorized for that court.

"(d) Any senior judge shall be paid, while performing duties pursuant to this section, the same compensation (in lieu of payments pursuant to section 373 of title 28, United States Code) and the same allowances for travel and other expenses as a judge in active service.

"(e) Senior judges under subsection (a) of this section shall at all times be governed by the code of judicial conduct for the United States judges, approved by the Judicial Conference of the United States.

"(f) Any person who has elected to be a senior judge under subsection (a) of this section and who thereafter—

"(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (b) of this section);

"(2) engages in the practice of law; or

"(3) materially violated the code of judicial conduct for the United States judges,

shall cease to be a senior judge and to be eligible for recall pursuant to subsection (b) of this section."

§ 376. Annuities for survivors of certain judicial officials of the United States

[*See main edition for text*]

(Added Aug. 3, 1956, ch. 944, § 2, 70 Stat. 1021, and amended July 7, 1958, Pub. L. 85-508, § 12(n), 72 Stat. 348; Dec. 20, 1967, Pub. L. 90-219, title II, § 202, 81 Stat. 668; Aug. 8, 1968, Pub. L. 90-466, § 1(a), 82 Stat. 662; Aug. 22, 1972, Pub. L. 92-397, §§ 2, 3(c), 86 Stat. 579, 580; Oct. 19, 1976, Pub. L. 94-554, § 2, 90 Stat. 2603; Nov. 6, 1978, Pub. L. 95-598, title II, § 211, 92 Stat. 2661.)

AMENDMENTS

1978—Subsec. (a)(2)(A). Pub. L. 95-598 directed the amendment of subpar. (A) by adding cl. (iii) relating to bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

§ 451. Definitions

[*See main edition for text*]

(June 25, 1948, ch. 646, 62 Stat. 907; Mar. 18, 1959, Pub. L. 86-3, § 10, 73 Stat. 9; Sept. 12, 1966, Pub. L. 89-571, § 3, 80 Stat. 764; Nov. 6, 1978, Pub. L. 95-598, title II, § 213, 92 Stat. 2661; Oct. 10, 1980, Pub. L. 96-417, title V, § 501(10), 94 Stat. 1742; Apr. 2, 1982, Pub. L. 97-164, title I, § 114, 96 Stat. 29.)

AMENDMENTS

1978—Pub. L. 95-598 directed the amendment of section by inserting references to bankruptcy courts and bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 453. Oaths of justices and judges

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 460, 631 of this title.

§ 456. Traveling expenses of justices and judges; official duty stations

(a) The Director of the Administrative Office of the United States Courts shall pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station for any continuous period of less than thirty calendar days (1) all necessary transportation expenses certified by the justice or judge; and (2) payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5. The Director of the Administrative Office of the United States Courts shall also pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days, all necessary transportation expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States.

[*See main edition for text of* (*b*) *to* (*g*)]

(As amended Jan. 2, 1986, Pub. L. 99-234, title I, § 107(d), 99 Stat. 1759.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-234 substituted "payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5" for "a per diem allowance for travel at the rate which the Director establishes not to exceed the maximum per diem allowance fixed by section 5702(a) of title 5, or in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States, reimbursement for his actual and necessary expenses of subsistence not in excess of the maximum amount fixed by section 5702 of title 5".

1978—Pub. L. 95-598 directed the amendment of section by adding references to the United States Bankruptcy Court for the District of Columbia and bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-234 effective (1) on the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as a note under section 5701 of Title 5, Government Organization and Employees.

§ 457. Records; obsolete papers

[*See main edition for text*]

(June 25, 1948, ch. 646, 62 Stat. 908; Nov. 6, 1978, Pub. L. 95-598, title II, § 216, 92 Stat. 2661.)

AMENDMENTS

1978—Pub. L. 95-598 directed the amendment of section by adding "of bankruptcy courts," after "The record", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 460. Application to other courts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 9 section 203; title 16 sections 1540, 3375, title 20 section 2901-7; title 22 sections 283gg, 285f, 290g-6, 1650a; title 33 section 1479.

§ 461. Adjustments in certain salaries

SALARY ADJUSTMENTS

Pub. L. 99-88, title I, § 100, Aug. 15, 1985, 99 Stat. 310, provided in part that: "Effective on the first day of the first applicable pay period commencing on or after January 1, 1985, each rate of pay subject to adjustment by section 461 of title 28, United States Code, shall be increased by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the overall percentage of the adjustment taking effect under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule during fiscal year 1985."

Pub. L. 98-369, div. B, title II, § 2207, July 18, 1984, 98 Stat. 1060, provided that: "Effective on the first day of the first applicable pay period commencing on or after January 1, 1984, each rate of pay subject to adjustment by section 461 of title 28, United States Code, shall be increased by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the overall percentage of the adjustment taking effect under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule during fiscal year 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 44, 135, 153, 172, 213, 252, 634, 792 of this title; title 26 section 7456.

PART II—DEPARTMENT OF JUSTICE

CHAPTER 31—THE ATTORNEY GENERAL

Sec.
530. Payment of travel and transportation expenses of newly appointed special agents.

AMENDMENTS

1983—Pub. L. 98-86, § 2, Aug. 26, 1983, 97 Stat. 492, added item 530.

§ 503. Attorney General

CROSS REFERENCES

Office of Justice Programs, see section 3711 of Title 42, The Public Health and Welfare.

Bureau of Justice Assistance, see section 3741 of Title 42.

§ 509. Functions of the Attorney General

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

(1) vested by subchapter II of chapter 5 of title 5 in administrative law judges employed by the Department of Justice;

(2) of the Federal Prison Industries, Inc.; and

(3) of the Board of Directors and officers of the Federal Prison Industries, Inc..[1]

(As amended Pub. L. 98-473, title II, § 228(a), Oct. 12, 1984, 98 Stat. 2030.)

AMENDMENTS

1984—Pub. L. 98-473 inserted "and" at end of cl. (2), substituted a period for "; and" at end of cl. (3), and struck out cl. (4) which related to the functions of the Board of Parole.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 235(a)(1)(B)(ii)(IV) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 516. Conduct of litigation reserved to Department of Justice

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 19 section 2350; title 38 sections 1850, 3116; title 42 section 1785.

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[1] So in original.

§ 518. Conduct and argument of cases

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 sections 1205, 7105; title 12 section 2244; title 29 sections 663, 792, 1132, 1852; title 30 section 822; title 42 section 7171.

§ 519. Supervision of litigation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 943; title 19 section 1920; title 38 sections 1830, 3116; title 42 section 8412.

§ 522. Report of business and statistics

REPORT TO CONGRESS ON ROBBERIES AND BURGLARIES INVOLVING CONTROLLED SUBSTANCES

Pub. L. 98-305, § 4, May 31, 1984, 98 Stat. 222, provided that: "For each of the first three years after the date of enactment of this Act [May 31, 1984], the Attorney General of the United States shall submit an annual report to the Congress with respect to the enforcement activities of the Attorney General relating to the offenses created by the amendment made by section 2 of this Act [enacting section 2118 of Title 18, Crimes and Criminal Procedure]."

REPORT TO CONGRESS ON SEXUAL EXPLOITATION OF CHILDREN

Pub. L. 98-292, § 9, May 21, 1984, 98 Stat. 206, provided that: "Beginning one hundred and twenty days after the date of enactment of this Act [May 21, 1984], and every year thereafter, the Attorney General shall report to the Congress on prosecutions, convictions, and forfeitures under chapter 110 of title 18 of the United States Code."

§ 524. Availability of appropriations

[*See main edition for text of* (*a*) *and* (*b*)]

(c)(1) There is established in the United States Treasury a special fund to be known as the Department of Justice Assets Forfeiture Fund (hereinafter in this subsection referred to as the "fund") which shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriations Acts for the following purposes of the Department of Justice—

(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property under seizure, detention, or forfeited pursuant to any law enforced or administered by the Department of Justice, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property; such payments may include payments for contract services and payments to reimburse any Federal, State, or local agency for any expenditures made to perform the foregoing functions;

(B) the payment of awards for information or assistance leading to a civil or criminal forfeiture under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 et seq.) or a criminal forfeiture under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1961 et seq.), at the discretion of the Attorney General;

(C) the compromise and payment of valid liens and mortgages against property that has been forfeited pursuant to any law enforced or administered by the Department of Justice, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made;

(D) disbursements authorized in connection with remission or mitigation procedures relating to property forfeited under any law enforced or administered by the Department of Justice;

(E) for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the Drug Enforcement Administration or the Immigration and Naturalization Service; and

(F) for purchase of evidence of any violation of the controlled substances Act or the Controlled Substances Import and Export Act.

(2) Any award paid from the fund for information concerning a forfeiture, as provided in paragraph (1)(B), shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay an award of $10,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. Any award for such information shall not exceed the lesser of $150,000 or one-fourth of the amount realized by the United States from the property forfeited.

(3) Any amount under subparagraph (F) of subsection (c)(1) of this section shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay $100,000 or more may be delegated only to the respective head of the agency involved.

(4) There shall be deposited in the fund all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice remaining after the payment of expenses for forfeiture and sale authorized by law.

(5) Amounts in the fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(6) The Attorney General shall transmit to the Congress, not later than four months after the end of each fiscal year a detailed report on the amounts deposited in the fund and a description of expenditures made under this subsection.

(7) The provisions of this subsection relating to deposits in the fund shall apply to all property in the custody of the Department of Justice on or after the effective date of the Comprehensive Forfeiture Act of 1983.

(8) For fiscal years 1984, 1985, 1986, and 1987, there are authorized to be appropriated such sums as may be necessary for the purposes described in paragraph (1). At the end of each fiscal year, any amount in the fund in excess of the amount appropriated shall be deposited in the general fund of the Treasury of the United States, except that an amount not to exceed

$5,000,000 may be carried forward and available for appropriation in the next fiscal year.

(9) For the purposes of this subsection, property is forfeited pursuant to a law enforced or administered by the Department of Justice if it is forfeited pursuant to—

(A) any criminal forfeiture proceeding;

(B) any civil judicial forfeiture proceeding; or

(C) any civil administrative forfeiture proceeding conducted by the Department of Justice;

except to the extent that the seizure was effected by a Customs officer or that custody was maintained by the Customs Service in which case the provisions of section 613a of the Tariff Act of 1930 (19 U.S.C. 1613a) shall apply.

(As amended Pub. L. 98-473, title II, §§ 310, 2303, Oct. 12, 1984, 98 Stat. 2052, 2193.)

References in Text

The Comprehensive Drug Abuse Prevention and Control Act of 1970, referred to in subsec. (c)(1)(B), is Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1236, as amended, which is classified principally to chapter 13 (§ 801 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1961 et seq.), referred to in subsec. (c)(1)(B), probably means chapter 96 (§ 1961 et seq.) of Title 18, Crimes and Criminal Procedure.

The Controlled Substances Act, referred to in subsec. (c)(1)(F), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (c)(1)(F), is title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

The effective date of the Comprehensive Forfeiture Act of 1983, referred to in subsec. (c)(7), probably means the date of enactment of the Comprehensive Forfeiture Act of 1984, chapter III (§§ 301 to 323) of title II of Pub. L. 98-473, which was approved Oct. 12, 1984.

Amendments

1984—Subsec. (c). Pub. L. 98-473, § 310, added subsec. (c).

Subsec. (c)(1)(E), (F). Pub. L. 98-473, § 2303(a), added subpars. (E) and (F).

Subsec. (c)(3) to (9). Pub. L. 98-473, § 2303(b), added par. (3) and redesignated existing pars. (3) to (8) as (4) to (9), respectively.

Section Referred to in Other Sections

This section is referred to in title 21 section 881.

§ 526. Authority of Attorney General to investigate United States attorneys, marshals, and trustee, clerks of court, and others

Repeal of References to United States Trustees in Subsection (a)(1)

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

§ 530. Payment of travel and transportation expenses of newly appointed special agents

The Attorney General or the Attorney General's designee is authorized to pay the travel expenses of newly appointed special agents and the transportation expenses of their families and household goods and personal effects from place of residence at time of selection to the first duty station, to the extent such payments are authorized by section 5723 of title 5 for new appointees who may receive payments under that section.

(Added Pub. L. 98-86, § 1, Aug. 26, 1983, 97 Stat. 492.)

CHAPTER 33—FEDERAL BUREAU OF INVESTIGATION

§ 533. Investigative and other officials; appointment

Undercover Investigative Operations Conducted by Federal Bureau of Investigation or Drug Enforcement Administration; Annual Report to Congress; Financial Audit

Pub. L. 99-180, title II, § 204(b)(4), (5), Dec. 13, 1985, 99 Stat. 1148, provided that:

"(4)(A) The Federal Bureau of Investigation or the Drug Enforcement Administration, as the case may be, shall conduct a detailed financial audit of each undercover investigative operation which is closed in fiscal year 1986—

"(i) submit the results of such audit in writing to the Attorney General, and

"(ii) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

"(B) The Federal Bureau of Investigation and the Drug Enforcement Administration shall each also submit a report annually to the Congress specifying as to their respective undercover investigative operations—

"(i) the number, by programs, of undercover investigative operations pending as of the end of the one-year period for which such report is submitted,

"(ii) the number, by programs, of undercover investigative operations commenced in the one-year period preceding the period for which such report is submitted, and

"(iii) the number, by programs, of undercover investigative operations closed in the one-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained. With respect to each such closed undercover operation which involves any of the sensitive circumstances specified in the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations, such report shall contain a detailed description of the operation and related matters, including information pertaining to—

"(I) the results,

"(II) any civil claims, and

"(III) indentification of such sensitive circumstances involved, that arose at any time during the course of such undercover operation.

"(5) For purposes of paragraph (4)—

"(A) the term 'closed' refers to the earliest point in time at which—

"(I) all criminal proceedings (other than appeals) are concluded, or

"(II) covert activities are concluded, whichever occurs later,

"(B) the term 'employees' means employees, as defined in section 2105 of title 5 of the United States Code, of the Federal Bureau of Investigation, and

"(C) the terms 'undercover investigative operation' and 'undercover operation' mean any undercover investigative operation of the Federal Bureau of Investigation or the Drug Enforcement Administration (other than a foreign counterintelligence undercover investigative operation)—

"(i) in which—

"(I) the gross receipts (excluding interest earned) exceed $50,000, or

"(II) expenditures (other than expenditures for salaries of employees) exceed $150,000, and

"(ii) which is exempt from section 3302 or 9102 of title 31 of the United States Code,

except that clauses (i) and (ii) shall not apply with respect to the report required under subparagraph (B) of such paragraph."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 98-411, title II, § 203(b)(4), (5), Aug. 30, 1984, 98 Stat. 1560.

Pub. L. 98-166, title II, § 205(b)(4), (5), Nov. 28, 1983, 97 Stat. 1087.

CHAPTER 35—UNITED STATES ATTORNEYS

§ 548. Salaries

Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States attorneys, assistant United States attorneys, and attorneys appointed under section 543 of this title at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States Code.

(As amended Pub. L. 98-473, title II, § 1701(a) Oct. 12, 1984, 98 Stat. 2184.)

Amendments

1984—Pub. L. 98-473 amended section generally, substituting "rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States Code" for "highest rate of GS-18 of the General Schedule set forth in section 5332 of title 5".

CHAPTER 37—UNITED STATES MARSHALS

Sec.
576. Reemployment rights.

Amendments

1984—Pub. L. 98-473, title II, § 1211(c), Oct. 12, 1984, 98 Stat. 2163, added item 576.

§ 569. Powers and duties generally; supervision by Attorney General

[*See main edition for text*]

(Added Pub. L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 620, and amended Pub. L. 95-598, title II, § 221, Nov. 6, 1978, 92 Stat. 2662; Pub. L. 96-417, title V, § 501(12), Oct. 10, 1980, 94 Stat. 1742.)

Amendments

1978—Subsec. (a). Pub. L. 95-598 directed the amendment of subsec. (a) by substituting "of the bankruptcy, of the district court," for "of the district court", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 571. Disbursement of salaries and moneys

[*See main edition for text*]

(Added Pub. L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 621, and amended Pub. L. 95-598, title II, §§ 222, 223, Nov. 6, 1978, 92 Stat. 2662; Pub. L. 97-258, § 2(g)(2), Sept. 13, 1982, 96 Stat. 1060.)

Repeal of References to United States Trustees in Subsection (a)

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

Amendments

1978—Subsec. (b). Pub. L. 95-598, § 223, directed the amendment of subsec. (b) by substituting ", district, and bankruptcy" for "and district", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 576. Reemployment rights

(a) A United States marshal for a judicial district who was appointed from a position in the competitive service (as defined in section 2102 of title 5) in the United States Marshals Service and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from such office, is entitled to be reemployed in any vacant position in the competitive service in the United States Marshals Service at the same grade or pay level, or lower, as the individual's former position if—

(1) the individual is qualified for the vacant position; and

(2) the individual has made application for the position not later than ninety days after being removed from office as a United States marshal.

Such individual shall be so reemployed within thirty days after making such application or after being removed from office, whichever is later. An individual denied reemployment under this section in a position because the individual is not qualified for that position may appeal that denial to the Merit Systems Protection Board under section 7701 of title 5.

(b) Any United States marshal serving on the effective date of this section shall continue to serve for the remainder of the term for which such marshal was appointed, unless sooner removed by the President.

(Added Pub. L. 98-473, title II, § 1211(a), Oct. 12, 1984, 98 Stat. 2163.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (b), is Oct. 1, 1984. See Effective Date note set out below.

EFFECTIVE DATE

Section 1212 of subpart B (§§ 1211, 1212) of part F of chapter XII of title II of Pub. L. 98-473 provided that: "The amendments made by this subpart [enacting this section] shall take effect on October 1, 1984."

CHAPTER 39—UNITED STATES TRUSTEES [1]

UNITED STATES TRUSTEE PILOT; REPEAL OF BANKRUPTCY PROVISIONS RELATING TO UNITED STATES TRUSTEES

Pub. L. 95-598, title IV, § 408, Nov. 6, 1978, 92 Stat. 2686, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that:

[*See main edition for text of* (a) *and* (b)]

"(c) Chapter 15 of title 11 of the United States Code and chapter 39 of title 28 of the United States Code are repealed, and all references to the United States trustee contained in title 28 of the United States Code are deleted, as of September 30, 1986. The service of any United States trustee, of any assistant United States trustee, and of any employee employed or appointed under the authority of such chapter 39 is terminated on such date."

§ 581. United States trustees

REPEAL OF SECTION

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

§ 582. Assistant United States trustees

REPEAL OF SECTION

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

§ 583. Oath of office

REPEAL OF SECTION

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

§ 584. Official stations

REPEAL OF SECTION

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

§ 585. Vacancies

REPEAL OF SECTION

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

§ 586. Duties; supervision by Attorney General

REPEAL OF SECTION

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

§ 587. Salaries

REPEAL OF SECTION

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

§ 588. Expenses

REPEAL OF SECTION

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

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[1] Another chapter 39, comprising sections 591 to 598 of this title, is set out following section 589.

§ 589. Staff and other employees

REPEAL OF SECTION

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

CHAPTER 39—INDEPENDENT COUNSEL [1]

§ 591. Applicability of provisions of this chapter

(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives information sufficient to constitute grounds to investigate that any of the persons described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a Class B or C misdemeanor or an infraction.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98-473, title II, § 228(b), Oct. 12, 1984, 98 Stat. 2030.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473 substituted "Class B or C misdemeanor or an infraction" for "petty offense".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 235(a)(1)(B)(ii)(IV) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 596. Removal of a [2] independent counsel; termination of office

(a) [*See main edition for text of* (*1*) *and* (*2*)]

(3) A [2] independent counsel so removed may obtain judicial review of the removal in a civil action commenced before the division of the court and, if such removal was based on error of law or fact, may obtain reinstatement or other appropriate relief.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-620, title IV, § 402(29)(A), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-620 struck out provision requiring the division of the court to cause such an action to be in every way expedited.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of this title.

PART III—COURT OFFICERS AND EMPLOYEES

Chap.		Sec.
41.	Administrative Office of United States Courts	601
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AMENDMENTS

1984—Pub. L. 98-473, title II, § 217(b), Oct. 12, 1984, 98 Stat. 2026, added item for chapter 58, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986).

1978—Pub. L. 95-598, title II, § 233(b), Nov. 6, 1978, 92 Stat. 2667, directed the addition of item for chapter 50, "Bankruptcy Courts", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

§ 604. Duties of Director generally

COMPENSATION AND APPOINTMENT OF SECRETARIES AND LAW CLERKS

Provisions authorizing the appointment and compensation of secretaries and law clerks to circuit and district judges in such number and at such rates of compensation as may be determined by the Judicial Conference of the United States were contained in the following appropriation acts:

Dec. 12, 1985, Pub. L. 99-180, title IV, § 400, 99 Stat. 1154.

Aug. 30, 1984, Pub. L. 98-411, title IV, § 400, 98 Stat. 1571.

Nov. 28, 1983, Pub. L. 98-166, title IV, § 400, 97 Stat. 1099.

§ 610. Courts defined

[*See main edition for text*]

(June 25, 1948, ch. 646, 62 Stat. 915; Oct. 31, 1951, ch. 655, § 44, 65 Stat. 725; July 7, 1958, Pub. L. 85-508, § 12(e), 72 Stat. 348; Nov. 6, 1978, Pub. L. 95-598, title II, § 226, 92 Stat. 2665; Oct. 10, 1980, Pub. L. 96-417, title V, § 501(15), 94 Stat. 1742; Apr. 2, 1982, Pub. L. 97-164, title I, § 120(a), 96 Stat. 33.)

AMENDMENTS

1978—Pub. L. 95-598 directed the amendment of section by substituting ", district courts, and bankruptcy courts" for "and district courts", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

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[1] Another chapter 39, comprising sections 581 to 589, is set out preceding this chapter.

[2] So in original.

CHAPTER 42—FEDERAL JUDICIAL CENTER

§ 620. Federal Judicial Center

[*See main edition for text of* (*a*)]

(b) The Center shall have the following functions:

[*See main edition for text of* (*1*) *and* (*2*)]

(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government, including, but not limited to, judges, referees, clerks of court, probation officers, and United States commissioners;

(4) insofar as may be consistent with the performance of the other functions set forth in this section, to provide staff, research, and planning assistance to the Judicial Conference of the United States and its committees; and

(5) Insofar[1] as may be consistent with the performance of the other functions set forth in this section, to cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice.

(Added Pub. L. 90-219, title I, § 101, Dec. 20, 1967, 81 Stat. 664, and amended Pub. L. 95-598, title II, § 227, Nov. 6, 1978, 92 Stat. 2665; Pub. L. 98-620, title II, § 214, Nov. 8, 1984, 98 Stat. 3346.)

AMENDMENTS

1984—Subsec. (b)(5). Pub. L. 98-620 added par. (5).

1978—Subsec. (b)(3). Pub. L. 95-598 directed the amendment of par. (3) by striking out "referees," and by substituting "magistrates" for "commissioners", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 effective Oct. 1, 1985, see section 216 of Pub. L. 98-620, set out as a note under section 10701 of Title 42, The Public Health and Welfare.

CHAPTER 43—UNITED STATES MAGISTRATES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 48 section 1694.

§ 631. Appointment and tenure

[*See main edition for text*]

(June 25, 1948, ch. 646, 62 Stat. 915; May 24, 1949, ch. 139, § 73, 63 Stat. 100; July 9, 1952, ch. 609, § 1, 66 Stat. 509; July 25, 1956, ch. 722, 70 Stat. 642; Oct. 17, 1968, Pub. L. 90-578, title I, § 101, 82 Stat. 1108; Oct. 17, 1976, Pub. L. 94-520, § 2, 90 Stat. 2458; Nov. 6, 1978, Pub. L. 95-598, title II, § 231, 92 Stat. 2665; Oct. 10, 1979, Pub. L. 96-82, § 3(a)-(d), 93 Stat. 644, 645; Aug. 6, 1982, Pub. L. 97-230, 96 Stat. 255.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-598 directed the amendment of subsec. (c) by substituting "of the conference," for "of the conference, a part-time referee in bankruptcy or" and "magistrate and" for "magistrate and part-time referee in bankruptcy,", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 634. Compensation

(a) Officers appointed under this chapter shall receive as full compensation for their services salaries to be fixed by the conference pursuant to section 633 of this title, at rates for full-time and part-time United States magistrates not to exceed rates determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361) as adjusted by section 461 of this title except that the salary of a part-time United States magistrate shall not be less than $100 nor more than one-half the maximum salary payable to a full-time magistrate. In fixing the amount of salary to be paid to any officer appointed under this chapter, consideration shall be given to the average number and the nature of matters that have arisen during the immediately preceding period of five years, and that may be expected thereafter to arise, over which such officer would have jurisdiction and to such other factors as may be material. Disbursement of salaries shall be made by or pursuant to the order of the Director.

[*See main edition for text of* (*b*)]

(c) All United States magistrates, effective upon their taking the oath or affirmation of office, and all necessary legal, clerical, and secretarial assistants employed in the offices of full-time United States magistrates shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of subchapter III (relating to civil service retirement) of chapter 83, chapter 87 (relating to Federal employees' group life insurance), and chapter 89 (relating to Federal employees' health benefits program) of title 5. Part-time magistrates shall not be excluded from coverage under these chapters solely for lack of a prearranged regular tour of duty.

(June 25, 1948, ch. 646, 62 Stat. 917; Oct. 17, 1968, Pub. L. 90-578, title I, § 101, 82 Stat. 1112; Sept. 21, 1972, Pub. L. 92-428, 86 Stat. 721; Oct. 17, 1976, Pub. L. 94-520, § 1, 90 Stat. 2458; Nov. 6, 1978, Pub. L. 95-598, title II, § 232, 92 Stat. 2665; Oct. 10, 1979, Pub. L. 96-82, § 8(b), 93 Stat. 647; July 10, 1984, Pub. L. 98-353, title I, § 108(a), title II, § 210, 98 Stat. 342, 351.)

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in subsec. (a), is section 225 of Pub. L. 90-206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 108(a), substituted "rates determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361) as adjusted by section 461 of this title" for "the rates now or hereafter provided for full-time and part-time referees in bankruptcy, respectively, referred to in section 40a of the Bankruptcy Act (11 U.S.C. 68(a)), as amended,".

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[1] So in original. Probably should not be capitalized.

Subsec. (c). Pub. L. 98-353, § 210, substituted "subchapter III" for "subsection III".

1978—Subsec. (a). Pub. L. 95-598 directed the amendment of subsec. (a) by substituting "not to exceed $48,500 per annum, subject to adjustment in accordance with section 225 of the Federal Salary Act of 1967 and section 461 of this title," for "for full-time and part-time United States magistrates not to exceed the rates now or hereafter provided for full-time and part-time referees in bankruptcy, respectively, referred to in section 40a of the Bankruptcy Act (11 U.S.C. 68(a)), as amended,", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Effective Date of 1984 Amendment

Amendment by section 108(a) of Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.

Continuation of Maximum Rates of Salary of Full-Time and Part-Time United States Magistrates in Effect on June 27, 1984

Section 108(b) of Pub. L. 98-353 provided that: "The maximum rates for salary of full-time and part-time United States magistrates in effect on June 27, 1984, shall remain in effect until changed as a result of a determination made under section 634(a) of title 28, United States Code, as amended by this Act."

[Section 108(b) of Pub. L. 98-353 effective June 27, 1984, see section 122(c) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.]

§ 636. Jurisdiction, powers, and temporary assignment

(a) Each United States magistrate serving under this chapter shall have within the territorial jurisdiction prescribed by his appointment—

[*See main edition for text of (1)*]

(2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions; and

[*See main edition for text of (3); (b)*]

(c) Notwithstanding any provision of law to the contrary—

[*See main edition for text of (1) to (3)*]

(4) Notwithstanding the provisions of paragraph (3) of this subsection, at the time of reference to a magistrate, the parties may further consent to appeal on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals. Wherever possible the local rules of the district court and the rules promulgated by the conference shall endeavor to make such appeal inexpensive. The district court may affirm, reverse, modify, or remand the magistrate's judgment.

[*See main edition for text of (5) to (7); (d) to (g)*]

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 208, 98 Stat. 1986; Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(29)(B), 98 Stat. 3359.)

Amendments

1984—Subsec. (a)(2). Pub. L. 98-473 substituted "issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial" for "impose conditions of release under section 3146 of title 18".

Subsec. (c)(4). Pub. L. 98-620 struck out "expeditious and" before "inexpensive".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of this title.

Section Referred to in Other Sections

This section is referred to in section 633 of this title; title 7 section 2149; title 19 section 1915; title 46 sections 4311, 12309.

CHAPTER 47—COURTS OF APPEALS

§ 713. Librarians

Continuation of Service of Marshal for Court of Appeals for District of Columbia; Applicability of Other Law to Court During Such Individual's Service

Pub. L. 98-620, title IV, § 415, Nov. 8, 1984, 98 Stat. 3364, provided that: "Any individual who, on the date of the enactment of the Federal Courts Improvement Act of 1982 [Pub. L. 97-164, enacted Apr. 2, 1982], was serving as marshal for the Court of Appeals for the District of Columbia under section 713(c) of title 28, United States Code, may, after the date of the enactment of this Act [Nov. 8, 1984], so serve under that section as in effect on the date of the enactment of the Federal Courts Improvement Act of 1982. While such individual so serves, the provisions of section 714(a) of title 28, United States Code, shall not apply to the Court of Appeals for the District of Columbia."

§ 714. Criers and messengers

Applicability of This Section to Court of Appeals for District of Columbia During Continued Service of Marshal for Court in Office on Apr. 2, 1982

Subsec. (a) of this section not applicable to the Court of Appeals for the District of Columbia during the continued service as Marshal for such Court of any individual who was serving in such office under section 713(c) of this title as of Apr. 2, 1982, see section 415 of Pub. L. 98-620, set out as a note under section 713 of this title.

CHAPTER 49—DISTRICT COURTS

Chapter Referred to in Other Sections

This chapter is referred to in title 48 section 1694.

[CHAPTER 50—OMITTED]

Codification

Chapter 50, which was added by Pub. L. 95-598, title II, § 233(a), Nov. 6, 1978, 92 Stat. 2665, did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy. Chapter 50 read as follows:

CHAPTER 50—BANKRUPTCY COURTS

Sec.
771. Clerks.
772. Other employees.
773. Records of proceedings; reporters.
774. Power to appoint.
775. Salaries of employees.

§ 771. Clerks

(a) Based on need each bankruptcy court may appoint a clerk who shall be subject to removal only by the court.

(b) The clerk may appoint, with the approval of the court, necessary deputies, clerical assistants, and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies, clerical assistants, and employees shall be subject to removal only by the clerk with the approval of the court. If there is no clerk, the Bankruptcy Judge shall perform the duties of this subsection.

(c) The clerk of each bankruptcy court shall reside in the district for which he is appointed. The bankruptcy court may designate places within the district for the offices of the clerk and his deputies, and their official stations.

(d) A clerk of a bankruptcy court or his deputy or assistant shall not receive any compensation or emoluments through any office or position to which he is appointed by the court, other than that received as such clerk, deputy or assistant, whether from the United States or from private litigants.

(e) The clerk of each bankruptcy court shall pay into the Treasury all fees, costs and other moneys collected by him, except uncollected fees not required by Act of Congress to be prepaid.

He shall make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

§ 772. Other employees

Bankruptcy judges may appoint necessary other employees, including law clerks and secretaries, subject to any limitation on the aggregate salaries of such employees which may be imposed by law.

§ 773. Records of proceedings; reporters

(a) The bankruptcy court shall require a record to be made, whenever practicable, of all proceedings in cases had in open court. The Judicial Conference shall prescribe that the record be taken by electronic sound recording means, by a court reporter appointed or employed by such bankruptcy court to take a verbatim record by shorthand or mechanical means, or by an employee of such court designated by such court to take such a verbatim record.

(b) On the request of a party to a proceeding that has been recorded who has agreed to pay the fee for a transcript, or a judge of the bankruptcy court, a transcript of the original record of the requested parts of such proceeding shall be made and delivered promptly to such party or judge. Any such transcript that is certified shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcript of the proceedings of the bankruptcy court shall be considered as official except those made from certified records.

(c) Fees for transcripts furnished in proceedings to persons permitted to appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).

§ 774. Power to appoint

Whenever a majority of the bankruptcy judges of any bankruptcy court cannot agree upon the appointment of any officer of such court, the chief judge shall make such appointment.

§ 775. Salaries of employees

The salary of an individual appointed or employed under section 771(a), 772, or 773(a) of this title shall be the same as the salary of an individual appointed or employed under section 751(a), 752, or 753(a) of this title, as the case may be. The salaries of individuals appointed under section 771(b) of this title shall be comparable to the salaries of individuals appointed under section 751(b) of this title.

CHAPTER 51—UNITED STATES CLAIMS COURT

Sec.
798. Places of holding court; appointment of special masters.

AMENDMENTS

1984—Pub. L. 98-620, title IV, § 416(b), Nov. 8, 1984, 98 Stat. 3364, added item 798.

§ 798. Places of holding court; appointment of special masters

(a) The United States Claims Court is hereby authorized to utilize facilities and hold court in Washington, District of Columbia, and in four locations outside of the Washington, District of Columbia metropolitan area, for the purpose of conducting trials and such other proceedings as may be appropriate to executing the court's functions. The Director of the Administrative Office of the United States Courts shall designate such locations and provide for such facilities.

(b) The chief judge of the Claims Court may appoint special masters to assist the court in carrying out its functions. Any special masters so appointed shall carry out their responsibilities and be compensated in accordance with procedures set forth in the rules of the court.

(Added Pub. L. 98-620, title IV, § 416(a), Nov. 8, 1984, 98 Stat. 3364.)

CHAPTER 57—GENERAL PROVISIONS APPLICABLE TO COURT OFFICERS AND EMPLOYEES

§ 957. Clerks ineligible for certain offices

A clerk of a court or any of his deputies shall not be appointed a commissioner, master, referee or receiver in any case, unless there are special reasons requiring such appointment which are recited in the order of appointment.

(June 25, 1948, ch. 646, 62 Stat. 926; Nov. 6, 1978, Pub. L. 95-598, title II, § 234, 92 Stat. 2667; Apr. 2, 1982, Pub. L. 97-164, title I, § 122(b), 96 Stat. 36; July 10, 1984, Pub. L. 98-353, title I, § 109, 98 Stat. 342.)

AMENDMENTS

1984—Pub. L. 98-353 struck out "district" before "court".

1978—Pub. L. 95-598 directed the amendment of section by inserting "or bankruptcy court" after "district court", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.

CHAPTER 58—UNITED STATES SENTENCING COMMISSION

Sec.
991. United States Sentencing Commission; establishment and purposes.
992. Terms of office; compensation.
993. Powers and duties of Chairman.
994. Duties of the Commission.
995. Powers of the Commission.
996. Director and staff.
997. Annual report.
998. Definitions.

§ 991. United States Sentencing Commission; establishment and purposes

(a) There is established as an independent commission in the judicial branch of the United States a United States Sentencing Commission which shall consist of seven voting members and one nonvoting member. The President, after consultation with representatives of judges, prosecuting attorneys, defense attorneys, law enforcement officials, senior citizens, victims of crime, and others interested in the criminal justice process, shall appoint the voting members of the Commission, by and with the advice and consent of the Senate, one of whom shall be appointed, by and with the advice and consent of the Senate, as the Chairman. At least three of the members shall be Federal judges selected after considering a list of six judges recommended to the President by the Judicial Conference of the United States. Not more than four of the members of the Commission shall be members of the same political party. The Attorney General, or his designee, shall be an ex officio, nonvoting member of the Commission. The Chairman and members of the Commission shall be subject to removal from the Commission by the President only for neglect of duty or malfeasance in office or for other good cause shown.

(b) The purposes of the United States Sentencing Commission are to—

(1) establish sentencing policies and practices for the Federal criminal justice system that—

(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(Added Pub. L. 98-473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2017, and amended Pub. L. 99-22, § 1(1), Apr. 15, 1985, 99 Stat. 46.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-22 struck out "in regular active service" after "Federal judges".

EFFECTIVE DATE

Chapter effective Oct. 12, 1984, see section 235(a)(1)(B)(i) of Pub. L. 98-473, set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

COMPOSITION OF MEMBERS OF COMMISSION DURING FIRST FIVE-YEAR PERIOD

For provisions directing that, notwithstanding the provisions of this section, during the five-year period following Oct. 12, 1984, the United States Sentencing Commission shall consist of nine members, including two ex officio, nonvoting members, see section 235(b)(5) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 994 of this title.

§ 992. Terms of office; compensation

(a) The voting members of the United States Sentencing Commission shall be appointed for six-year terms, except that the initial terms of the first members of the Commission shall be staggered so that—

(1) two members, including the Chairman, serve terms of six years;

(2) three members serve terms of four years; and

(3) two members serve terms of two years.

(b) No voting member may serve more than two full terms. A voting member appointed to fill a vacancy that occurs before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(c) The Chairman of the Commission shall hold a full-time position and shall be compensated during the term of office at the annual rate at which judges of the United States courts of appeals are compensated. The voting members of the Commission, other than the Chairman, shall hold full-time positions until the end of the first six years after the sentencing guidelines go into effect pursuant to section 225(a)(1)(B)(ii) of the Sentencing Reform Act of 1983,[1] and shall be compensated at the annual rate at which judges of the United States courts of appeals are compensated. Thereafter, the voting members of the Commission, other than the Chairman, shall hold part-time positions and shall be paid at the daily rate at which judges of the United States courts of appeals are compensated. A Federal judge may serve as a member of the Commission without resigning his appointment as a Federal judge.

(Added Pub. L. 98-473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2018.)

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[1] See References in Text note below.

REFERENCES IN TEXT

Section 225(a)(1)(B)(ii) of the Sentencing Reform Act of 1983, referred to in subsec. (c), probably means section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984, which is set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

COMMENCEMENT OF TERMS OF FIRST MEMBERS OF COMMISSION

For provisions directing that, for purposes of subsec. (a) of this section, the terms of the first members of the United States Sentencing Commission shall not begin to run until the sentencing guidelines go into effect pursuant to section 235(a)(1)(B)(ii) of Pub. L. 98-473, see section 235(a)(2) of Pub. L. 98-473, both of which are set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 993. Powers and duties of Chairman

The Chairman shall—

(a) call and preside at meetings of the Commission, which shall be held for at least two weeks in each quarter after the members of the Commission hold part-time positions; and

(b) direct—

(1) the preparation of requests for appropriations for the Commission; and

(2) the use of funds made available to the Commission. Before the appointment of the first Chairman, the Administrative Office of the United States Courts may make requests for appropriations for the Commission.

(Added Pub. L. 98-473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2019, and amended Pub. L. 99-22, § 1(2), Apr. 15, 1985, 99 Stat. 46.)

AMENDMENTS

1985—Subsec. (b)(2). Pub. L. 99-22 added provision authorizing the Administrative Office of the United States Courts to make requests for appropriations for the Commission before the appointment of the first Chairman of the Commission.

§ 994. Duties of the Commission

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of this title and title 18, United States Code, shall promulgate and distribute to all courts of the United States and to the United States Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the appropriate length of such a term; and

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively;

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of—

(A) the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

(B) the conditions of probation and supervised release set forth in sections 3563(b) and 3583(d) of title 18;

(C) the sentence modification provisions set forth in sections 3563(c), 3573, and 3582(c) of title 18;

(D) the authority granted under rule 11(e)(2) of the Federal Rules of Criminal Procedure to accept or reject a plea agreement entered into pursuant to rule 11(e)(1); and

(E) the temporary release provisions set forth in section 3622 of title 18, and the prerelease custody provisions set forth in section 3624(c) of title 18; and

(3) guidelines or general policy statements regarding the appropriate use of the probation revocation provisions set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of probation or supervised release set forth in sections 3563(c), 3564(d), and 3583(e) of title 18.

(b) The Commission, in the guidelines promulgated pursuant to subsection (a)(1), shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code. If a sentence specified by the guidelines includes a term of imprisonment, the maximum of the range established for such a term shall not exceed the minimum of that range by more than 25 per centum.

(c) The Commission, in establishing categories of offenses for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, have any relevance to the nature, extent, place of service, or other incidents [1] of an appropriate sentence, and shall take them into account only to the extent that they do have relevance—

(1) the grade of the offense;

(2) the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense;

(3) the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a

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[1] So in original. Probably should be "incidence".

person, a number of persons, or a breach of public trust;

(4) the community view of the gravity of the offense;

(5) the public concern generated by the offense;

(6) the deterrent effect a particular sentence may have on the commission of the offense by others; and

(7) the current incidence of the offense in the community and in the Nation as a whole.

(d) The Commission in establishing categories of defendants for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, with respect to a defendant, have any relevance to the nature, extent, place of service, or other incidents [2] of an appropriate sentence, and shall take them into account only to the extent that they do have relevance—

(1) age;

(2) education;

(3) vocational skills;

(4) mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant;

(5) physical condition, including drug dependence;

(6) previous employment record;

(7) family ties and responsibilities;

(8) community ties;

(9) role in the offense;

(10) criminal history; and

(11) degree of dependence upon criminal activity for a livelihood.

The Commission shall assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders.

(e) The Commission shall assure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant.

(f) The Commission, in promulgating guidelines pursuant to subsection (a)(1), shall promote the purposes set forth in section 991(b)(1), with particular attention to the requirements of subsection 991(b)(1)(B) for providing certainty and fairness in sentencing and reducing unwarranted sentence disparities.

(g) The Commission, in promulgating guidelines pursuant to subsection (a)(1) to meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code, shall take into account the nature and capacity of the penal, correctional, and other facilities and services available, and shall make recommendations concerning any change or expansion in the nature or capacity of such facilities and services that might become necessary as a result of the guidelines promulgated pursuant to the provisions of this chapter. The sentencing guidelines prescribed under this chapter shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission.

(h) The Commission shall assure that the guidelines will specify a sentence to a term of imprisonment at or near the maximum term authorized by section 3581(b) of title 18, United States Code, for categories of defendants in which the defendant is eighteen years old or older and—

(1) has been convicted of a felony that is—

(A) a crime of violence; or

(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and section 1 of the Act of September 15, 1980 (21 U.S.C. 955a); and

(2) has previously been convicted of two or more prior felonies, each of which is—

(A) a crime of violence; or

(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and section 1 of the Act of September 15, 1980 (21 U.S.C. 955a).

(i) The Commission shall assure that the guidelines will specify a sentence to a substantial term of imprisonment for categories of defendants in which the defendant—

(1) has a history of two or more prior Federal, State, or local felony convictions for offenses committed on different occasions;

(2) committed the offense as part of a pattern of criminal conduct from which he derived a substantial portion of his income;

(3) committed the offense in furtherance of a conspiracy with three or more persons engaging in a pattern of racketeering activity in which the defendant participated in a managerial or supervisory capacity;

(4) committed a crime of violence that constitutes a felony while on release pending trial, sentence, or appeal from a Federal, State, or local felony for which he was ultimately convicted; or

(5) committed a felony that is set forth in section 401 or 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 841 and 960), and that involved trafficking in a substantial quantity of a controlled substance.

(j) The Commission shall insure [3] that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense, and the general appropriateness of imposing a term of imprisonment on a person convicted of a crime of violence that results in serious bodily injury.

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[3] So in original. Probably should be "ensure".

(k) The Commission shall insure[4] that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment.

(*l*) The Commission shall insure[4] that the guidelines promulgated pursuant to subsection (a)(1) reflect—

(1) the appropriateness of imposing an incremental penalty for each offense in a case in which a defendant is convicted of—

(A) multiple offenses committed in the same course of conduct that result in the exercise of ancillary jurisdiction over one or more of the offenses; and

(B) multiple offenses committed at different times, including those cases in which the subsequent offense is a violation of section 3146 (penalty for failure to appear) or is committed while the person is released pursuant to the provisions of section 3147 (penalty for an offense committed while on release) of title 18; and

(2) the general inappropriateness of imposing consecutive terms of imprisonment for an offense of conspiring to commit an offense or soliciting commission of an offense and for an offense that was the sole object of the conspiracy or solicitation.

(m) The Commission shall insure[4] that the guidelines reflect the fact that, in many cases, current sentences do not accurately reflect the seriousness of the offense. This will require that, as a starting point in its development of the initial sets of guidelines for particular categories of cases, the Commission ascertain the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served. The Commission shall not be bound by such average sentences, and shall independently develop a sentencing range that is consistent with the purposes of sentencing described in section 3553(a)(2) of title 18, United States Code.

(n) The Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section. In fulfilling its duties and in exercising its powers, the Commission shall consult with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system. The United States Probation System, the Bureau of Prisons, the Judicial Conference of the United States, the Criminal Division of the United States Department of Justice, and a representative of the Federal Public Defenders shall submit to the Commission any observations, comments, or questions pertinent to the work of the Commission whenever they believe such communication would be useful, and shall, at least annually, submit to the Commission a written report commenting on the operation of the Commission's guidelines, suggesting changes in the guidelines that appear to be warranted, and otherwise assessing the Commission's work.

(*o*) The Commission, at or after the beginning of a regular session of Congress but not later than the first day of May, shall report to the Congress any amendments of the guidelines promulgated pursuant to subsection (a)(1), and a report of the reasons therefor, and the amended guidelines shall take effect one hundred and eighty days after the Commission reports them, except to the extent the effective date is enlarged or the guidelines are disapproved or modified by Act of Congress.

(p) The Commission and the Bureau of Prisons shall submit to Congress an analysis and recommendations concerning maximum utilization of resources to deal effectively with the Federal prison population. Such report shall be based upon consideration of a variety of alternatives, including—

(1) modernization of existing facilities;

(2) inmate classification and periodic review of such classification for use in placing inmates in the least restrictive facility necessary to ensure adequate security; and

(3) use of existing Federal facilities, such as those currently within military jurisdiction.

(q) The Commission, not later than one year after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect, and thereafter whenever it finds it advisable, shall recommend to the Congress that it raise or lower the grades, or otherwise modify the maximum penalties, of those offenses for which such an adjustment appears appropriate.

(r) The Commission shall give due consideration to any petition filed by a defendant requesting modification of the guidelines utilized in the sentencing of such defendant, on the basis of changed circumstances unrelated to the defendant, including changes in—

(1) the community view of the gravity of the offense;

(2) the public concern generated by the offense; and

(3) the deterrent effect particular sentences may have on the commission of the offense by others.

Within one hundred and eighty days of the filing of such petition the Commission shall provide written notice to the defendant whether or not it has approved the petition. If the petition is disapproved the written notice shall contain the reasons for such disapproval. The Commission shall submit to the Congress at least annually an analysis of such written notices.

(s) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

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[4] So in original. Probably should be "ensure".

(t) If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify by what amount the sentences of prisoners serving terms of imprisonment that are outside the applicable guideline ranges for the offense may be reduced.

(u) The Commission shall ensure that the general policy statements promulgated pursuant to subsection (a)(2) include a policy limiting consecutive terms of imprisonment for an offense involving a violation of a general prohibition and for an offense involving a violation of a specific prohibition encompassed within the general prohibition.

(v) The appropriate judge or officer shall submit to the Commission in connection with each sentence imposed a written report of the sentence, the offense for which it is imposed, the age, race, and sex of the offender, information regarding factors made relevant by the guidelines, and such other information as the Commission finds appropriate. The Commission shall submit to Congress at least annually an analysis of these reports and any recommendations for legislation that the Commission concludes is warranted by that analysis.

(w) The provisions of section 553 of title 5, relating to publication in the Federal Register and public hearing procedure, shall apply to the promulgation of guidelines pursuant to this section.

(Added Pub. L. 98-473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2019, and amended Pub. L. 99-217, § 3, Dec. 26, 1985, 99 Stat. 1728.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a)(2)(D), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1985—Subsec. (q). Pub. L. 99-217 substituted "not later than one year after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect" for "within three years of the date of enactment of the Sentencing Reform Act of 1983".

SUBMISSION TO CONGRESS OF INITIAL SENTENCING GUIDELINES

Provisions directing that the United States Sentencing Commission submit to Congress within 30 months of Oct. 12, 1984, the initial sentencing guidelines promulgated pursuant to subsec. (a)(1) of this section, see section 235(a)(1)(B)(i) of Pub. L. 98-473, as amended, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF SENTENCING GUIDELINES

Sentencing guidelines promulgated pursuant to this section effective the day after U.S. Sentencing Commission has submitted the initial set of sentencing guidelines to Congress, the General Accounting Office has studied and reported to Congress on the guidelines, and Congress has examined the guidelines, see section 235(a)(1)(B)(ii) of Pub. L. 98-473, as amended, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

STUDIES OF IMPACT AND OPERATION OF SENTENCING GUIDELINE SYSTEM; REPORTING REQUIREMENTS

Section 236 of Pub. L. 98-473 provided that:

"(a)(1) Four years after the sentencing guidelines promulgated pursuant to section 994(a)(1), and the provisions of sections 3581, 3583, and 3624 of title 18, United States Code, go into effect, the General Accounting Office shall undertake a study of the guidelines in order to determine their impact and compare the guidelines system with the operation of the previous sentencing and parole release system, and, within six months of the undertaking of such study, report to the Congress the results of its study.

"(2) Within one month of the start of the study required under subsection (a), the United States Sentencing Commission shall submit a report to the General Accounting Office, all appropriate courts, the Department of Justice, and the Congress detailing the operation of the sentencing guideline system and discussing any problems with the system or reforms needed. The report shall include an evaluation of the impact of the sentencing guidelines on prosecutorial discretion, plea bargaining, disparities in sentencing, and the use of incarceration, and shall be issued by affirmative vote of a majority of the voting members of the Commission.

"(b) The Congress shall review the study submitted pursuant to subsection (a) in order to determine—

"(1) whether the sentencing guideline system has been effective;

"(2) whether any changes should be made in the sentencing guideline system; and

"(3) whether the parole system should be reinstated in some form and the life of the Parole Commission extended."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 995, 998 of this title; title 18 sections 3143, 3552, 3553, 3582, 3583, 3621, 3622, 3742, 4106, 4108, 5037.

§ 995. Powers of the Commission

(a) The Commission, by vote of a majority of the members present and voting, shall have the power to—

(1) establish general policies and promulgate such rules and regulations for the Commission as are necessary to carry out the purposes of this chapter;

(2) appoint and fix the salary and duties of the Staff Director of the Sentencing Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate now or hereafter prescribed for grade 18 of the General Schedule pay rates (5 U.S.C. 5332);

(3) deny, revise, or ratify any request for regular, supplemental, or deficiency appropriations prior to any submission of such request to the Office of Management and Budget by the Chairman;

(4) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code;

(5) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

(6) without regard to 31 U.S.C. 3324, enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

(7) accept and employ, in carrying out the provisions of this title, voluntary and uncompensated services, notwithstanding the provisions of 31 U.S.C. 1342, however, individuals providing such services shall not be considered Federal employees except for purposes of chapter 81 of title 5, United States Code, with respect to job-incurred disability and title 28, United States Code, with respect to tort claims;

(8) request such information, data, and reports from any Federal agency or judicial officer as the Commission may from time to time require and as may be produced consistent with other law;

(9) monitor the performance of probation officers with regard to sentencing recommendations, including application of the Sentencing Commission guidelines and policy statements;

(10) issue instructions to probation officers concerning the application of Commission guidelines and policy statements;

(11) arrange with the head of any other Federal agency for the performance by such agency of any function of the Commission, with or without reimbursement;

(12) establish a research and development program within the Commission for the purpose of—

(A) serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices; and

(B) assisting and serving in a consulting capacity to Federal courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;

(13) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process;

(14) publish data concerning the sentencing process;

(15) collect systematically and disseminate information concerning sentences actually imposed, and the relationship of such sentences to the factors set forth in section 3553(a) of title 18, United States Code;

(16) collect systematically and disseminate information regarding effectiveness of sentences imposed;

(17) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in the sentencing field;

(18) devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process;

(19) study the feasibility of developing guidelines for the disposition of juvenile delinquents;

(20) make recommendations to Congress concerning modification or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy;

(21) hold hearings and call witnesses that might assist the Commission in the exercise of its powers or duties; and

(22) perform such other functions as are required to permit Federal courts to meet their responsibilities under section 3553(a) of title 18, United States Code, and to permit others involved in the Federal criminal justice system to meet their related responsibilities.

(b) The Commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter, and may delegate to any member or designated person such powers as may be appropriate other than the power to establish general policy statements and guidelines pursuant to section 994(a)(1) and (2), the issuance of general policies and promulgation of rules and regulations pursuant to subsection (a)(1) of this section, and the decisions as to the factors to be considered in establishment of categories of offenses and offenders pursuant to section 994(b). The Commission shall, with respect to its activities under subsections (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18), to the extent practicable, utilize existing resources of the Administrative Office of the United States Courts and the Federal Judicial Center for the purpose of avoiding unnecessary duplication.

(c) Upon the request of the Commission, each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Commission in the execution of its functions.

(d) A simple majority of the membership then serving shall constitute a quorum for the conduct of business. Other than for the promulgation of guidelines and policy statements pursuant to section 994, the Commission may exercise its powers and fulfill its duties by the vote of a simple majority of the members present.

(e) Except as otherwise provided by law, the Commission shall maintain and make available for public inspection a record of the final vote of each member on any action taken by it.

(Added Pub. L. 98-473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2024.)

References in Text

The provisions of title 28, United States Code, with respect to tort claims, referred to in subsec. (a)(7), are classified generally to section 1346(b) and chapter 171 (§ 2671 et seq.) of this title.

Section Referred to in Other Sections

This section is referred to in section 998 of this title.

§ 996. Director and staff

(a) The Staff Director shall supervise the activities of persons employed by the Commission and perform other duties assigned to him by the Commission.

(b) The Staff Director shall, subject to the approval of the Commission, appoint such officers and employees as are necessary in the execution of the functions of the Commission. The officers and employees of the Commission shall be exempt from the provisions of part III of title 5, United States Code, except the following chapters: 81 (Compensation for Work Injuries), 83 (Retirement), 85 (Unemployment Compensation), 87 (Life Insurance), 89 (Health Insurance), and 91 (Conflicts of Interest).[5]

(Added Pub. L. 98-473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2026.)

§ 997. Annual report

The Commission shall report annually to the Judicial Conference of the United States, the Congress, and the President of the United States on the activities of the Commission.

(Added Pub. L. 98-473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2026.)

§ 998. Definitions

As used in this chapter—

(a) "Commission" means the United States Sentencing Commission;

(b) "Commissioner" means a member of the United States Sentencing Commission;

(c) "guidelines" means the guidelines promulgated by the Commission pursuant to section 994(a) of this title; and

(d) "rules and regulations" means rules and regulations promulgated by the Commission pursuant to section 995 of this title.

(Added Pub. L. 98-473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2026.)

PART IV—JURISDICTION AND VENUE

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Amendments

1978—Pub. L. 95-598, title II, § 241(b), Nov. 6, 1978, 92 Stat. 2671, directed the addition of item for chapter 90, "District Courts and Bankruptcy Courts", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 81—SUPREME COURT

Sec.
1259. Court of Military Appeals; certiorari.

Amendments

1983—Pub. L. 98-209, § 10(a)(2), Dec. 6, 1983, 97 Stat. 1406, added item 1259.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Section Referred to in Other Sections

This section is referred to in section 2350 of this title; title 2 section 437g; title 5 section 1508, 7123; title 7 sections 136n, 194; title 12 sections 1464, 1730, 1730a, 1786, 1818, 2266; title 15 sections 21, 29, 45, 57a, 77i, 78aa, 79x, 79y, 80a-42, 80a-43, 80b-13, 687a, 687e, 717r, 1193, 1262, 1394, 1474, 1710, 1719, 1913, 2003, 2004, 2008, 2060, 2618, 3416; title 16 sections 79*l*, 825*l*, 825p; title 20 sections 351d, 1070c-3, 1119d-8, 1234d, 1413, 1416, 2464, 2740, 2851, 3806, 3862, 3873; title 21 sections 346a, 348, 355, 360g, 371; title 22 section 1631e, 2740, 2851, 3086; title 23 section 131; title 26 sections 3310, 6363, 7482; title 27 section 204; title 29 sections 160, 210, 660, 667, 1578; title 30 section 816; title 31 section 6722; title 33 sections 505, 520, 988; title 38 section 784; title 40 section 333; title 42 sections 263a, 263f, 291h, 504, 1316, 1320a-7a, 2022, 2689*l*, 3027, 3414, 3785, 5311, 5405, 6029, 6306, 6869, 8412; title 45 section 153; title 47 section 402; title 49 App. sections 45, 1486, 1674b, 1675, 2005, 2507.

§ 1259. Court of Military Appeals; certiorari

Decisions of the United States Court of Military Appeals may be reviewed by the Supreme Court by writ of certiorari in the following cases:

(1) Cases reviewed by the Court of Military Appeals under section 867(b)(1) of title 10.

(2) Cases certified to the Court of Military Appeals by the Judge Advocate General under section 867(b)(2) of title 10.

(3) Cases in which the Court of Military Appeals granted a petition for review under section 867(b)(3) of title 10.

(4) Cases, other than those described in paragraphs (1), (2), and (3) of this subsection, in which the Court of Military Appeals granted relief.

(Added Pub. L. 98-209, § 10(a)(1), Dec. 6, 1983, 97 Stat. 1405.)

Effective Date

Section effective on the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as an Effective Date of 1983 Amendment note under section 801 of Title 10, Armed Forces.

Section Referred to in Other Sections

This section is referred to in title 10 section 867.

CHAPTER 83—COURTS OF APPEALS

Sec.
1291. Final decisions of district courts.
[1293. Repealed.]
[1296. Repealed.]

Amendments

1984—Pub. L. 98-620, title IV, § 402(29)(C), Nov. 8, 1984, 98 Stat. 3359, struck out item 1296, "Precedence of cases in the United States Court of Appeals for the Federal Circuit".

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[5] So in original. There is no chapter 91 in Title 5, Government Organization and Employees.

1978—Pub. L. 95-598, title II, § 236(b), Nov. 6, 1978, 92 Stat. 2667, directed the addition of item 1293, "Bankruptcy appeals", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1291. Final decisions of district courts

Section Referred to in Other Sections

This section is referred to in section 1295 of this title; title 15 sections 29, 57b-1, 78aa, 79y, 80a-43, 80b-14, 1314, 1719; title 16 section 825p; title 18 section 3145; title 22 section 1631e; title 42 sections 2000e-5, 3414; title 45 section 153; title 49 App. section 45; title 50 App. section 17.

§ 1292. Interlocutory decisions

[See main edition for text of (a)]

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1) of an appeal from an interlocutory order or decree described in subsection (a) or (b) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title; and

[See main edition for text of (2); (d)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 412, 98 Stat. 3362.)

Amendments

1984—Subsec. (b). Pub. L. 98-620, § 412(a), inserted "which would have jurisdiction of an appeal of such action" after "The Court of Appeals".

Subsec. (c)(1). Pub. L. 98-620, § 412(b), inserted "or (b)" after "(a)".

[§ 1293. Repealed. Pub. L. 87-189, § 3, Aug. 30, 1961, 75 Stat. 417]

Section, acts June 25, 1948, ch. 646, 62 Stat. 929; Mar. 18, 1959, Pub. L. 86-3, § 14(b), 73 Stat. 10, provided for appeal from the supreme court of Puerto Rico *to the* court of appeals for the first circuit. See section 1258 of this title.

A subsequent section 1293, added Pub. L. 95-598, title II, § 236(a), Nov. 6, 1978, 92 Stat. 2667, did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy. Section read as follows:

§ 1293. Bankruptcy appeals

(a) The courts of appeals shall have jurisdiction of appeals from all final decisions of panels designated under section 160(a) of this title.

(b) Notwithstanding section 1482 of this title, a court of appeals shall have jurisdiction of an appeal from a final judgment, order, or decree of an appellate panel created under section 160 or a District court of the United States or from a final judgment, order, or decree of a bankruptcy court of the United States if the parties to such appeal agree to a direct appeal to the court of appeals.

§ 1294. Circuits in which decisions reviewable

[See main edition for text]

(June 25, 1948, ch. 646, 62 Stat. 930; Oct. 31, 1951, ch. 655, § 50(a), 65 Stat. 727; July 7, 1958, Pub. L. 85-508, § 12(g), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86-3, § 14(c), 73 Stat. 10; Aug. 30, 1961, Pub. L. 87-189, § 5, 75 Stat. 417; Nov. 6, 1978, Pub. L. 95-598, title II, § 237, 92 Stat. 2667; Apr. 2, 1982, Pub. L. 97-164, title I, § 126, 96 Stat. 37.)

Amendments

1978—Pub. L. 95-598 directed the amendment of section by substituting "district, bankruptcy, and territorial" for "district and territorial" and by adding pars. (5) and (6) relating to panels designated under section 160(a) of this title and bankruptcy courts, respectively, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit

(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

[See main edition for text of (1) to (3)]

(4) of an appeal from a decision of—

(A) the Board of Patent Appeals and Interferences of the Patent and Trademark Office with respect to patent applications and interferences, at the instance of an applicant for a patent or any party to a patent interference, and any such appeal shall waive the right of such applicant or party to proceed under section 145 or 146 of title 35;

[See main edition for text of (B) and (C), (5) to (10); (b) and (c)]

(As amended Pub. L. 98-622, title II, § 205(a), Nov. 8, 1984, 98 Stat. 3388.)

Amendments

1984—Subsec. (a)(4)(A). Pub. L. 98-622 substituted "Patent Appeals and" for "Appeals or the Board of Patent".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-622 applicable to all United States patents granted before, on, or after Nov. 8, 1984, and to all applications for United States patents pending on or filed after that date, except as otherwise provided, see section 106 of Pub. L. 98-622, set out as a note under section 103 of Title 35, Patents.

Amendment by Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as a note under section 7 of Title 35.

[§ 1296. Repealed. Pub. L. 98-620, title IV, § 402(29)(C), Nov. 8, 1984, 98 Stat. 3359]

Section, added Pub. L. 97-164, title I, § 127(a), Apr. 2, 1982, 96 Stat. 39, related to precedence of cases in the United States Court of Appeals for the Federal Circuit.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of this title.

CHAPTER 85—DISTRICT COURTS; JURISDICTION

Sec.
1334. Bankruptcy cases and proceedings.

AMENDMENTS

1984—Pub. L. 98-353, title I, § 101(b), July 10, 1984, 98 Stat. 333, substituted "cases" for "matters" in item 1334.

1978—Pub. L. 95-598, title II, § 238(b), Nov. 6, 1978, 92 Stat. 2668, directed the substitution of "Bankruptcy appeals" for "Bankruptcy matters and proceedings" in item 1334, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CROSS REFERENCES

Admiralty and maritime jurisdiction, see section 740 of Title 46, Appendix, Shipping.

§ 1331. Federal question

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 2064; title 25 section 416a; title 42 section 405.

§ 1332. Diversity of citizenship; amount in controversy; costs

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1335, 1603 of this title; title 48 sections 1424, 1612, 1694a.

§ 1333. Admiralty, maritime and prize cases

CROSS REFERENCES

Admiralty and maritime jurisdiction of cases of damage or injury to persons or property, caused by a vessel, whether done or consummated on land, see section 740 of Title 46, Appendix, Shipping.

Admiralty suits against United States, jurisdiction, see sections 741 et seq. and 781 et seq. of Title 46, Appendix.

Limitation of vessel owner's liability, see section 181 et seq. of Title 46, Appendix.

Seaman, definition of, see section 10101 of Title 46, Shipping.

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain made under this subsection is not reviewable by appeal or otherwise. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of the estate.

(June 25, 1948, ch. 646, 62 Stat. 931; Nov. 6, 1978, Pub. L. 95-598, title II, § 238(a), 92 Stat. 2667; July 10, 1984, Pub. L. 98-353, title I, § 101(a), 98 Stat. 333.)

AMENDMENTS

1984—Pub. L. 98-353 in amending section generally, substituted "cases" for "matters" in section catchline, designated existing provision as subsec. (a), and in subsec. (a) as so designated, substituted "Except as provided in subsection (b) of this section, the district" for "The district" and "original and exclusive jurisdiction of all cases under title 11" for "original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy", and added subsecs. (b) to (d).

1978—Pub. L. 95-598 directed the general amendment of section to relate to bankruptcy appeals, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective July 10, 1984, except that subsec. (c)(2) not applicable with respect to cases under Title 11, Bankruptcy, that are pending on July 10, 1984, or to proceedings arising in or related to such cases, see section 122(a), (b) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.

JURISDICTION OVER AND TRANSFER OF BANKRUPTCY CASES AND PROCEEDINGS

Section 115 of Pub. L. 98-353 provided that:

"(a) On the date of the enactment of this Act [July 10, 1984] the appropriate district court of the United States shall have jurisdiction of—

"(1) cases, and matters and proceedings in cases, under the Bankruptcy Act [former Title 11, Bankruptcy] that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687) [formerly set out as a note preceding section 151 of this title], and

"(2) cases under title 11 of the United States Code, and proceedings arising under title 11 of the United

States Code or arising in or related to cases under title 11 of the United States Code, that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687).

"(b) On the date of the enactment of this Act [July 10, 1984], there shall be transferred to the appropriate district court of the United States appeals from final judgments, orders, and decrees of the bankruptcy courts pending immediately before such date in the bankruptcy appellate panels appointed under section 405(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2685) [formerly set out as a note preceding section 1471 of this title]."

Section Referred to in Other Sections

This section is referred to in sections 156, 157, 1408, 1452 of this title.

§ 1335. Interpleader

Cross References

Actions on war risk insurance claims, see section 1292 of Title 46, Appendix, Shipping.

§ 1338. Patents, plant variety protection, copyrights, trade-marks, and unfair competition

Section Referred to in Other Sections

This section is referred to in section 1295 of this title; title 17 section 912.

§ 1341. Taxes by States

Section Referred to in Other Sections

This section is referred to in title 45 section 546b; title 49 sections 11503, 11503a.

§ 1346. United States as defendant

Section Referred to in Other Sections

This section is referred to in sections 995, 1295, 1402, 2402, 2409a, 2671, 2676, 2677, 2678, 2679, 2680 of this title; title 2 section 190g; title 5 sections 3373, 3374; title 10 section 1089; title 22 sections 2702, 3761, 4606; title 25 section 640d-17; title 26 section 7422; title 29 section 938; title 38 sections 351, 4116; title 41 sections 113, 602; title 42 sections 233, 405, 2212, 2221, 2223, 2458a, 4654, 5055, 8768, 8771; title 43 section 1737; title 46 App. section 1242; title 47 section 606; title 49 App. section 1540; title 50 App. sections 9, 2410.

§ 1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian country affected
Alaska	All Indian country within the State.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

[*See main edition for text of* (*b*) *and* (*c*)]

(Added Aug. 15, 1953, ch. 505, § 4, 67 Stat. 589, and amended Aug. 24, 1954, ch. 910, § 2, 68 Stat. 795; Aug. 8, 1958, Pub. L. 85-615, § 2, 72 Stat. 545; Nov. 6, 1978, Pub. L. 95-598, title II, § 239, 92 Stat. 2668; July 10, 1984, Pub. L. 98-353, title I, § 110, 98 Stat. 342.)

Amendments

1984—Subsec. (a). Pub. L. 98-353 struck out "or Territories" after "Each of the States", struck out "or Territory" after "State" in 5 places, and substituted "within the State" for "within the Territory" in item relating to Alaska.

1978—Subsec. (a). Pub. L. 95-598 directed the amendment of subsec. (a) by substituting in the item relating to Alaska "within the State" for "within the Territory", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.

Section Referred to in Other Sections

This section is referred to in title 25 sections 711e, 713f, 714e, 1300b-15, 1300f, 1323, 1747, 1918.

§ 1364. Senate actions

[*See main edition for text of* (*a*) *and* (*b*)]

[(c) Repealed. Pub. L. 98-620, title IV, § 402(29)(D), Nov. 8, 1984, 98 Stat. 3359.]

[*See main edition for text of* (*d*) *to* (*f*)]

(As amended Pub. L. 98-620, title IV, § 402(29)(D), Nov. 8, 1984, 98 Stat. 3359.)

Amendments

1984—Subsec. (c). Pub. L. 98-620 struck out subsec. (c) which provided that in any civil action or contempt proceeding brought pursuant to this section, the court had to assign the action or proceeding for hearing at the earliest practicable date and cause the action or proceeding in every way to be expedited, and that any appeal or petition for review from any order or judgment in such action or proceeding had to be expedited in the same manner.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of this title.

CHAPTER 87—DISTRICT COURTS; VENUE

Sec.

1408. Venue of cases under title 11.
1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11.
1410. Venue of cases ancillary to foreign proceedings.
1411. Jury trials.
1412. Change of venue.

AMENDMENTS

1984—Pub. L. 98-353, title I, § 102(b), July 10, 1984, 98 Stat. 335, added items 1408 to 1412.

1978—Pub. L. 95-598, title II, § 240(b), Nov. 6, 1978, 92 Stat. 2668, directed the addition of item 1408, "Bankruptcy appeals", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1395. Fine, penalty or forfeiture

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 section 881; title 26 section 7409.

§ 1400. Patents and copyrights

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 17 section 912.

§ 1402. United States as defendant

CROSS REFERENCES

Actions on war risk insurance claims, see section 1292 of Title 46, Appendix, Shipping.

§ 1407. Multidistrict litigation

RULES OF PROCEDURE OF THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

(Adopted February 26, 1981, effective June 1, 1981, as amended to January 1, 1986)

[See main edition for text of Rules 1 to 3]

Rule 4. Place and Manner of Filing of Papers

(a) All papers for consideration by the Panel shall be submitted for filing to the Clerk of the Panel by mailing or delivering to:

Clerk of the Panel
Judicial Panel on Multidistrict Litigation
1120 Vermont Avenue, N.W.
Suite 1002
Washington, D.C. 20005

No papers shall be left with or mailed to a Judge of the Panel.

[See main edition for text of (b) to (d)]

(As amended May 10, 1984.)

[See main edition for text of Rules 5 to 18]

§ 1408. Venue of cases under title 11

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

(Added Pub. L. 98-353, title I, § 102(a), July 10, 1984, 98 Stat. 334.)

PRIOR PROVISIONS

A prior section 1408, added by Pub. L. 95-598, title II, § 240(a), Nov. 6, 1978, 92 Stat. 2668, which related to bankruptcy appeals, did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE

Section effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as a note under section 151 of this title.

§ 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,000 or a consumer debt of less than $5,000 only in the district court for the district in which the defendant resides.

(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the district court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

(e) A proceeding arising under title 11 or arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the district court for the district where the State or

Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.

(Added Pub. L. 98-353, title I, § 102(a), July 10, 1984, 98 Stat. 334.)

Effective Date

Section effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as a note under section 151 of this title.

§ 1410. Venue of cases ancillary to foreign proceedings

(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the district court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against a property, or to require the turnover of property of an estate, may be commenced only in the district court for the district in which such property is found.

(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the district court for the district in which is located the principal place of business in the United States, or the principal assets in the United States, of the estate that is the subject of such case.

(Added Pub. L. 98-353, title I, § 102(a), July 10, 1984, 98 Stat. 335.)

Effective Date

Section effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as a note under section 151 of this title.

Section Referred to in Other Sections

This section is referred to in section 1408 of this title.

§ 1411. Jury trials

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

(Added Pub. L. 98-353, title I, § 102(a), July 10, 1984, 98 Stat. 335.)

Effective Date

Section effective July 10, 1984, except that subsec. (a) not applicable with respect to cases under Title 11, Bankruptcy, that are pending on July 10, 1984, or to proceedings arising in or related to such cases, see section 122(a), (b) of Pub. L. 98-353, set out as a note under section 151 of this title.

§ 1412. Change of venue

A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.

(Added Pub. L. 98-353, title I, § 102(a), July 10, 1984, 98 Stat. 335.)

Effective Date

Section effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as a note under section 151 of this title.

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

Sec.
1452. Removal of claims related to bankruptcy cases.

Amendments

1984—Pub. L. 98-353, title I, § 103(b), July 10, 1984, 98 Stat. 335, added item 1452.

§ 1446. Procedure for removal

Section Referred to in Other Sections

This section is referred to in section 1441 of this title; title 22 sections 283gg, 290i-7; title 25 sections 487, 610c, 642, 670.

§ 1452. Removal of claims related to bankruptcy cases

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise.

(Added Pub. L. 98-353, title I, § 103(a), July 10, 1984, 98 Stat. 335.)

Effective Date

Section effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as a note under section 151 of this title.

[CHAPTER 90—OMITTED]

Codification

Chapter 90, consisting of sections 1471 to 1482, which was added by Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2668, did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy. Chapter 90 read as follows:

CHAPTER 90—DISTRICT COURTS AND BANKRUPTCY COURTS

Sec.
1471. Jurisdiction.
1472. Venue of cases under title 11.
1473. Venue of proceedings arising under or related to cases under title 11.
1474. Venue of cases ancillary to foreign proceedings.
1475. Change of venue.
1476. Creation or alteration of district or division.
1477. Cure or waiver of defects.
1478. Removal to the bankruptcy courts.
1479. Provisional remedies; security.
1480. Jury trials.
1481. Powers of bankruptcy court.
1482. Appeals.

§ 1471. Jurisdiction

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

(c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

(d) Subsection (b) or (c) of this section does not prevent a district court or a bankruptcy court, in the interest of justice, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such abstention, or a decision not to abstain, is not reviewable by appeal or otherwise.

(e) The bankruptcy court in which a case under title 11 is commenced shall have exclusive jurisdiction of all of the property, whereever located, of the debtor, as of the commencement of such case.

§ 1472. Venue of cases under title 11

Except as provided in section 1474 of this title, a case under title 11 may be commenced in the bankruptcy court for a district—

(1) in which the domicile, residence, principal place of business, in the United States, or principal assets, in the United States, of the person or entity that is the subject of such case have been located for the 180 days immediately preceding such commencement, or for a longer portion of such 180-day period than the domicile, residence, principal place of business, in the United States, or principle [principal] assets, in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

§ 1473. Venue of proceedings arising under or related to cases under title 11

(a) Except as provided in subsections (b) and (d) of this section, a proceeding arising in or related to a case under title 11 may be commenced in the bankruptcy court in which such case is pending.

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,000 or a consumer debt of less than $5,000 only in the bankruptcy court for the district in which a defendant resides.

(c) Except as provided in section (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the bankruptcy court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

(d) A trustee may commence a proceedihg arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the bankruptcy court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

(e) A proceeding arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the bankruptcy court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the bankruptcy court in which such case in [is] pending.

§ 1474. Venue of cases ancillary to foreign proceedings

(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the bankruptcy court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against property, or to require turnover of property of an estate, may be commenced only in the bankruptcy court for the district in which such property is found.

(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the bankruptcy court for the district in which is located the principal assets in the United States, of the estate that is the subject of such case.

§ 1475. Change of venue

A bankruptcy court may transfer a case under title 11 or a proceeding arising under or related to such a case to a bankruptcy court for another district, in the interest of justice and for the convenience of the parties.

§ 1476. Creation or alteration of district or division

Cases or proceedings pending at the time of the creation of a new district or division or transfer of a county or territory from one division or district to another may be tried in the district or division as it existed at the institution of the case or proceeding, or in the district or division so created or to which the county or territory is so transferred as the parties shall agree or the court direct.

§ 1477. Cure or waiver of defects

(a) The bankruptcy court of a district in which is filed a case or proceeding laying venue in the wrong division or district may, in the interest of justice and for the convenience of the parties, retain such case or proceeding, or may transfer, under section 1475 of this title, such case or proceeding to any other district or division.

(b) Nothing in this chapter shall impair the jurisdiction of a bankruptcy court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

§ 1478. Removal to the bankruptcy courts

(a) A party may remove any claim or cause of action in a civil action, other than a proceeding before the United States Tax Court or a civil action by a Government unit to enforce such governmental unit's police or regulatory power, to the bankruptcy court for the district where such civil action is pending, if the bankruptcy courts have jurisdiction over such claim or cause of action.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order under this subsection remanding a claim or cause of action, or a decision not so remanding, is not reviewable by appeal or otherwise.

§ 1479. Provisional remedies; security

(a) Whenever any action is removed to a bankruptcy court under section 1478 of this title, any attachment or sequestration of the goods or estate of the defendant in such action shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the court from which the action was removed, unless the attachment or sequestration is invalidated under applicable law.

(b) Any bond, undertaking, or security given by either party in an action prior to removal under section 1478 of this title shall remain valid and effectual notwithstanding such removal, unless such bond, undertaking, or other security is invalidated under applicable law.

(c) All injunctions, orders, or other proceedings in an action prior to removal of such action under section 1478 of this title shall remain in full force and effect until dissolved or modified by the bankruptcy court.

§ 1480. Jury trials

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury, in a case under title 11 or in a proceeding arising under title 11 or arising in or related to a case under title 11, that is provided by any statute in effect on September 30, 1979.

(b) The bankruptcy court may order the issues arising under section 303 of title 11 to be tried without a jury.

§ 1481. Powers of bankruptcy court

A bankruptcy court shall have the powers of a court of equity, law, and admiralty, but may not enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment.

§ 1482. Appeals

(a) Panels designated under section 160(a) of this title shall have jurisdiction of appeals from all final judgments, orders, and decrees of bankruptcy courts.

(b) Panels designated under section 160(a) of this title shall have jurisdiction of appeals from interlocutory judgments, orders, and decrees of bankruptcy courts, but only by leave of the panel to which the appeal is taken.

JURISDICTION AND PROCEDURE DURING TRANSITION

Pub. L. 95-598, title IV, § 405(a)-(c), Nov. 6, 1978, 92 Stat. 2686, which, during the transition period, provided that cases commenced under title 11 be referred to United States bankruptcy judges, authorized bankruptcy judges to exercise jurisdiction and powers of bankruptcy courts, provided that certain proceedings be before judges of courts of bankruptcy, and related to appeals from judgments, orders, or decrees of bankruptcy judges and the jurisdiction of district courts, the courts of appeals, and panels to bankruptcy judges to hear appeals, was repealed by Pub. L. 98-353, title I, § 114, July 10, 1984, 98 Stat. 343.

TRANSITION TO NEW COURT SYSTEM

Pub. L. 95-598, title IV, § 409, Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-249, § 1(d), Mar. 31, 1984, 98 Stat. 116; Pub. L. 98-271, § 1(d), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98-299, § 1(d), May 25, 1984, 98 Stat. 214; Pub. L. 98-325, § 1(d), June 20, 1984, 98 Stat. 268; Pub. L. 98-353, title I, § 121(d), July 10, 1984, 98 Stat. 346, which provided for transfer to the new court system of cases, and matters and proceedings in cases, under the Bankruptcy Act [former Title 11] pending at the end of Sept. 30, 1983, in the courts of bankruptcy continued under section 404(a) of Pub. L. 95-598, with certain exceptions, and cases and proceedings arising under or related to cases under Title 11 pending at the end of July 9, 1984, and directed that civil actions pending on July 9, 1984, over which a bankruptcy court had jurisdiction on July 9, 1984, not abate, but continuation of such actions not finally determined before Apr. 1, 1985, be removed to a bankruptcy court under this chapter, and that all law books, publications, etc., furnished bankruptcy judges as of July 9, 1984, be transferred to the United States bankruptcy courts under the supervision of the Director of the Administrative Office of the United States Courts, was repealed by Pub. L. 98-353, title I, § 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

CHAPTER 91—UNITED STATES CLAIMS COURT

Sec.
1509. No jurisdiction in cases involving refunds of tax shelter promoter and understatement penalties.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title VII, § 714(g)(3), July 18, 1984, 98 Stat. 962, added item 1509.

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

CROSS REFERENCES

Admiralty suits against United States, jurisdiction of district courts, see sections 741 et seq. and 781 et seq. of Title 46, Appendix, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2409a of this title; title 12 section 216b; title 41 sections 114, 602; title 42 section 4654; title 45 section 1018; title 46 App. section 1242; title 47 section 606.

§ 1498. Patent and copyright cases

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 17 sections 502, 912; title 19 section 1337; title 22 section 2356; title 35 section 183; title 42 section 2457.

§ 1509. No jurisdiction in cases involving refunds of tax shelter promoter and understatement penalties

The United States Claims Court shall not have jurisdiction to hear any action or proceeding for any refund or credit of any penalty imposed under section 6700 of the Internal Revenue Code of 1954 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 of such Code (relating to penalties for aiding and abetting understatement of tax liability).

(Added Pub. L. 98-369, div. A, title VII, § 714(g)(2), July 18, 1984, 98 Stat. 962.)

REFERENCES IN TEXT

Sections 6700 and 6701 of the Internal Revenue Code of 1954, referred to in text, are classified to sections 6700 and 6701, respectively, of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section 714(g)(4) of Pub. L. 98-369 provided that: "The amendments made by this subsection [enacting this section and amending section 7422 of Title 26, Internal Revenue Code] shall apply to any claim for refund or credit filed after the date of the enactment of this Act [July 18, 1984]."

CHAPTER 95—COURT OF INTERNATIONAL TRADE

§ 1581. Civil actions against the United States and agencies and officers thereof

[*See main edition for text of* (a) *to* (f)]

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

(1) any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) or (c) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641(b)(5) or (c)(2) of such Act; and

(2) any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit, or impose a monetary penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1930.

[*See main edition for text of* (h) *to* (j)]

(As amended Pub. L. 98-573, title II, § 212(b)(1), Oct. 30, 1984, 98 Stat. 2983.)

References in Text

Section 641 of the Tariff Act of 1930, referred to in subsec. (g)(1), (2), is classified to section 1641 of Title 19, Customs Duties.

Amendments

1984—Subsec. (g)(1). Pub. L. 98-573 amended par. (1) generally, substituting "a customs broker's license under section 641(b)(2) or (3) or (c) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641(b)(5) or (c)(2) of such Act" for "or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930".

Subsec. (g)(2). Pub. L. 98-573 amended par. (2) generally, substituting "any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit, or impose a monetary penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1930" for "any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective on the close of the 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98-573, set out as a note under section 1304 of Title 19, Customs Duties.

§ 1582. Civil actions commenced by the United States

The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—

(1) to recover a civil penalty under section 592, 641(a)(1)(C),,[1] 641(d)(2)(A), 704(i)(2), or 734(i)(2) of the Tariff Act of 1930;

[*See main edition for text of* (2) *and* (3)]

(As amended Pub. L. 98-573, title II, § 212(b)(2), Oct. 30, 1984, 98 Stat. 2983.)

References in Text

Sections 592, 641(d)(2)(A), 704(i)(2), and 734(i)(2) of the Tariff Act of 1930, referred to in par. (1), are classified to sections 1592, 1641(d)(2)(A), 1671c(i)(2), and 1673c(i)(2), respectively, of Title 19, Customs Duties.

Section 641(a)(1)(C) of the Tariff Act of 1930, referred to in par. (1), probably means section 641(d)(1)(C) of the Tariff Act of 1930, which is classified to section 1641(d)(1)(C) of Title 19 and relates to monetary penalties if a broker violates customs laws or regulations. Section 641(a)(1) does not contain a subpar. (C).

Amendments

1984—Par. (1). Pub. L. 98-573 inserted references to section 641(a)(1)(C) and 641(d)(2)(A) of the Tariff Act of 1930.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective on the close of the 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98-573, set out as a note under section 1304 of Title 19, Customs Duties.

PART V—PROCEDURE

CHAPTER 111—GENERAL PROVISIONS

Sec.
1657. Priority of civil actions.

Amendments

1984—Pub. L. 98-620, title IV, § 401(b), Nov. 8, 1984, 98 Stat. 3357, added item 1657.

§ 1656. Creation of new district or division or transfer of territory; lien enforcement

[*See main edition for text*]

(June 25, 1948, ch. 646, 62 Stat. 944; Nov. 6, 1978, Pub. L. 95-598, title II, § 242, 92 Stat. 2671.)

Amendments

1978—Pub. L. 95-598 directed the amendment of section by inserting "or in a bankruptcy court" after "a district court", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1657. Priority of civil actions

(a) Notwithstanding any other provision of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown. For purposes of this subsection, "good cause" is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

(b) The Judicial Conference of the United States may modify the rules adopted by the courts to determine the order in which civil actions are heard and determined, in order to establish consistency among the judicial circuits.

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[1] So in original. See References in Text note below.

(Added Pub. L. 98-620, title IV, § 401(a), Nov. 8, 1984, 98 Stat. 3356.)

EFFECTIVE DATE

Section 403 of Pub. L. 98-620 provided that: "The amendments made by this subtitle [subtitle A, §§ 401 to 403 of Pub. L. 98-620, enacting section 1657 of this title, amending sections 596, 636, 1364, 2284, and 2349 of this title, sections 437g, 437h, and 687 of Title 2, The Congress, section 552 of Title 5, Government Organization and Employees, sections 8, 136d, 136h, 136n, 136w, 194, 1366, 1600, and 1601 of Title 7, Agriculture, section 1464 of Title 12, Banks and Banking, sections 18a, 21, 45, 57a-1, 78k-1, 687a, 687c, 719h, 1415, 2003, and 2622 of Title 15, Commerce and Trade, sections 1463a, 1910, 3117, and 3163 of Title 16, Conservation, sections 1964 and 1966 of Title 18, Crimes and Criminal Procedure, sections 346a and 348 of Title 21, Food and Drugs, section 618 of Title 22, Foreign Relations and Intercourse, section 640d-3 of Title 25, Indians, sections 3310, 6110, 6363, 7609, 9010, and 9011 of Title 26, Internal Revenue Code, sections 110, 160, 660, and 1303 of Title 29, Labor, section 816 of Title 30, Mineral Lands and Mining, section 2022 of Title 38, Veterans' Benefits, section 3628 of Title 39, Postal Service, sections 300j-9, 504, 6508, and 8514 of Title 42, The Public Health and Welfare, sections 1062, 1349, 1652, and 2011 of Title 43, Public Lands, sections 355, 745, 1018, and 1205 of Title 45, Railroads, section 402 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, section 2305 of Title 49, Appendix, Transportation, section 792a of Title 50, War and National Defense, and sections 462 and 1984 of Title 50, Appendix, repealing sections 1296 and 2647 of this title, section 28 of Title 15, and section 3614 of Title 42, and amending provisions set out as a note under section 2304 of Title 10, Armed Forces] shall not apply to cases pending on the date of the enactment of this subtitle [Nov. 8, 1984]."

CHAPTER 115—EVIDENCE; DOCUMENTARY

§ 1746. Unsworn declarations under penalty of perjury

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 8 section 1357; title 10 section 931; title 18 sections 152, 1546, 1621, 1623; title 25 section 399.

CHAPTER 119—EVIDENCE; WITNESSES

§ 1821. Per diem and mileage generally; subsistence

REFERENCES IN TEXT

Subsection (c) of section 5702 of title 5, referred to in subsec. (d)(3), which related to conditions under which an employee could be reimbursed for actual and necessary expenses of official travel when the maximum per diem allowance was less than these expenses, was repealed, and subsec. (e) of section 5702 of title 5, was redesignated as subsec. (c), by Pub. L. 99-234, title I, § 102, Jan. 2, 1986, 99 Stat. 1756.

Section 3149 of title 18, referred to in subsec. (d)(4), which related to release of material witnesses, was repealed by Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1976. Section 203(a) of Pub. L. 98-473 also enacted a new section 3149 of Title 18, Crimes and Criminal Procedure, relating to surrender of an offender by a surety and a new section 3144 of Title 18 relating to release or detention of a material witness.

§ 1826. Recalcitrant witnesses

[*See main edition for text of* (a) *and* (b)]

(c) Whoever escapes or attempts to escape from the custody of any facility or from any place in which or to which he is confined pursuant to this section or section 4243 of title 18, or whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempt to escape of such a person, shall be subject to imprisonment for not more than three years, or a fine of not more than $10,000, or both.

(As amended Pub. L. 98-473, title II, § 1013, Oct. 12, 1984, 98 Stat. 2142.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-473 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1657 of this title.

CHAPTER 121—JURIES; TRIAL BY JURY

§ 1869. Definitions

[*See main edition for text*]

(June 25, 1948, ch. 646, 62 Stat. 953; Oct. 16, 1963, Pub. L. 88-139, 32, 77 Stat. 248; Mar. 27, 1968, Pub. L. 90-274, § 101, 82 Stat. 61; July 29, 1970, Pub. L. 91-358, title I, § 172(b), 84 Stat. 590; Sept. 29, 1972, Pub. L. 92-437, § 1, 86 Stat. 740; Nov. 2, 1978, Pub. L. 95-572, §§ 3(b), 4, 92 Stat. 2453; Nov. 6, 1978, Pub. L. 95-598, title II, § 243, 92 Stat. 2671.)

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-598 directed the amendment of subsec. (f) by inserting "chapter 6 of title 28, United States Code," after "chapter 5 of title 28, United States Code,", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 123—FEES AND COSTS

Sec.	
1930.	Bankruptcy fees.

AMENDMENTS

1984—Pub. L. 98-353, title I, § 111(c), July 10, 1984, 98 Stat. 343, substituted "fees" for "courts" in item 1930. Notwithstanding directory language that the amendment be made to the table of sections for chapter 125 of this title, the amendment was executed to the table of sections for chapter 123 of this title to reflect the probable intent of Congress.

§ 1915. Proceedings in forma pauperis

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1930 of this title; title 10 section 867; title 18 section 3006A.

§ 1923. Docket fees and costs of briefs

REPEAL OF REFERENCES TO UNITED STATES TRUSTEE

Section 408(c) of Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that all references to United States trustees contained in this title are deleted, as of Sept. 30, 1986.

§ 1930. Bankruptcy fees

(a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the court the following filing fees:

[*See main edition for text of (1) to (4); (b)*]

(c) Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari $5 shall be paid to the clerk of the court, by the appellant or petitioner.

[*See main edition for text of (d)*]

(e) The clerk of the court may collect only the fees prescribed under this section.

(As amended Pub. L. 98-353, title I, § 111(a), (b), July 10, 1984, 98 Stat. 342.)

Amendments

1984—Pub. L. 98-353, § 111(b), substituted "fees" for "courts" in section catchline.

Subsecs. (a), (c), (e). Pub. L. 98-353, § 111(a), substituted "clerk of the court" for "clerk of the bankruptcy court".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.

Judicial Conference Schedule of Fees

The Judicial Conference of the United States at its session on March 7-9, 1979, adopted a schedule of fees to be charged in bankruptcy courts pursuant to this section. The schedule becomes effective on October 1, 1979. At its session in March and September, 1980, and March, 1981, the Judicial Conference amended the schedule of fees.

The scheduled charges for special services to be made under Section 40c(3) of the Bankruptcy Act for deposit to the Referees' Salary and Expense Fund and the miscellaneous fees chargeable in bankruptcy cases filed after October 1, 1979, pursuant to 28 U.S.C. § 1930(b) are as follows (except that no fees are to be charged for services rendered on behalf of the United States):

1. For reproducing any record or paper, 50 cents per page. This fee does not include certification. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records.
2. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, $2.00.
3. For comparing with the original thereof any copy of any transcript of record, entry, record or paper, when such copy is furnished by any person requesting certification, $2.00 per page or fraction thereof. This fee is in addition to the fee for certification.
4. For reproduction of magnetic tape recordings, either cassette or reel-to-reel, $2.00 plus the cost of materials, minimum charge of $5.00.
5. For amendments to a debtor's schedules, or lists, of creditors after notice to creditors, $10.00 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case.
6. For every search of the records of the bankruptcy court conducted by the clerk of the bankruptcy court or one of his deputies, $2.00 per name or item searched.
7. For filing a complaint, a fee should be collected in the same amount as the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. If the United States, other than a United States Trustee acting as a trustee in a case under Title 11, or a debtor is the plaintiff, no fee is required. If a trustee in a case under Title 11 is the plaintiff, the fee shall be payable only from the estate and to the extent there is any estate realized. The exemption granted herein to a debtor is not granted to a debtor in possession.
8. For filing or indexing any paper not in a case or proceeding for which a filing fee has been paid, $3.00, except that the fee for registering a judgment from another district shall be $10.00.
9. For each set of notices in cases filed under Title 11 of the United States Code in excess of fifty notices per set, twenty-five cents for each additional notice. The fee shall be payable only from the estate and only to the extent there is an estate.
10. Upon the filing of a notice of appeal with the bankruptcy court in a proceeding arising under the Bankruptcy Act, $5.00 should be paid to the clerk of the bankruptcy court by the appellant.
11. For clerical processing of each claim filed in excess of 10, 25 cents each in asset cases filed under Chapters I-VII of the Bankruptcy Act and in cases filed under the relief chapters of the Bankruptcy Act.
12. For transcribing a record of any proceeding by a regularly employed member of the bankruptcy court staff who is not entitled by statute to retain the transcript fees for his or her own account, a charge shall be made at the same rate and conditions established by the Judicial Conference for transcripts prepared and sold to parties by official court reporters. The party requesting the transcript shall pay the charge to the clerk of the bankruptcy court for deposit to the credit of the referees' salary and expense fund if the proceeding is related to a case commenced prior to October 1, 1979, and to the credit of the Treasury if the proceeding is related to a case commenced on or after October 1, 1979. If the trustee in bankruptcy or the debtor in possession requests a transcript in the performance of his official duties the charge shall be paid from the estate to the extent there is any estate realized.

CHAPTER 125—PENDING ACTIONS AND JUDGMENTS

§ 1961. Interest

Section Referred to in Other Sections

This section is referred to in section 2412 of this title; title 15 section 4303; title 26 section 6622.

§ 1962. Lien

Section Referred to in Other Sections

This section is referred to in title 18 sections 3565, 3613.

CHAPTER 129—MONEYS PAID INTO COURT

§ 2041. Deposit of moneys in pending or adjudicated cases

Cross References

Limitation of liability, deposit of value of interest in court, see section 185 of Title 46, Appendix, Shipping.

CHAPTER 131—RULES OF COURTS

§ 2072. Rules of civil procedure

Section Referred to in Other Sections

This section is referred to in section 2112 of this title; title 26 section 7482; title 29 section 160.

§ 2075. Bankruptcy rules

Rules Promulgated by Supreme Court

Pub. L. 98-353, title III, § 320, July 10, 1984, 98 Stat. 357, provided that: "The Supreme Court shall prescribe general rules implementing the practice and procedure to be followed under section 707(b) of title 11, United States Code. Section 2075 of title 28, United States Code, shall apply with respect to the general rules prescribed under this section."

Applicability of Rules to Cases Under Title 11

Pub. L. 95-598, title IV, § 405(d), Nov. 6, 1978, 92 Stat. 2685, provided that: "The rules prescribed under section 2075 of title 28 of the United States Code and in effect on September 30, 1979, shall apply to cases under title 11, to the extent not inconsistent with the amendments made by this Act, or with this Act [see Tables for complete classification of Pub. L. 95-598], until such rules are repealed or superseded by rules prescribed and effective under such section, as amended by section 248 of this Act."

Additional Rulemaking Power

Pub. L. 95-598, title IV, § 410, Nov. 6, 1978, 92 Stat. 2687, provided that: "The Supreme Court may issue such additional rules of procedure, consistent with Acts of Congress, as may be necessary for the orderly transfer of functions and records and the orderly transition to the new bankruptcy court system created by this Act [see Tables for complete classification of Pub. L. 95-598]."

CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay

[See main edition for text of (a) to (f)]

(g) The time for application for a writ of certiorari to review a decision of the United States Court of Military Appeals shall be as prescribed by rules of the Supreme Court.

(As amended Dec. 6, 1983, Pub. L. 98-209, § 10(b), 97 Stat. 1406.)

Amendments

1983—Subsec. (g). Pub. L. 98-209 added subsec. (g).

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-209 effective on the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of Title 10, Armed Forces.

§ 2107. Time for appeal to court of appeals

[See main edition for text]

(June 25, 1948, ch. 646, 62 Stat. 963; May 24, 1949, ch. 139, §§ 107, 108, 63 Stat. 104; Nov. 6, 1978, Pub. L. 95-598, title II, § 248, 92 Stat. 2672.)

Amendments

1978—Pub. L. 95-598 directed the amendment of section by inserting "or the bankruptcy court" after "district court" and by striking out the final paragraph, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 2112. Record on review and enforcement of agency orders

Section Referred to in Other Sections

This section is referred to in section 2346 of this title; title 5 section 7123; title 7 sections 8, 9, 136n, 194, 1115, 1600, 1601; title 12 sections 93, 504, 505, 1464, 1730, 1730a, 1786, 1818, 1828, 1848, 1972, 2266, 2268; title 15 sections 21, 45, 57a, 78y, 79x, 80a-42, 80b-13, 687e, 717r, 1193, 1262, 1394, 1474, 1710, 1825, 1913, 2008, 2060, 2618, 3416; title 16 sections 773f, 825*l*, 1030, 1536, 1858, 2437, 3142, 3373; title 19 section 81r; title 20 sections 351d, 1234d, 1413, 1416, 2464, 2740, 2851, 3806, 3862, 3873; title 21 sections 346a, 348, 355, 360g, 371; title 22 section 1631f; title 26 sections 3310, 6363; title 27 section 204; title 29 sections 160, 210, 660, 667, 721, 1578; title 30 sections 816, 1462; title 31 section 1263; title 33 section 921; title 39 section 3628; title 40 section 333; title 42 sections 263a, 263f, 291h, 504, 1316, 1320a-7a, 2022, 3027, 3785, 5311, 5405, 6029, 6306, 6869, 7525, 8412, 9152; title 43 sections 355, 1349; title 46 App. section 1181; title 47 section 402; title 49 App. sections 1486, 1674b.

PART VI—PARTICULAR PROCEEDINGS

CHAPTER 151—DECLARATORY JUDGMENTS

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 of the Federal Food, Drug, and Cosmetic Act.

(As amended Sept. 24, 1984, Pub. L. 98-417, title I, § 106, 98 Stat. 1597.)

References in Text

Section 505 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b), is classified to section 355 of Title 21, Food and Drugs.

Amendments

1984—Pub. L. 98-417 designated existing provisions as subsec. (a) and added subsec. (b).

Section Referred to in Other Sections

This section is referred to in title 7 section 623; title 8 sections 1105a, 1503; title 21 section 355.

CHAPTER 153—HABEAS CORPUS

Sec.
[2256. Omitted.]

Amendments

1978—Pub. L. 95-598, title II, § 250(b), Nov. 6, 1978, 92 Stat. 2672, directed the addition of item 2256, "Habeas corpus from bankruptcy courts", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an

Effective Date note preceding section 101 of Title 11, Bankruptcy.

Chapter Referred to in Other Sections

This chapter is referred to in section 1657 of this title.

[§ 2256. Omitted]

Codification

Section, added Pub. L. 95-598, title II, § 250(a), Nov. 6, 1978, 92 Stat. 2672, did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy. Section read as follows:

§ 2256. Habeas corpus from bankruptcy courts

A bankruptcy court may issue a writ of habeas corpus—

(1) when appropriate to bring a person before the court—

(A) for examination;

(B) to testify; or

(C) to perform a duty imposed on such person under this title; or

(2) ordering the release of a debtor in a case under title 11 in custody under the judgment of a Federal or State court if—

(A) such debtor was arrested or imprisoned on process in any civil action;

(B) such process was issued for the collection of a debt—

(i) dischargeable under title 11; or

(ii) that is or will be provided for in a plan under chapter 11 or 13 of title 11; and

(C) before the issuance of such writ, notice and a hearing have been afforded the adverse party of such debtor in custody to contest the issuance of such writ.

Prior Provisions

A prior section 2256, added Pub. L. 95-144, § 3, Oct. 28, 1977, 91 Stat. 1220, which related to jurisdiction of proceedings relating to transferred offenders, was transferred to section 3244 of Title 18, Crimes and Criminal Procedure, by Pub. L. 95-598, title III, § 314(j), Nov. 6, 1978, 92 Stat. 2677.

CHAPTER 155—INJUNCTIONS; THREE-JUDGE COURTS

§ 2284. Three-judge court; when required; composition; procedure

[See main edition for text of (a)]

(b) In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

[See main edition for text of (1)]

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State.

[See main edition for text of (3)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(29)(E), 98 Stat. 3359.)

Amendments

1984—Subsec. (b)(2). Pub. L. 98-620 struck out provision that the hearing had to be given precedence and held at the earliest practicable day.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of this title.

Section Referred to in Other Sections

This section is referred to in title 2 section 922; title 26 sections 9010, 9011; title 42 sections 1973b, 1973c, 1973h, 1973aa-2, 1973bb.

CHAPTER 158—ORDERS OF FEDERAL AGENCIES; REVIEW

Chapter Referred to in Other Sections

This chapter is referred to in section 2321 of this title; title 7 sections 149, 150gg, 163; title 8 section 1105a; title 21 sections 104, 117, 122, 127, 134e, 135a; title 31 section 755; title 39 section 3628; title 42 sections 2239, 2242; title 46 App. section 1712; title 47 section 402; title 49 sections 10934, 11901; title 50 section 167h.

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

[See main edition for text of (1) to (4)]

(5) all rules, regulations, or final orders of the Interstate Commerce Commission made reviewable by section 2321 of this title and all final orders of such Commission made reviewable under section 11901(j)(2) of title 49, United States Code.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

(As amended Pub. L. 98-554, title II, § 227(a)(4), Oct. 30, 1984, 98 Stat. 2852.)

References in Text

Chapters 23 and 23A and section 830 of title 46, referred to in par. (3), are classified to Title 46, Appendix, Shipping.

Amendments

1984—Par. (5). Pub. L. 98-554 substituted "11901(j)(2)" for "11901(i)(2)".

§ 2349. Jurisdiction of the proceeding

[See main edition for text of (a)]

(b) The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. When the petitioner makes application for an interlocutory injunction restraining or suspending the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this chapter, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General. In a case in which irreparable damage would otherwise result to the petitioner, the court of appeals may, on hearing, after reasonable notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60 days from the date of the order pending the hearing on the application for the interlocutory injunction, in which case the order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that irreparable damage would result to the petitioner and specifying the nature of the damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, on a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

(As amended Pub. L. 98-620, title IV, § 402(29)(F), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-620 struck out provisions that the hearing on an application for an interlocutory injunction be given preference and expedited and heard at the earliest practicable date after the expiration of the notice of hearing on the application, and that on the final hearing of any proceeding to review any order under this chapter, the same requirements as to precedence and expedition was to apply.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620 set out as an Effective Date note under section 1657 of this title.

CHAPTER 161—UNITED STATES AS PARTY GENERALLY

§ 2401. Time for commencing action against United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2671 of this title; title 41 section 113; title 42 section 2212; title 45 section 1203; title 49 App. section 1540.

§ 2402. Jury trial in actions against United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 section 113; title 42 section 2212.

§ 2412. Costs and fees

(a) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

[*See main edition for text of* (c)]

(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(2) For the purposes of this subsection—

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

(B) "party" means (i) an individual whose net worth did not exceed $2,000,000 at the time the civil action was filed, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association;

(C) "United States" includes any agency and any official of the United States acting in his or her official capacity;

(D) "position of the United States" means, in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings;

(E) "civil action brought by or against the United States" includes an appeal by a party, other than the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to the Contract Disputes Act of 1978;

(F) "court" includes the United States Claims Court;

(G) "final judgment" means a judgment that is final and not appealable, and includes an order of settlement; and

(H) "prevailing party", in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement), exclusive of interest, the amount of which is at least as close to the highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trial on behalf of the Government.

(3) In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States Code, or an adversary adjudication subject to the Contract Disputes Act of 1978, the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust.

(4) Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(5) The Director of the Administrative Office of the United States Courts shall include in the annual report prepared pursuant to section 604 of this title, the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this subsection. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards.

[*See main edition for text of* (*e*)]

(f) If the United States appeals an award of costs or fees and other expenses made against the United States under this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award as affirmed. Such interest shall be computed at the rate determined under section 1961(a) of this title, and shall run from the date of the award through the day before the date of the mandate of affirmance.

(June 25, 1948, ch. 646, 62 Stat. 973; July 18, 1966, Pub. L. 89-507, § 1, 80 Stat. 308; Oct. 21, 1980, Pub. L. 96-481, title II, § 204(a), (c), 94 Stat. 2327, 2329; Sept. 3, 1982, Pub. L. 97-248, title II, § 292(c), 96 Stat. 574; Aug. 5, 1985, Pub. L. 99-80, §§ 2, 6, 99 Stat. 184, 186.)

References in Text

The Contract Disputes Act of 1978, referred to in subsec. (d)(2)(E), (3), is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

Amendments

1985—Subsecs. (a), (b). Pub. L. 99-80, § 2(a)(1), substituted "or any agency or any official of the United States" for "or any agency and any official of the United States".

Subsec. (d). Pub. L. 99-80, § 6, repealed amendment made by Pub. L. 96-481, § 204(c), and provided that subsec. (d) was effective on or after Aug. 5, 1985, as if it had not been repealed by section 204(c). See 1980 Amendment note and Revival of Previously Repealed Provisions note below.

Subsec. (d)(1)(A). Pub. L. 99-80, § 2(a)(2), inserted ", including proceedings for judicial review of agency actions," after "in tort)".

Subsec. (d)(1)(B). Pub. L. 99-80, § 2(b), added provisions directing that whether or not the position of the United States was substantially justified must be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action was based) which is made in the civil action for which fees and other expenses are sought.

Subsec. (d)(2)(B). Pub. L. 99-80, § 2(c)(1), substituted "$2,000,000" for "$1,000,000" in cl. (i), and substituted "or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such

Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association;" for "(ii) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed $5,000,000 at the time the civil action was filed, except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of the Code and a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association, or (iii) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization, having not more than 500 employees at the time the civil action was filed; and".

Subsec. (d)(2)(D) to (H). Pub. L. 99-80, § 2(c)(2), added subpars. (D) to (H).

Subsec. (d)(4). Pub. L. 99-80, § 2(d), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

"(A) Fees and other expenses awarded under this subsection may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment of final judgments is made in accordance with sections 2414 and 2517 of this title.

"(B) There is authorized to be appropriated to each agency for each of the fiscal years 1982, 1983, and 1984, such sums as may be necessary to pay fees and other expenses awarded pursuant to this subsection in such fiscal years."

Subsec. (f). Pub. L. 99-80, § 2(e), added subsec. (f).

1980—Subsec. (d). Pub. L. 96-481, § 204(c), repealed subsec. (d) eff. Oct. 1, 1984. See Effective Date of 1980 Amendment note below.

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-80 applicable to cases pending on or commenced on or after Aug. 5, 1985, but with provision for additional applicability to certain prior cases and to prior board of contracts appeals cases, see section 7 of Pub. L. 99-80, set out as a note under section 504 of Title 5, Government Organization and Employees.

Effective Date of 1980 Amendment

Amendment by section 204(a) of Pub. L. 96-481 effective Oct. 1, 1981, and applicable to any adversary adjudication, as defined in section 504(b)(1)(C) of Title 5, Government Organization and Employees, and any civil action or adversary adjudication described in this section which is pending on, or commenced on or after, such date, see section 208 of Pub. L. 96-481, set out as an Effective Date note under section 504 of Title 5.

Section 204(c) of Pub. L. 96-481 which provided in part that effective Oct. 1, 1984, subsec. (d) of this section is repealed, except that the provisions of subsec. (d) shall continue to apply through final disposition of any adversary adjudication initiated before the date of repeal, was repealed by Pub. L. 99-80, § 6(b)(2), Aug. 5, 1985, 99 Stat. 186.

Revival of Previously Repealed Provisions

For revival of subsec. (d) of this section effective on or after Aug. 5, 1985, as if it had not been repealed by section 204(c) of Pub. L. 96-481, and repeal of section 204(c) of Pub. L. 96-481, see section 6 of Pub. L. 99-80, set out as a note under section 504 of Title 5, Government Organization and Employees.

Savings Provision

Section 206 of Pub. L. 96-481, as amended by Pub. L. 99-80, § 3, Aug. 5, 1985, 99 Stat. 186, provided that:

"(a) Except as provided in subsection (b), nothing in section 2412(d) of title 28, United States Code, as added by section 204(a) of this title, alters, modifies, repeals, invalidates, or supersedes any other provision of Federal law which authorizes an award of such fees and other expenses to any party other than the United States that prevails in any civil action brought by or against the United States.

"(b) Section 206(b) of the Social Security Act (42 U.S.C. 406(b)(1)) shall not prevent an award of fees and other expenses under section 2412(d) of title 28, United States Code. Section 206(b)(2) of the Social Security Act shall not apply with respect to any such award but only if, where the claimant's attorney receives fees for the same work under both section 206(b) of that Act and section 2412(d) of title 28, United States Code, the claimant's attorney refunds to the claimant the amount of the smaller fee."

Section Referred to in Other Sections

This section is referred to in title 5 section 504; title 10 section 2321; title 15 section 2060; title 41 section 253d.

§ 2414. Payment of judgments and compromise settlements

Section Referred to in Other Sections

This section is referred to in section 2412 of this title; title 16 sections 79g, 460bb-2; title 31 section 1304; title 42 section 418.

§ 2415. Time for commencing actions brought by the United States

(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment: *Provided further*, That an action for money damages brought by the United States for or on behalf of a recognized tribe, band or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: *Provided further*, That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed sixty days after the date of publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided*, That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought on or before sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim.

[*See main edition for text of* (*c*) *to* (*i*)]

(As amended Pub. L. 98-250, § 4(a), Apr. 3, 1984, 98 Stat. 118.)

REFERENCES IN TEXT

The Indian Claims Limitation Act of 1982, referred to in subsecs. (a) and (b), is Pub. L. 97-394, title I, §§ 2-6, Dec. 30, 1982, 96 Stat. 1976-1978, which amended this section and enacted provisions set out as notes below. For complete classification of this Act to the Code, see Short Title of 1982 Amendment note set out below and Tables.

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-250 substituted "Indian Claims Limitation Act of 1982" for "Indian Claims Act of 1982" wherever appearing.

SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97-394, as amended by Pub. L. 98-250, § 4(b), Apr. 3, 1984, 98 Stat. 119, provided that: "Sections 2 through 6 of this Act [amending this section and enacting provisions set out as a note below] may be cited as the 'Indian Claims Limitation Act of 1982'."

CHAPTER 163—FINES, PENALTIES AND FORFEITURES

§ 2464. Security; special bond

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 sections 916g, 958, 959, 971f, 972g.

CHAPTER 165—UNITED STATES CLAIMS COURT PROCEDURE

§ 2517. Payment of judgments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2412 of this title; title 16 section 460bb-2; title 25 section 640d-27; title 31 section 1304.

CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

Sec.
[2647. Repealed.]

AMENDMENTS

1984—Pub. L. 98-620 title IV, § 402(29)(G), Nov. 8, 1984, 98 Stat. 3359, struck out item 2647 "Precedence of cases".

§ 2631. Persons entitled to commence a civil action

[*See main edition for text of* (*a*) *to* (*f*)]

(g)(1) A civil action to review any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke such license or permit under section 641(b)(5) or (c)(2) of such Act, may be commenced in the Court of International Trade by the person whose license or permit was denied or revoked.

(2) A civil action to review any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit or impose a monetary penalty in lieu thereof under section 641(d)(2)(B) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person against whom the decision was issued.

[*See main edition for text of* (*h*) *to* (*j*)]

(k) In this section—

[*See main edition for text of* (*1*)]

(2) "party-at-interest" means—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product;

(D) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States,[1] and

(E) an association composed of members who represent parties-at-interest described in subparagraph (B), (C), or (D).

(As amended Pub. L. 98-573, title II, § 212(b)(3), title VI, § 612(b)(3), Oct. 30, 1984, 98 Stat. 2983, 3034.)

Amendments

1984—Subsec. (g). Pub. L. 98-573, § 212(b)(3), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows:

"(1) A civil action to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was denied or revoked.

"(2) A civil action to review any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was revoked or suspended."

Subsec. (k)(2)(E). Pub. L. 98-573, § 612(b)(3), added subpar. (E).

Effective Date of 1984 Amendment

Amendment by section 212(b)(3) of Pub. L. 98-573 effective on the close of the 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98-573, set out as a note under section 1304 of Title 19, Customs Duties.

Amendment by section 612(b)(3) of Pub. L. 98-573 applicable with respect to investigations initiated by petition or by the administering authority under subtitle A or B of title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., 1673 et seq.) on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98-573, set out as a note under section 1671 of Title 19.

§ 2632. Commencement of a civil action

Section Referred to in Other Sections

This section is referred to in title 19 section 1520.

§ 2635. Filing of official documents

Section Referred to in Other Sections

This section is referred to in title 19 section 1641.

§ 2636. Time for commencement of action

[See main edition for text of (a) *and* (b)*]*

(c) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within the time specified in such section.

(d) A civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or a final determination of the Secretary of Commerce under section 251 or section 271 of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of notice of such determination.

(e) A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

(f) A civil action involving an application for the issuance of an order making confidential information available under section 777(c)(2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

(g) A civil action contesting the denial or revocation by the Secretary of the Treasury of a customs broker's license or permit under subsection (b) or (c) of section 641 of the Tariff Act of 1930, or the revocation or suspension of such license or permit or the imposition of a monetary penalty in lieu thereof by such Secretary under section 641(d) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

(h) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)-(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

(As amended Pub. L. 98-573, title II, § 212(b)(4), title VI, § 623(b)(1), Oct. 30, 1984, 98 Stat. 2984, 3041.)

References in Text

Sections 223, 251, and 271 of the Trade Act of 1974, referred to in subsec. (d), are classified to sections 2273, 2341, and 2371, respectively, of Title 19, Customs Duties.

Section 305(b)(1) of the Trade Agreements Act of 1979, referred to in subsec. (e), is classified to section 2515(b)(1) of Title 19.

Section 777(c)(2) of the Tariff Act of 1930, referred to in subsec. (f), is classified to section 1677f(c)(2) of Title 19.

Section 641 of the Tariff Act of 1930, referred to in subsec. (g), is classified to section 1641 of Title 19.

Amendments

1984—Subsec. (c). Pub. L. 98-573, § 623(b)(1)(A), amended subsec. (c) generally, striking out ", other than a determination under section 703(b), 703(c), 733(b), or 733(c) of such Act," and substituting "within the time specified in such section" for "within thirty days after the date of the publication of such determination in the Federal Register".

Subsec. (d). Pub. L. 98-573, § 623(b)(1)(B), redesignated subsec. (e) as (d). Former subsec. (d), which provided that civil actions contesting certain determinations by the administering authority under sections 703(b), (c), and 733(b), (c), of the Tariff Act of 1930 were barred unless commenced in accordance with the rules of the Court of International Trade within 10 days after publication of the determination in the Federal Register, was struck out.

Subsecs. (e) to (g). Pub. L. 98-573, § 623(b)(1)(B), redesignated subsecs. (f) to (h) as (e) to (g), respectively. Former subsec. (e) redesigntaed (d).

Subsec. (h). Pub. L. 98-573, § 623(b)(1)(B), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Pub. L. 98-573, § 212(b)(4), amended subsec. (h) generally, substituting "customs broker's license or permit under subsection (b) or (c) of section 641 of the Tariff Act of 1930, or the revocation or suspension of such license or permit or the imposition of a monetary penalty in lieu thereof by such Secretary under section 641(d) of such Act," for "customhouse broker's license under section 641(a) of the Tariff Act of 1930 or the revocation or suspension by such Secretary of a customhouse broker's license under section 641(b) of such Act".

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[1] So in original. The comma probably should be a semicolon.

Subsec. (i). Pub. L. 98-573, § 623(b)(1)(B), redesignated subsec. (i) as (h).

Effective Date of 1984 Amendment

Amendment by section 212(b)(4) of Pub. L. 98-573 effective on the close of the 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98-573, set out as a note under section 1304 of Title 19, Customs Duties.

Amendment by section 623(b)(1) of Pub. L. 98-573 applicable with respect to civil actions pending on, or filed on or after, Oct. 30, 1984, see section 626(b)(2) of Pub. L. 98-573, set out as a note under section 1671 of Title 19.

§ 2640. Scope and standard of review

(a) The Court of International Trade shall make its determinations upon the basis of the record made before the court in the following categories of civil actions:

[*See main edition for text of (1) to (4)*]

(5) Civil actions commenced to review any decision of the Secretary of the Treasury under section 641 of the Tariff Act of 1930, with the exception of decisions under section 641(d)(2)(B), which shall be governed by subdivision (d) of this section.

[*See main edition for text of (6); (b) to (d)*]

(As amended Pub. L. 98-573, title II, § 212(b)(5), Oct. 30, 1984, 98 Stat. 2984.)

References in Text

Section 641 of the Tariff Act of 1930, referred to in subsec. (a)(5), is classified to section 1641 of Title 19, Customs Duties.

Amendments

1984—Subsec. (a)(5). Pub. L. 98-573 amended par. (5) generally, substituting "under section 641 of the Tariff Act of 1930, with the exception of decisions under section 641(d)(2)(B), which shall be governed by subdivision (d) of this section" for "to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective on the close of the 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98-573, set out as a note under section 1304 of Title 19, Customs Duties.

§ 2643. Relief

[*See main edition for text of (a) to (d)*]

(e) In any proceeding involving assessment or collection of a monetary penalty under section 641(b)(6) or 641(d)(2)(A) of the Tariff Act of 1930, the court may not render judgment in an amount greater than that sought in the initial pleading of the United States, and may render judgment in such lesser amount as shall seem proper and just to the court.

(As amended Pub. L. 98-573, title II, § 212(b)(6), Oct. 30, 1984, 98 Stat. 2984.)

References in Text

Section 641 of the Tariff Act of 1930, referred to in subsec. (e), is classified to section 1641 of Title 19, Customs Duties.

Amendments

1984—Subsec. (e). Pub. L. 98-573 added subsec. (e).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective on the close of the 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98-573, set out as a note under section 1304 of Title 19, Customs Duties.

[§ 2647. Repealed. Pub. L. 98-620, title IV, § 402(29)(G), Nov. 8, 1984, 98 Stat. 3359]

Section, added Pub. L. 96-417, title III, § 301, Oct. 10, 1980, 94 Stat. 1739, and amended Pub. L. 98-573, title VI, § 623(b)(2), Oct. 30, 1984, 98 Stat. 3041, related to precedence of cases.

Effective Date of Repeal

Repeal not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of this title.

CHAPTER 171—TORT CLAIMS PROCEDURE

Chapter Referred to in Other Sections

This chapter is referred to in sections 995, 1346 of this title; title 2 section 190g; title 5 sections 3102, 3111, 3373, 3374, 5564; title 7 section 2272; title 10 sections 1588, 2113, 2360; title 15 sections 637, 4102; title 16 sections 565a-2, 742f, 742*l*, 773a, 1703, 3602, 3640; title 22 sections 2504, 3508, 3761, 4606; title 25 section 2020; title 29 section 1706; title 31 sections 3723, 3724; title 33 section 569c; title 37 section 554; title 39 section 409; title 42 sections 2021d, 2212, 3788, 5055, 8768, 8771; title 43 section 1737; title 45 section 437; title 46 App. section 740.

§ 2672. Administrative adjustment of claims

Section Referred to in Other Sections

This section is referred to in sections 2678, 2679 of this title; title 10 sections 1089, 2733; title 15 section 2081; title 21 section 904; title 22 sections 1474, 2669, 2702; title 29 section 1706; title 31 section 1304; title 32 section 715; title 38 sections 236, 351, 4116; title 39 section 2603; title 42 sections 233, 2212, 2458a, 5055.

§ 2680. Exceptions

References in Text

Sections 741-752 of title 46, referred to in subsec. (d), are popularly known as the "Suits in Admiralty Act" and are classified to Title 46, Appendix, Shipping.

Sections 781-790 of title 46, referred to in subsec. (d), are popularly known as the "Public Vessels Act" and are classified to Title 46, Appendix.

Sections 1-31 of Title 50, Appendix, referred to in subsec. (e), was in the original source of this section (section 943 of act Aug. 2, 1946) a reference to the Trading with the Enemy Act, as amended. The Trading with the Enemy Act is now comprised of sections 1 to 43, which are classified to sections 1 to 6, 7 to 39, and 41 to 44 of Title 50, Appendix, War and National Defense.

CHAPTER 175—CIVIL COMMITMENT AND REHABILITATION OF NARCOTIC ADDICTS

§ 2901. Definitions

As used in this chapter—

(a) "Addict" means any individual who habitually uses any narcotic drug as defined by section 102(16)[1] of the Controlled Substances Act so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such narcotic drugs as to have lost the power of self-control with reference to his addiction.

[*See main edition for text of* (*b*) *to* (*d*)]

(e) "Felony" includes any offense in violation of a law of the United States classified as a felony under section 3581 of title 18 of the United States Code, and further includes any offense in violation of a law of any State, any possession or territory of the United States, the District of Columbia, the Canal Zone, or the Commonwealth of Puerto Rico, which at the time of the offense was classified as a felony by the law of the place where that offense was committed.

[*See main edition for text of* (*f*)]

(g) "Eligible individual" means any individual who is charged with an offense against the United States, but does not include—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) an individual against whom there is pending a prior charge of a felony which has not been finally determined or who is on probation or whose sentence following conviction on such a charge, including any time on parole, supervised release, or mandatory release, has not been fully served: *Provided*, That an individual on probation, parole, supervised release, or mandatory release shall be included if the authority authorized to require his return to custody consents to his commitment.

[*See main edition for text of* (*4*) *and* (*5*)]

(As amended Pub. L. 98-473, title II, § 228(c), Oct. 12, 1984, 98 Stat. 2030.)

REFERENCES IN TEXT

Section 102(16) of the Controlled Substances Act, referred to in subsec. (a), was redesignated section 102(17) of the Controlled Substances Act by Pub. L. 98-473, title II, § 507(a), Oct. 12, 1984, 98 Stat. 2071, and is classified to section 802(17) of Title 21, Food and Drugs.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-473, § 228(c)(1), substituted "section 3581" for "section 1".

Subsec. (g)(3). Pub. L. 98-473, § 228(c)(2), inserted references to supervised release.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 235(b)(1)(B)(ii)(IV) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

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[1] See References in Text note below.

TITLE 28—APPENDIX

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JUDICIAL PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

Pub. L. 95-521, title III, Oct. 26, 1978, 92 Stat. 1851, as amended Pub. L. 96-19, §§ 2(a)(3), (c)(3), 3(a)(3), (b), 4(c), 6, 7(a)-(c), (d)(2), (e), (f), 8(c), 9(c)(3), (d), (j), (p)-(r), June 13, 1979, 93 Stat. 37-43; Pub. L. 96-417, title VI, § 601(9), Oct. 10, 1980, 94 Stat. 1744; Pub. L. 96-579, § 12(c), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 97-164, title I, § 163(a)(6), Apr. 2, 1982, 96 Stat. 49; Pub. L. 98-150, § 10, Nov. 11, 1983, 97 Stat. 962

§ 302. Contents of reports

[See main edition for text of (a) to (e)]

(f) *[See main edition for text of (1) to (4)]*

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

[See main edition for text of (i) and (ii)]

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

[See main edition for text of (B) to (E), (6)]

(7) Any trust may be considered to be a qualified blind trust if—

(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

[See main edition for text of (g) and (h)]

(As amended Pub. L. 98-150, § 10, Nov. 11, 1983, 97 Stat. 962.)

AMENDMENTS

1983—Subsec. (f)(5)(A). Pub. L. 98-150, § 10(b), added provision that this subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

Subsec. (f)(7). Pub. L. 98-150, § 10(a), amended par. (7) generally, substituting in provisions preceding subpar. (A) "Any trust may be considered to be a qualified blind trust if" for "Any trust which is in existence prior to October 26, 1978, shall be considered a qualified blind trust if"; substituting in subpar. (A) "the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph" for "the supervising ethics office determines that the trust was a good faith effort to establish a blind trust"; substituting in subpar. (B) "a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and" for "the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and"; and substituting in subpar. (C) "the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations" for "a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold are filed and made available to the public as provided under paragraph (5) of this subsection".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-150 effective Oct. 1, 1983, see section 13 of Pub. L. 98-150 set out as a note under section 201 of Pub. L. 95-521 [Executive Personnel Financial Disclosure Requirements] in the Appendix to Title 5, Government Organization and Employees.

RULES OF THE SUPREME COURT OF THE UNITED STATES

(Adopted April 14, 1980, effective June 30, 1980, as amended to January 1, 1986)

[See main edition for text of Parts I to IV]

PART V—JURISDICTION ON WRIT OF CERTIORARI

Rule 17. Considerations Governing Review on Certiorari

[See main edition for text of .1.]

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

(As amended July 5, 1984, eff. Aug. 1, 1984.)

[See main edition for text of Rules 18 and 19]

Rule 20. Review on Certiorari—Time for Petitioning

.1. A petition for writ of certiorari to review the judgment in a criminal case of a state court of last resort or of a federal court of appeals or a decision of the United States Court of Military Appeals (see 28 U.S.C. Sec. 1259) rendered after June 1, 1984, shall be deemed in time when it is filed with the Clerk within 60 days after the entry of such judgment. A Justice of this Court, for good cause shown, may extend the time for applying for a writ of certiorari in such cases for a period not exceeding 30 days.

[See main edition for text of .2. to .6.]

(As amended July 5, 1984, eff. Aug. 1, 1984.)

[See main edition for text of Rules 21 to 23; Parts VI to VIII]

PART IX—SPECIAL PROCEEDINGS

[See main edition for text of Rule 46]

Rule 47. Veterans' and Seamen's Cases

[See main edition for text of .1. and .2.]

.3. An accused person petitioning for a writ of certiorari pursuant to 28 U.S.C. Sec. 1259 may proceed without prepayment of fees or costs or furnishing security therefor and without filing an affidavit of indigency, but is not relieved of the printing requirements under Rule 33 and is not entitled to proceed on typewritten papers except as authorized by the Court on separate motion.

(As amended July 5, 1984, eff. Aug. 1, 1984.)

[See main edition for text of Parts X and XI]

FEDERAL RULES OF APPELLATE PROCEDURE

(As amended to January 1, 1986)

[See main edition for text of Title I]

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

[See main edition for text of Rules 3 to 8]

Rule 9. Release in criminal cases

[See main edition for text of (a) and (b)]

(c) *Criteria for release.*—The decision as to release pending appeal shall be made in accordance with Title 18, U.S.C. § 3143. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community and that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or in an order for a new trial rests with the defendant.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 210, 98 Stat. 1987.)

1984 Amendment

Subd. (c). Pub. L. 98-473 substituted "3143" for "3148" and inserted "and that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or in an order for a new trial" after "community".

[See main edition for text of Rules 10 to 12; Titles III to VII; Forms]

GENERAL RULES OF THE TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

(As amended to January 1, 1986)

GENERAL RULES

Rule 17. Docketing the Appeal

Upon receipt of the notice of appeal the clerk shall enter the appeal upon the docket. Except in those cases where the party seeking review is exempt or relieved from prepayment of the fees the appellant shall pay at the time of filing the notice of appeal or no later than 7 days after the filing of the notice of appeal a docket fee of $65.00.

Rule 22. Reproduction of Record, Briefs and Other Written Materials Filed

Printing of the record, briefs or any other papers filed in the court is not required. Papers and briefs may be typewritten, on standard size paper, with copies reproduced by any method resulting in clearly readable copy. All written material shall be double spaced. Briefs shall be bound in soft covers: blue for appellant; red for appellee; green for intervenor or amicus curiae; gray for reply briefs and fastened at the left side at three places.

RULES OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

(Effective October 1, 1982, as amended to January 1, 1986)

Communications to the Court

All communications to the court pertaining to cases on its docket shall be addressed to the Clerk, United States Court of Appeals for the Federal Circuit, National Courts Building, 717 Madison Place, N.W., Washington, D.C. 20439 (phone 202/633-6550). When it is intended that a communication should come to the personal attention of a judge or judges, sufficient copies, not including the original, shall be supplied to the Clerk so that he can furnish a copy to each judge. See Rule 32(b) of the Federal Rules of Appellate Procedure for form of communications.

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INTRODUCTION

Appeals shall be governed by the Federal Rules of Appellate Procedure (FRAP), with such modifications and additions as are dictated by the nature of the court's jurisdiction. Provisions of FRAP applicable to a "District Court" shall apply to the United States Court of International Trade and the United States Claims Court. Masculine terms include the feminine equivalent. This table reflects the relationship of the Federal Rules of Appellate Procedure to rules of this court adopted pursuant to FRAP 1, 2, and 47:

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I. THE COURT

Rule 1. Seal

The seal of the court shall contain on its outer edge the legend "Seal of the United States Court of Appeals for the Federal Circuit" with a ring of 50 stars therein. In the center of the seal are the Scales of Justice resting on a book and superimposed over an outline of the United States of America. The clerk shall be the keeper of the seal which shall be the means of authentication of all records and certificates issued from this court.

Rule 2. Sessions—Places of Holding Court

(a) *Sessions.* Sessions of the court will be held as announced by the court.

(b) *Places of Holding Court.* The court may hold sessions in any place named in 28 U.S.C. § 48 and permitted under 28 U.S.C. § 48(b).

Rule 3. Panels

(a) *Panels.* Cases and controversies will be heard and determined by a panel consisting of an odd number of judges not less than three. A panel of more than three judges may be provided when warranted.

(b) *Assignment of Cases.* Assignment of cases to panels will be made so as to provide each judge with a representative cross-section of the cases heard by the court.

Rule 4. Employees and Former Employees

No employee of the court shall engage in the practice of law. No former employee of the court shall participate or assist, by way of representation, consultation or otherwise, in any case pending in the court during the period of employment.

Rule 5. Complaints of Judicial Conduct

The procedures for processing complaints of judicial conduct pursuant to 28 U.S.C. § 372(c), as added by the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, Pub. L. No. 96-458, 94 Stat. 2035 (1980), are incorporated into these rules. Copies of these procedures are available from the clerk on request.

II. ATTORNEYS

Rule 6. Admissions to the Bar

(a) *Qualifications for Admission.* Admissions to the bar of this court are subject to the provision of FRAP 46(a). In addition, an attorney who is admitted to practice before the United States district courts for Puerto Rico and the Northern Mariana Islands, the United States Court of International Trade, the United States Claims Court, or the District of Columbia Court of Appeals, who is in good standing therein, and who is of good moral and professional character, is eligible for admission to the bar of this court.

(b) *Procedure for Admission.* Attorneys may be admitted to the bar in open court by appearing personally with a sponsor, who is a member of the bar of this court, who states the applicant's qualifications and moves his admission. Motions for admission to the bar will be entertained at the opening of each session of court. An attorney may also be admitted upon written motion of a member of the bar of the court. This motion shall be submitted on a form approved by the court and furnished by the clerk. The oath in either instance shall be that prescribed by the court.

(c) *Admission Fee.* The prescribed fee for admission is $25.00, payable to the clerk, for which the applicant shall receive a certificate of admission. For a duplicate certificate of admission the fee is $10.00. The clerk as trustee shall deposit the fee in a special account in a bank designated by the court.

(d) *Government Attorneys.* Attorneys for any federal, state or local government office or agency may appear before this court in connection with their official duties without being formally admitted to practice before the court.

Rule 7. Appearance

(a) *Parties and Amicus Curiae Represented.* Except for an individual appearing *pro se*, each party and *amicus curiae* must appear through an attorney who is authorized to practice before this court and shall designate one attorney as the attorney of record. Other attorneys assisting the attorney of record shall be designated as "of counsel."

(b) *Appearance.* Each attorney of record or individual appearing *pro se* must file a written appearance with the clerk within ten days after the appeal has been docketed. Attorneys retained or appointed thereafter shall file an appearance within 10 days after being retained or appointed. The appearance shall include the name of the party or parties represented and the name, address, and telephone number of the attorney or the individual appearing *pro se*. Attorneys' appearances shall show the name of the law firms or public or quasi-public legal offices with which they are associated. Until such time as an attorney of record has filed a written appearance for a party or a party has appeared *pro se*, service of all papers shall be made upon that party's attorney of record in the proceeding below or upon the party if *pro se*. An attorney of record may not withdraw as such from the representation of a party without serving notice on the party and without the consent of the court.

Rule 8. Certificate of Interest

Certificate of Interest. To enable determination of whether recusal is necessary or appropriate, an attorney for a party or *amicus curiae* other than the United States must furnish a certificate of interest stating:

(a) The full name of every party or *amicus* represented by the attorney in the case;

(b) The name of the real party in interest, if the party named in the caption is not the real party in interest;

(c) Any publicly held affiliates, if a party or *amicus* is a corporation;

(d) The names of all law firms whose partners or associates have appeared for the party in the lower tribunal or are expected to appear for the party in this court.

Twelve copies of the certificate shall be filed with the notice of appearance or with a motion or petition in this court, whichever occurs first. The text of the certificate (i.e., caption omitted) shall also be included in front of the table of contents of the main brief of a party and the brief of an *amicus*. The certificate shall be in the form set forth in the Appendix to these rules.

(As amended Feb. 1, 1984.)

III. PRACTICE

Rule 9. Unopposed Procedural Motions

Procedural Motions. Pursuant to FRAP 27(b), the clerk may dispose of any procedural motion timely filed and served, when the motion is consented to or unopposed and seeks to:

(a) Dismiss an appeal;

(b) Remand a case;

(c) Enlarge time for filing a brief, appendix, or petition, et cetera, or for designating the contents of an appendix;

(d) Stay issuance of a mandate pending application to the Supreme Court of the United States for a writ of certiorari for a period not to exceed 30 days;

(e) Consolidate appeals;

(f) Correct a brief or other paper;

(g) Correct or modify record in accordance with FRAP 10(e) or FRAP 16(b);

(h) File brief *amicus curiae* pursuant to FRAP 29;

(i) Grant an *amicus curiae* leave to participate in oral argument by sharing time with other counsel;

(j) Stay further proceedings;

(k) Withdraw or substitute an appearance or a party;

(*l*) Permit an excess of not more than ten pages beyond limitations contained in FRAP;

(m) Advance or continue a case.

Rule 10. Notice of Appeal; Transmittal of Certified Copy of Docket Entries or Certified List

(a) *Courts—Appeals as of Right.*

(1) *Manner of Filing; Time for Filing.* A notice of appeal shall be filed in the manner and within the time prescribed by FRAP 4(a). If, pursuant to statute, the trial court has adopted a rule which deems a document filed on the date it is transmitted by a specified type of mail, a notice of appeal shall be deemed filed in accordance with that rule.

(2) *Service of the Notice of Appeal; Appeal Information Sheet; Certified Copy of Docket Entries.* Upon the filing of a notice of appeal, the clerk of the trial court shall serve copies of the notice of appeal as provided by FRAP 3(d). In addition, the clerk of the trial court shall promptly transmit to the clerk of this court: (a) a copy of the notice of appeal; (b) a certified copy of the docket entries (up to and including the notice of appeal); and, (c) the Appeal Information Sheet prescribed by this court.

(3) *Payment of Fees.* Upon the filing of any notice of appeal, the appellant shall pay to the clerk of the trial court such fees as are established by statute and also the docket fee prescribed by Rule 17 of these rules, the latter to be received by the clerk of the trial court on behalf of this court.

(b) *Courts—Appeals by Permission.*

(1) *General.* Appeals by permission pursuant to 28 U.S.C. 1292(d) shall be governed by FRAP 5(a), (b), and (c).

(2) *Grant of Permission; Payment of Fees; Cost Bond; Notice of Appeal Unnecessary.* Within 10 days after the entry of an order granting permission to appeal, the appellant shall (a) pay to the clerk of the trial court such fees as are established by statute and the docket fee prescribed by Rule 17 of these rules, the latter to be received by the clerk of the trial court on behalf of this court; and, (b) file a bond for costs if required pursuant to FRAP 7. A notice of appeal need not be filed.

(3) *Notice to be Provided by Clerk of the Trial Court; Certified Copy of Docket Entries.* The clerk of the trial court shall notify the clerk of this court of the payment of the fees specified in paragraph (b)(2) of this Rule and shall simultaneously transmit a certified copy of the docket entries and the Appeal Information Sheet to the clerk of this court.

(c) *Administrative Agencies.*

(1) *Petitions for Review; Payment of Fees (except Patent and Trademark Office).* FRAP 15(a) shall govern appeals from administrative agencies. Upon filing of the petition for review, the petitioner shall pay to the clerk of this court such fees as are prescribed by statute and the fee prescribed by Rule 17 of these rules.

(2) *Service of the Petition for Review; Certified List (except Patent and Trademark Office).* FRAP 15(c) shall govern service of the petition for review. Upon service of the petition upon the agency, the agency shall promptly, but no later than 40 days following service, transmit the certified list described in FRAP 17(b) to the clerk of this court.

(3) *Appeals from Decisions of the Patent and Trademark Office; Payment of Fee; Notice to Commissioner; Certified List.* A notice of appeal from a decision of the Patent and Trademark Office, and reasons of appeal if required, shall be filed with the Commissioner of Patents and Trademarks within the time prescribed by law. The appellant shall simultaneously transmit a copy of the notice and any reasons of appeal, together with the fee prescribed by Rule 17 of these Rules, to the clerk of this court. Upon receipt of the notice and any reasons of appeal, the Commissioner shall promptly, but no later than 40 days following receipt of the notice, transmit to the clerk of this court a certified list as described in FRAP 17(b), which shall constitute compliance with the requirement of 35 U.S.C. 143 and 15 U.S.C. 1071(a)(3) for the transmission of a certified record to the court.

(As amended Feb. 1, 1984.)

Rule 11. Record on Appeal; Transmission of Docket Entries or Certified List; Docketing

(a) *General.*

(1) *Composition of Record.* The record on appeal shall consist of those papers named in FRAP 10(a) and 16.

(2) *Transcript of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Transcript is Ordered; Duty of Reporter to Prepare and File Transcript; Notice to Court.* FRAP 10(b) and 10(c) and the first paragraph of FRAP 11(b) shall govern the preparation and filing of the transcript of proceedings in the tribunal from which appeal is taken.

(3) *Correction or Modification of Record.* FRAP 10(e) and 16(b) shall govern correction or modification of the record except that no supplemental record need be transmitted to this court.

(4) *Retention of Record.* All papers shall be retained by the tribunal from which appeal is taken, as provided in FRAP 11(e) and 17(b). When deemed necessary, the original or certified copies of the trial or administrative record, or portions thereof, may be ordered by this court, on motion or *sua sponte*, at any time during pendency of the appeal.

(b) *Docketing of Appeals.*

(1) *From Courts.* In appeals from courts, the clerk of this court shall enter the appeal on the docket upon receipt of the documents required by Rule 10(a)(2) and Rule 10(b)(3) of these Rules.

(2) *From Administrative Agencies.* In appeals from administrative agencies, the clerk of this court shall enter the appeal on the docket upon receipt of the certified list required by Rule 10(c)(2) and Rule 10(c)(3) of these Rules.

(3) *Clerk to Provide Notice.* The clerk of this court shall give notice to all parties of the date on which the appeal was docketed.

(c) *Access of Counsel to Original Record.*

(1) *Material Not Subject to a Protective Order.* When a notice of appeal or petition for review is filed, the clerk of the trial court or the administrative agency shall permit counsel to inspect the non-confidential original papers, transcript, and exhibits, for purposes of the preparation of the appendix. The clerk of the trial court or the administrative agency shall permit counsel to make copies of these materials upon payment of the customary fee.

(2) *Material Subject to a Protective Order.* Counsel shall be permitted access to and to make copies of material contained in the record governed by a protective order issued by the trial court or administrative agency in accordance with the protective order. If the protective order is amended, modified, or annulled by this court, pursuant to paragraph (d) of this rule, the access of counsel shall be governed by the order of this court.

(3) *Patent and Trademark Office Proceedings.* Upon the filing of a notice of appeal from a decision of the Patent and Trademark Office, the Commissioner shall permit counsel of record in the Office to inspect the original papers and exhibits for purposes of the preparation of the appendix. The Office shall permit counsel to make copies of these materials upon payment of the customary fee.

(d) *Preservation of Protective Order on Appeal.* Material contained in the record on appeal which is subject to a protective order issued by the trial court, or an administrative agency, shall remain subject to that order, unless this court, on motion, amends, modifies, or annuls the order.

(e) *In Camera Proceeding.* In a proper case, where the interests of justice require, and upon a convincing showing thereof by motion properly made, the court will sit *in camera* or may seal its record, or both.

Rule 12. Appendices

(a) *Contents.* FRAP 30(a) shall govern the contents of the appendix, except that the following will not be included in appendices other than by leave or order of this court:

(1) briefs and memoranda
(2) notices
(3) subpoenas

(4) summonses in appeals other than those from the Court of International Trade

(5) motions to extend time

(6) admissions and affidavits of service and mailing

(7) jury lists.

(b) *Determination of Contents of Appendix; Cost of Production.* The determination of the contents of the appendix and the assessment of costs of production shall be governed by FRAP 30(b), except that the 10-day period specified in the second sentence of that rule shall commence upon the docketing of the appeal in this court. If a transcript of the proceedings is required before the contents of the appendix can be designated and if the transcript has been ordered but not completed within the time periods prescribed by this rule and FRAP 30(b), a party may request an extension of time within which to designate the contents of the appendix.

(c) *Format.* Appendices shall be easily readable and substantially conform to FRAP 32, except that papers shall be 8½ by 11 inches. If printed separately, the cover shall conform to Rule 13(f).

(d) *Arrangement.* FRAP 30(d) shall govern the arrangement of the appendix.

(e) *Pagination; Optional Separate Document.* The appendix and the brief should normally be incorporated within one cover. If voluminous, the appendix may be filed as a separate document. In either event, the appendix and the brief shall be separately paginated.

(f) *Number of Copies.* Except for appendices containing material subject to a protective order (see paragraph (i) of this Rule), twelve copies of the appendix must be filed with the court.

(g) *Service.* Two copies of a separate appendix shall be served on counsel for each party represented.

(h) *Reproduction of Exhibits.* FRAP 30(e) shall govern the reproduction of exhibits.

(i) *Materials Subject to a Protective Order.*

(1) *Two Segments of Appendices; Number of Copies.* If a party deems it necessary to include material subject to a protective order in an appendix, the appendix shall be filed in two segments.

a. *Confidential Segment; Labelling; Number of Copies.* One appendix segment shall be labelled "confidential" on the cover and five copies shall be filed with the court. In addition, each page of a "confidential" segment containing confidential material shall bear a legend to the effect that the page contains material subject to a protective order.

b. *Non-Confidential Segment; Labelling; Number of Copies.* The second appendix segment shall be labelled "non-confidential" on the cover and twelve copies shall be filed with the court. In addition, each page of the "non-confidential" segment from which material subject to a protective order has been deleted shall bear a legend so stating.

(2) *Service; Number of Copies.* Each party to the appeal shall be served with two copies of the non-confidential segment of the appendix and, when permitted by the applicable protective order, with two copies of the confidential segment.

(3) *Non-Availability to the Public.* Confidential segments of appendices filed with the court shall be available only to authorized court personnel and shall not be made available to the public.

(4) *Costs.* The costs of preparing separate segments of appendices may be assessed as provided in FRAP 30(b).

(j) *Hearing of Appeals on the Original Record Without the Necessity of an Appendix.* Pursuant to FRAP 30(f), the court, upon motion or *sua sponte*, may dispense with the requirements of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.

(As amended Feb. 1, 1984.)

Rule 13. Briefs

(a) *General.* Except as otherwise provided in these rules, FRAP 28(a)-(i), 29, 31 and 32 shall govern briefs filed in this court.

(b) *Length.* Except by leave of court, principal briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of certificate of interest, the table of contents, tables of citations, and pages devoted only to quotations of statutes, rules, and the like. If a cross-appeal is filed, the appellant's reply brief shall not exceed 35 pages. The court looks with disfavor upon motions to file extended briefs and will grant them only for extraordinary reasons.

(c) *Format.* Every brief shall be easily readable and shall comply with FRAP 32, except that pages shall be 8½ X 11 inches. If produced by standard typographic process, type matter shall not exceed 4⅛ by 7⅛ inches. If produced by any other process, type matter shall not exceed 6½ by 9½ inches. Briefs shall have a cover of durable quality on both front and back sides and be securely bound along the left hand margin to insure that the bound copy will not loosen or fall apart. Ring type bindings, plastic or metal, are not acceptable. Externally positioned staple ends must be covered with tape.

A brief produced by typewriter and photocopied shall contain a clear black image on white paper to permit easy reading, with double spacing between each line of text. Elite, or type similar thereto, shall not be considered 11 point type. The clerk may refuse to file any brief which has not been printed or bound in conformity with FRAP 32 and this rule.

(d) *Number of Copies.* Except for briefs containing material subject to a protective order (see paragraph (h) of this rule), twelve copies of each brief shall be filed with the court and two copies shall be served on counsel for each party separately represented.

(e) *Content of Brief.* The order of content of briefs shall be in conformity with FRAP 28, except that a summary of the argument shall precede the argument, and an appellee's statement of the issues and the case shall be limited to statements of disagreement, if any, with the statements of appellant.

In addition, counsel shall indicate, immediately after the certificate of interest and before the table of contents: (1) whether any other appeal in or from the same civil action or proceeding in the lower court or body was previously before this or any other appellate court under the same or similar title (stating the title and number of that earlier appeal); and (2) the title and number of any related case pending in this or any other court. A related case is one known to counsel and the outcome of which is likely to directly affect or be directly affected by this court's decision in the pending appeal. Where the related cases are numerous, they may be described generally, but title and number shall be given for any case known to be pending in the Supreme Court, this court, or any other circuit court of appeal.

(f) *Content of Cover.* The cover of each brief shall, from top to bottom, display this information in this order:

1. The title of the document and the designation of the party for whom it is filed (e.g., Brief for Appellant).
2. The name of this court.
3. The docket number of the case in this court.
4. The title of the case, appellants, appellees, petitioners, respondents, etc., being so designated.
5. The nature of the proceedings in this court and the name of the agency, board, or court from which the appeal is taken (e.g., appeal from the Claims Court) including, where applicable, the name of the judge for [1] whose judgment appeal is taken.
6. The names, addresses, and telephone numbers of all counsel representing or serving as counsel for the party on whose behalf the document is filed.
7. A black line shall appear under each of entries 1 through 5.

(g) *Time for Service and Filing; Service of Certain Reply Briefs.* The appellant shall serve and file its brief within 60 days after the date upon which the appeal is docketed in this court in accordance with Rule 11(b)(1)(2) of these rules. The appellee shall serve and file its brief within 40 days after service of the brief of the appellant. The appellant may serve and file a reply brief as provided in FRAP 31. A reply brief filed four business days or less prior to oral argument shall be served in such manner as to reach the addressee before the argument.

(h) *Briefs Containing Material Subject to a Protective Order.*

(1) *Two Sets of Briefs.* If a party deems it necessary to refer in a brief to material covered by a protective order, two sets of briefs shall be filed.

a. *Confidential Set; Labelling; Number of Copies.* One set of briefs, consisting of five copies, shall be labelled "confidential" on the cover and be filed with the court. In addition, each page containing confidential material shall bear a legend so indicating.

b. *Non-Confidential Set; Labelling; Number of Copies.* The second set of briefs, consisting of twelve copies, shall be labelled "non-confidential" on the cover and be filed with the court. In addition, each page of the "non-confidential" set from which material subject to a protective order has been deleted shall bear a legend so stating.

(2) *Service.* Each party to the appeal shall be served two copies of the "non-confidential" brief, and, when permitted by the applicable protective order, two copies of the "confidential" brief.

(3) *Non-Availability to the Public.* The confidential set of briefs filed with the court shall be available only to authorized court personnel and shall not be made available to the public.

(i) *Amicus Curiae.* Briefs of *amici curiae* shall be governed by FRAP 29, but shall not exceed 20 pages except by leave of court. An *amicus* may not file a reply brief except by leave of court granted only in extraordinary circumstances.

(j) *Citations.* It is preferred that opinions of this court and its predecessors be cited as found in the Federal Reporter and, if reasonably available, the United States Patents Quarterly. Parallel citations to other reports are discouraged.

Guotos v. United States, 552 F.2d 992 (Ct. Cl. 1976)

In re Sponnable, 405 F.2d 578, 160 USPQ 237 (CCPA 1969)

South Corporation v. United States, 690 F.2d 1368, 215 USPQ 657 (Fed. Cir. 1982)

Doe v. Roe, No. 12-345, slip op. (Fed. Cir. October 1, 1982)

(As amended Feb. 1, 1984; July 15, 1985.)

Rule 14. Visual Aids

(a) *General.* FRAP 34(g), as supplemented by the additional provisions of this Rule, shall apply to the use of visual aids at oral argument.

(b) *Used Below.* Use at oral argument of illustrative models, specimens, samples, charts, diagrams, and other visual aids used below, is encouraged.

(c) *Not Used Below.* When a visual aid was not part of the presentative below, its proposed use shall be brought to the attention of opposing counsel not less than 15 days before the date of hearing. Objections, if any, shall be in writing, served on all adverse parties and filed not less than 5 days prior to the hearing date. This rule shall neither preclude agreement of counsel on the use of visual aids nor preclude use of a chalkboard or equivalent during oral argument.

(d) *Disposition.* The clerk may dispose of visual aids left in his custody more than 90 days after the appeal is decided.

Rule 15. Oral Argument

(a) *General.* FRAP 34, as supplemented by the additional provisions of this Rule, shall apply to oral argument. The provisions of FRAP 34(a) respecting unanimity of the panel in dispensing with oral argument, opportunity to submit a statement supporting oral argument, and the criteria to be employed in determining whether oral argument is needed, are adopted and made part of this Rule.

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[1] So in original. Probably should be "from".

(b) *Time Allowed.* The time allowed each side for oral argument shall be determined by the court. Counsel will be advised by the clerk of the time allotted by the court. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) *Amicus Curiae.* Except as provided in Rule 9(i) of these Rules, a motion of an *amicus curiae* to participate in oral argument will be granted only for extraordinary reasons.

(d) *In Camera Hearing.* As reflected in Rule 11(e), the court may sit *in camera*.

Rule 16. Citation of Additional Authorities

When a pertinent and significant authority comes to the attention of a party after its brief has been filed, or after oral argument but before decision, the party may, without special leave of court, file with the clerk an original and five copies of a letter addressed to the court citing the additional authority, with service upon opposing counsel. The letter shall refer either to a page of the brief or to a point raised at oral argument and shall state in a single sentence the proposition the authority supports. It shall contain no other argument or explanation. A copy of the authority cited, if not yet published, shall accompany each copy of the letter. Any response shall be made within seven days of receipt of service by opposing counsel, shall be limited to a short statement of why the authority is considered inapplicable, and shall be served upon counsel who filed the additional authority.

Rule 17. Fees

(a) *Schedule of Fees.* Except as expressly provided in these Rules, the fees to be charged by the clerk of this court shall be the fees prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1913. No fees are to be charged for services rendered on behalf of the United States. The fees are as follows:

(1) For docketing a case on appeal or petition for review, or docketing any other proceeding,.......	$65.00
A separate fee shall be paid by each party filing a notice of appeal or petition for review, but parties filing a joint notice of appeal or petition for review are required to apply [1] only one fee. The docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(d) unless the appeal is allowed. The docketing fee will be paid to the clerk of the trial court on the filing of the notice of appeal in that court. The docketing fee will be paid to the clerk of this court on the docketing of any other proceeding, including an appeal or petition for review from the Patent and Trademark Office or from an administrative agency.	
(2) For every search of the records of the court and certifying the results thereof,..............................	$2.00
(3) For certifying any document or paper, other than a certificate of admission to the Bar, but including a certificate of good standing, whether the certification is made directly on the document or by separate instrument,......................	$2.00
(4) For reproducing any record or paper (per page),............................	$.50
(5) For comparing with the original record thereof any copy of a transcript of record, entry, record or paper, submitted for certification, per page or fraction thereof,....	$2.00
(6) For reproduction of the record in any appeal in which the requirement of an appendix is dispensed with by the court pursuant to FRAP 30(f), a flat fee of,...............	$25.00
(7) For each copy of an opinion, including any separate and dissenting opinions, regardless of whether the copy is certified,...........	$2.00

but no charge shall be assessed for:

(i) A copy of the opinion furnished to each party of record in the case, and

(ii) Copies of opinions furnished persons and organizations whose names are included on a public interest list established by order of the court.

(b) *Fees to be Paid in Advance.* The clerk shall not be required to docket any proceeding or perform any other service until all fees due the clerk have been paid, except at the direction of a judge of this court or where a party has been granted leave to proceed without prepayment of fees.

(c) *Dismissal of Appeal for Failure to Pay Docketing Fee.* If a proceeding is docketed without prepayment of the docketing fee, the appellant shall pay the fee within 14 days after docketing. If the appellant fails to do so, the clerk is authorized to dismiss the appeal.

(As amended Feb. 1, 1984.)

IV. DISPOSITION OF CAUSES

Rule 18. Opinions and Orders of the Court

(a) *Opinions.* All decisions, and opinions accompanying decisions, of this court shall be provided to the parties, shall be public records of the court, and shall be accessible to the public. Disposition of appeals shall be with a published opinion or an unpublished opinion.

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[1] So in original. Probably should be "pay".

Opinions which do not add significantly or usefully to the body of law or would not have precedential value will not be published in commercial reports of decisions. Opinions designated as unpublished shall not be employed as precedent by this court, nor may they be cited by counsel as precedent, except in support of a claim of res judicata, collateral estoppel, or law of the case. A party may, on motion, request that an unpublished opinion be reissued as a published opinion, citing reasons therefor. Such motion will be granted or denied by the panel that rendered the decision.

(b) *Orders.* The action of the court in granting or denying motions, petitions, and similar actions, shall be reflected in an order of the court.

Rule 19. Petitions for Rehearing and Suggestions for Hearing and Rehearing In Banc

(a) *General.* FRAP 35 and 40, as supplemented by the additional provisions of this rule, shall apply to petitions for rehearing and to suggestions for hearing or rehearing *in banc*. A suggestion for *in banc* consideration, whether upon initial hearing or rehearing, is an extraordinary procedure. Upon initial hearing, the suggestion is intended to bring to the attention of the entire court a precedent-setting question of exceptional importance. On rehearing, the suggestion is intended to bring to the entire court either a precedent-setting question of exceptional importance or a panel opinion that is allegedly in conflict with precedent of the Supreme Court of the United States or of this circuit. The petition for rehearing or suggestion for rehearing *in banc* shall state on the cover whether it requests rehearing by the panel or suggests rehearing *in banc* or both. Counsel are reminded that the duty of counsel is fully discharged without filing a suggestion for rehearing *in banc* if the case does not meet the rigid standards of FRAP 35(a), and that the filing of a petition for rehearing or suggestion for rehearing *in banc* is not prerequisite to filing a petition for a writ of certiorari to the Supreme Court.

(b) *Content of Suggestion of Hearing or Rehearing In Banc.* A suggestion that an appeal be initially heard *in banc* shall contain the following statement of counsel at the beginning of the suggestion:

> I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more precedent-setting questions of exceptional importance: (set forth each question in one sentence).

A suggestion that an appeal be reheard *in banc* shall contain one or both of the following statements of counsel, as applicable, at the beginning of the suggestion:

> I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedents of this circuit: (cite specifically the case or cases).
>
> I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more precedent-setting questions of exceptional importance: (set forth each question in one sentence).

/s/ ____________________

ATTORNEY OF RECORD FOR ______

(c) *Suggestion for Hearing In Banc; Format; Number of Copies.* A suggestion for hearing *in banc* shall comply with FRAP 32(b), except that it shall be 8½ by 11 inches with type matter 6½ by 9½ inches. Three copies of a suggestion for hearing *in banc* shall be filed with the court and one copy shall be served upon each party.

(d) *Petitions for Rehearing and Suggestions for Rehearing In Banc; Format; Number of Copies.* Petitions for rehearing by the panel and suggestions for rehearing *in banc* shall be in the format for briefs set forth in FRAP 32 as supplemented by Rule 13(c) of these rules. The cover of the petition shall be yellow and the cover of the answer, if one is required by the court, shall be brown. Twelve copies of a petition shall be filed, except that fifteen copies of a petition shall be filed if the petitioner suggests rehearing *in banc*.

(As amended Feb. 1, 1984.)

Rule 20. Attorney Fees and Expenses

(a) *Attorney Fees and Expenses Incurred in this Court.*

(1) *Time for Filing; Responses.* The court may award attorney fees and expenses where authorized by law. Applications must be filed within 30 days after the date of the decision involved. No response shall be filed to an application unless directed by the court, but no application will be granted without an opportunity to submit a response.

(2) *Content of Application.* Each application for attorney fees and expenses as provided in (a)(1) shall contain a citation to the authority which authorizes an award, and shall indicate the manner in which the prerequisites for an award have been fulfilled. In addition, each application shall contain a statement, under oath, which specifies:

(i) the nature of each service rendered;

(ii) the amount of time expended in rendering each type of service; and

(iii) the customary charge for each type of service rendered.

(b) *Appeals and Petitions for Leave to Appeal.*

(1) *Appeals.* An appeal of the grant or denial of attorney fees by a lower court or by an agency not subject to the Equal Access to Justice Act is an appeal subject to all of the rules governing appeals.

(2) *Petitions for Leave to Appeal.* A petition for leave to appeal a denial of attorney fees by an agency under the Equal Access to Justice Act shall be subject to Rule 10(b) of these rules.

(As amended Feb. 1, 1984.)

REFERENCES IN TEXT

The Equal Access to Justice Act, referred to in subd. (b), is Pub. L. 96-481, title II, Oct. 21, 1980, 94 Stat.

2325, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 504 of Title 5, Government Organization and Employees, and Tables.

Rule 21. Title of Petition for Mandamus or Prohibition

A petition for writ of mandamus or writ of prohibition shall not bear the name of the respondent, but shall be entitled simply "In Re: [Name of Petitioner] , Petitioner." Unless otherwise ordered by the Court, the respondent need not file a formal response. Five copies of the petition are required to be filed.

V. MISCELLANEOUS

Rule 22. Judicial Conference

There shall be held annually at such time and place as shall be designated by the Chief Judge, a Conference for the purpose of considering the state of business of the court and advising ways and means of improving the administration of justice. It shall be the duty of each active judge to attend the Conference and, unless excused by the Chief Judge, to remain throughout the Conference. The Chief Judge presides at the Conference. All members of the bar of the court may be members of the Conference and participate in its discussions and deliberations. Attendees shall pay a registration fee to be applied to the payment of expenses of the Conference as approved by the Chief Judge.

(Added Feb. 1, 1984.)

Rule 23. Failure to Prosecute

The clerk may dismiss an appeal for failure to prosecute in accordance with the rules. Reconsideration of such dismissal may be sought from the court by motion within 10 days after receipt of notice of dismissal.

(Added Feb. 1, 1984.)

APPENDIX

CERTIFICATE OF INTEREST

(Caption of Case)

The undersigned counsel of record for John Doe, (plaintiff-appellant), furnishes the following list in compliance with Rule 8:

(Listed by lettered category)

____
Attorney's Signature

____
Date

RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

(As amended to January 1, 1986)

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APPENDIX OF FORMS

Form

33. Notice of Right To Consent to the Exercise of Civil Jurisdiction by a Magistrate and Appeal Option.

34. Consent To Proceed Before a United States Magistrate, Election of Appeal to District Judge, and Order of Reference.

RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 4. Process

Cross References

Actions on war risk insurance claims, see section 1292 of Title 46, Appendix, Shipping.

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) ENLARGEMENT. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), 60(b), and 74(a), except to the extent and under the conditions stated in them.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

Subdivision (*b*). The amendment confers finality upon the judgments of magistrates by foreclosing enlargement of the time for appeal except as provided in new Rule 74(a) (20 day period for demonstration of excusable neglect).

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Rule 6(a) is amended to acknowledge that weather conditions or other events may render the clerk's office inaccessible one or more days. Parties who are obliged to file something with the court during that period should not be penalized if they cannot do so. The amendment conforms to changes made in Federal Rule of Criminal Procedure 45(a), effective August 1, 1982.

The Rule also is amended to extend the exclusion of intermediate Saturdays, Sundays, and legal holidays to the computation of time periods less than 11 days. Under the current version of the Rule, parties bringing motions under rules with 10-day periods could have as few as 5 working days to prepare their motions. This hardship would be especially acute in the case of Rules 50(b) and (c)(2), 52(b), and 59(b), (d), and (e), which may not be enlarged at the discretion of the court. See Rule 6(b). If the exclusion of Saturdays, Sundays, and legal holidays will operate to cause excessive delay in urgent cases, the delay can be obviated by applying to the court to shorten the time, See Rule 6(b).

The Birthday of Martin Luther King, Jr., which becomes a legal holiday effective in 1986, has been added to the list of legal holidays enumerated in the Rule.

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions

[*See main edition for text of* (*a*)]

(b) MOTIONS AND OTHER PAPERS.

[*See main edition for text of* (*1*)]

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

[*See main edition for text of* (*c*)]

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

One of the reasons sanctions against improper motion practice have been employed infrequently is the lack of clarity of Rule 7. That rule has stated only generally that the pleading requirements relating to captions, signing, and other matters of form also apply to motions and other papers. The addition of Rule 7(b)(3) makes explicit the applicability of the signing requirement and the sanctions of Rule 11, which have been amplified.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or othe paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

Since its original promulgation, Rule 11 has provided for the striking of pleadings and the imposition of disciplinary sanctions to check abuses in the signing of pleadings. Its provisions have always applied to motions and other papers by virtue of incorporation by reference in Rule 7(b)(2). The amendment and the addition of Rule 7(b)(3) expressly confirms this applicability.

Experience shows that in practice Rule 11 has not been effective in deterring abuses. See 6 Wright & Miller, *Federal Practice and Procedure: Civil* § 1334 (1971). There has been considerable confusion as to (1) the circumstances that should trigger striking a pleading or motion or taking disciplinary action, (2) the standard of conduct expected of attorneys who sign pleadings and motions, and (3) the range of available and appropriate sanctions. See Rodes, Ripple & Mooney, *Sanctions Imposable for Violations of the Federal Rules of Civil Procedure* 64–65, Federal Judicial Center (1981). The new language is intended to reduce the reluctance of courts to impose sanctions, see Moore, *Federal Practice* ¶7.05, at 1547, by emphasizing the responsibilities of the attorney and reenforcing those obligations by the imposition of sanctions.

The amended rule attempts to deal with the problem by building upon and expanding the equitable doctrine permitting the court to award expenses, including attorney's fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation. See, *e.g., Roadway Express, Inc. v. Piper*, 447 U.S. 752, (1980); *Hall v. Cole*, 412 U.S. 1, 5 (1973). Greater attention by the district courts to pleading and motion abuses and the imposition of sanctions when appropriate, should discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses.

The expanded nature of the lawyer's certification in the fifth sentence of amended Rule 11 recognizes that the litigation process may be abused for purposes other than delay. See, *e.g., Browning Debenture Holders' Committee v. DASA Corp.*, 560 F.2d 1078 (2d Cir. 1977).

The words "good ground to support" the pleading in the original rule were interpreted to have both factual and legal elements. See, *e.g., Heart Disease Research Foundation v. General Motors Corp.*, 15 Fed. R. Serv. 2d 1517, 1519 (S.D.N.Y. 1972). They have been replaced by a standard of conduct that is more focused.

The new language stresses the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule. The standard is one of reasonableness under the circumstances. See *Kinee v. Abraham Lincoln Fed. Sav. & Loan Ass'n*, 365 F.Supp. 975 (E.D. Pa. 1973). This standard is more stringent than the original good-faith formula and thus it is expected that a greater range of circumstances will trigger its violation. See *Nemeroff v. Abelson*, 620 F.2d 339 (2d Cir. 1980).

The rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. The court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. Thus, what constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the bar.

The rule does not require a party or an attorney to disclose privileged communications or work product in order to show that the signing of the pleading, motion, or other paper is substantially justified. The provisions of Rule 26(c), including appropriate orders after *in camera* inspection by the court, remain available to protect a party claiming privilege or work product protection.

Amended Rule 11 continues to apply to anyone who signs a pleading, motion, or other paper. Although the standard is the same for unrepresented parties, who are obliged themselves to sign the pleadings, the court has sufficient discretion to take account of the special circumstances that often arise in *pro se* situations. See *Haines v. Kerner* 404 U.S. 519 (1972).

The provision in the orignal rule for striking pleadings and motions as sham and false has been deleted. The passage has rarely been utilized, and decisions thereunder have tended to confuse the issue of attorney honesty with the merits of the action. See generally Risinger, *Honesty in Pleading and its Enforcement: Some "Striking" Problems with Fed. R. Civ. P. 11*, 61 Minn.L.Rev. 1 (1976). Motions under this provision generally present issues better dealt with under Rules 8, 12, or 56. See *Murchison v. Kirby*, 27 F.R.D. 14 (S.D.N.Y. 1961); 5 Wright & Miller, *Federal Practice and Procedure: Civil* § 1334 (1969).

The former reference to the inclusion of scandalous or indecent matter, which is itself strong indication that an improper purpose underlies the pleading, motion, or other paper, also has been deleted as unnecessary. Such matter may be stricken under Rule 12(f) as well as dealt with under the more general language of amended Rule 11.

The text of the amended rule seeks to dispel apprehensions that efforts to obtain enforcement will be fruitless by insuring that the rule will be applied when properly invoked. The word "sanctions" in the caption, for example, stresses a deterrent orientation in dealing with improper pleadings, motions or other papers. This corresponds to the approach in imposing sanctions for discovery abuses. See *National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639 (1976) (per curiam). And the words "shall impose" in the last sentence focus the court's attention on the need to impose sanctions for pleading and motion abuses. The court, however, retains the necessary flexibility to deal appropriately with violations of the rule. It has discretion to tailor sanctions to the particular facts of the case, with which it should be well acquainted.

The reference in the former text to wilfulness as a prerequisite to disciplinary action has been deleted. However, in considering the nature and severity of the sanctions to be imposed, the court should take account of the state of the attorney's or party's actual or presumed knowledge when the pleading or other paper was signed. Thus, for example, when a party is not represented by counsel, the absence of legal advice is an appropriate factor to be considered.

Courts currently appear to believe they may impose sanctions on their own motion. See *North American Trading Corp. v. Zale Corp.*, 73 F.R.D. 293 (S.D.N.Y. 1979). Authority to do so has been made explicit in order to overcome the traditional reluctance of courts to intervene unless requested by one of the parties. The detection and punishment of a violation of the signing requirement, encouraged by the amended rule, is part of the court's responsibility for securing the system's effective operation.

If the duty imposed by the rule is violated, the court should have the discretion to impose sanctions on either the attorney, the party the signing attorney representes, or both, or on an unrepresented party who signed the pleading, and the new rule so provides. Although Rule 11 has been silent on the point, courts have claimed the power to impose sanctions on an attorney personally, either by imposing costs or employing the contempt technique. See 5 Wright & Miller, *Federal Practice and Procedure: Civil* § 1334 (1969); 2A Moore, *Federal Practice* ¶11.02, at 2104 n.8. This power has been used infrequently. The amended rule should eliminate any doubt as to the propriety of assessing sanctions against the attorney.

Even though it is the attorney whose signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client. See *Browning Debenture Holders' Committee v. DASA Corp., supra.* This modification brings Rule 11 in line with practice under Rule 37, which allows sanctions for abuses during discovery to be imposed upon the party, the attorney, or both.

A party seeking sanctions should give notice to the court and the offending party promptly upon discovering a basis for doing so. The time when sanctions are to be imposed rests in the discretion of the trial judge. However, it is anticipated that in the case of pleadings the sanctions issue under Rule 11 normally will be determined at the end of the litigation, and in the case of motions at the time when the motion is decided or shortly thereafter. The procedure obviously must comport with due process requirements. The particular format to be followed should depend on the circumstances of the situation and the severity of the sanction under consideration. In many situations the judge's participation in the proceedings provides him with full knowledge of the relevant facts and little further inquiry will be necessary.

To assure that the efficiencies achieved through more effective operation of the pleading regimen will not be offset by the cost of satellite litigation over the imposition of sanctions, the court must to the extent possible limit the scope of sanction proceedings to the record. Thus, discovery should be conducted only by leave of the court, and then only in extraordinary circumstances.

Although the encompassing reference to "other papers" in new Rule 11 literally includes discovery papers, the certification requirement in that context is governed by proposed new Rule 26(g). Discovery motions, however, fall within the ambit of Rule 11.

Rule 16. Pretrial Conferences; Scheduling; Management

(a) PRETRIAL CONFERENCES; OBJECTIVES. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation, and;

(5) facilitating the settlement of the case.

(b) SCHEDULING AND PLANNING. Except in categories of actions exempted by district court rule as inappropriate, the judge, or a magistrate when authorized by district court rule, shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery.

The scheduling order also may include

(4) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(5) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in no event more than 120 days after filing of the complaint. A schedule shall not be modified except by leave of the judge or a magistrate when authorized by district court rule upon a showing of good cause.

(c) SUBJECTS TO BE DISCUSSED AT PRETRIAL CONFERENCES. The participants at any conference under this rule may consider and take action with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6) the advisability of referring matters to a magistrate or master;

(7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

(8) the form and substance of the pretrial order;

(9) the disposition of pending motions;

(10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(11) such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(d) FINAL PRETRIAL CONFERENCE. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) PRETRIAL ORDERS. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) SANCTIONS. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or his own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney repre-

senting him or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

Introduction

Rule 16 has not been amended since the Federal Rules were promulgated in 1938. In many respects, the rule has been a success. For example, there is evidence that pretrial conferences may improve the quality of justice rendered in the federal courts by sharpening the preparation and presentation of cases, tending to eliminate trial surprise, and improving, as well as facilitating, the settlement process. See 6 Wright & Miller, *Federal Practice and Procedure: Civil* § 1522 (1971). However, in other respects particularly with regard to case management, the rule has not always been as helpful as it might have been. Thus there has been a widespread feeling that amendment is necessary to encourage pretrial management that meets the needs of modern litigation. See *Report of the National Commission for the Review of Antitrust Laws and Procedures* (1979).

Major criticism of Rule 16 has centered on the fact that its application can result in over-regulation of some cases and under-regulation of others. In simple, run-of-the-mill cases, attorneys have found pretrial requirements burdensome. It is claimed that over-administration leads to a series of mini-trials that result in a waste of an attorney's time and needless expense to a client. Pollack, *Pretrial Procedures More Effectively Handled*, 65 F.R.D. 475 (1974). This is especially likely to be true when pretrial proceedings occur long before trial. At the other end of the spectrum, the discretionary character of Rule 16 and its orientation toward a single conference late in the pretrial process has led to under-administration of complex or protracted cases. Without judicial guidance beginning shortly after institution, these cases often become mired in discovery.

Four sources of criticism of pretrial have been identified. First, conferences often are seen as a mere exchange of legalistic contentions without any real analysis of the particular case. Second, the result frequently is nothing but a formal agreement on minutiae. Third, the conferences are seen as unnecessary and time-consuming in cases that will be settled before trial. Fourth, the meetings can be ceremonial and ritualistic, having little effect on the trial and being of minimal value, particularly when the attorneys attending the sessions are not the ones who will try the case or lack authority to enter into binding stipulations. See generally *McCargo v. Hedrick*, 545 F.2d 393 (4th Cir. 1976); Pollack, *Pretrial Procedures More Effectively Handled*, 65 F.R.D. 475 (1974); Rosenberg, *The Pretrial Conference and Effective Justice* 45 (1964).

There also have been difficulties with the pretrial orders that issue following Rule 16 conferences. When an order is entered far in advance of trial, some issues may not be properly formulated. Counsel naturally are cautious and often try to preserve as many options as possible. If the judge who tries the case did not conduct the conference, he could find it difficult to determine exactly what was agreed to at the conference. But any insistance on a detailed order may be too burdensome, depending on the nature or posture of the case.

Given the significant changes in federal civil litigation since 1938 that are not reflected in Rule 16, it has been extensively rewritten and expanded to meet the challenges of modern litigation. Empirical studies reveal that when a trial judge intervenes personally at an early stage to assume judicial control over a case and to schedule dates for completion by the parties of the principal pretrial steps, the case is disposed of by settlement or trial more efficiently and with less cost and delay than when the parties are left to their own devices. Flanders, *Case Management and Court Management in United States District Courts* 17, Federal Judicial Center (1977). Thus, the rule mandates a pretrial scheduling order. However, although scheduling and pretrial conferences are encouraged in appropriate cases, they are not mandated.

Discussion

Subdivision (a); Pretrial Conferences; Objectives. The amended rule makes scheduling and case management an express goal of pretrial procedure. This is done in Rule 16(a) by shifting the emphasis away from a conference focused solely on the trial and toward a process of judicial management that embraces the entire pretrial phase, especially motions and discovery. In addition, the amendment explicitly recognizes some of the objectives of pretrial conferences and the powers that many courts already have assumed. Rule 16 thus will be a more accurate reflection of actual practice.

Subdivision (b); Scheduling and Planning. The most significant change in Rule 16 is the mandatory scheduling order described in Rule 16(b), which is based in part on Wisconsin Civil Procedure Rule 802.10. The idea of scheduling orders is not new. It has been used by many federal courts. See, *e.g.*, Southern District of Indiana, Local Rule 19.

Although a mandatory scheduling order encourages the court to become involved in case management early in the litigation, it represents a degree of judicial involvement that is not warranted in many cases. Thus, subdivision (b) permits each district court to promulgate a local rule under Rule 83 exempting certain categories of cases in which the burdens of scheduling orders exceed the administrative efficiencies that would be gained. See Eastern District of Virginia, Local Rule 12(1). Logical candidates for this treatment include social security disability matters, habeas corpus petitions, forfeitures, and reviews of certain administrative actions.

A scheduling conference may be requested either by the judge, a magistrate when authorized by district court rule, or a party within 120 days after the summons and complaint are filed. If a scheduling conference is not arranged within that time and the case is not exempted by local rule, a scheduling order must be issued under Rule 16(b), after some communication with the parties, which may be by telephone or mail rather than in person. The use of the term "judge" in subdivision (b) reflects the Advisory Committee's judgment that is it preferable that this task should be handled by a district judge rather than a magistrate, except when the magistrate is acting under 28 U.S.C. § 636(c). While personal supervision by the trial judge is preferred, the rule, in recognition of the impracticality or difficulty of complying with such a requirement in some districts, authorizes a district by local rule to delegate the duties to a magistrate. In order to formulate a practicable scheduling order, the judge, or a magistrate when authorized by district court rule, and attorneys are required to develop a timetable for the matters listed in Rule 16(b)(1)–(3). As indicated in Rule 16(b)(4)–(5), the order may also deal with a wide range of other matters. The rule is phrased permissively as to clauses (4) and (5), however, because scheduling these items at an early point may not be feasible or appropriate. Even though subdivision (b) relates only to scheduling, there is no reason why some of the procedural matters listed in Rule 16(c) cannot be addressed at the same time, at least when a scheduling conference is held.

Item (1) assures that at some point both the parties and the pleadings will be fixed, by setting a time within which joinder of parties shall be completed and the pleadings amended.

Item (2) requires setting time limits for interposing various motions that otherwise might be used as stalling techniques.

Item (3) deals with the problem of procrastination and delay by attorneys in a context in which scheduling is especially important—discovery. Scheduling the completion of discovery can serve some of the same functions as the conference described in Rule 26(f).

Item (4) refers to setting dates for conferences and for trial. Scheduling multiple pretrial conferences may well be desirable if the case is complex and the court believes that a more elaborate pretrial structure, such as that described in the *Manual for Complex Litigation*, should be employed. On the other hand, only one pretrial conference may be necessary in an uncomplicated case.

As long as the case is not exempted by local rule, the court must issue a written scheduling order even if no scheduling conference is called. The order, like pretrial orders under the former rule and those under new Rule 16(c), normally will "control the subsequent course of the action." See Rule 16(e). After consultation with the attorneys for the parties and any unrepresented parties—a formal motion is not necessary—the court may modify the schedule on a showing of good cause if it cannot reasonably be met despite the diligence of the party seeking the extension. Since the scheduling order is entered early in the litigation, this standard seems more appropriate than a "manifest injustice" or "substantial hardship" test. Otherwise, a fear that extensions will not be granted may encourage counsel to request the longest possible periods for completing pleading, joinder, and discovery. Moreover, changes in the court's calendar sometimes will oblige the judge or magistrate when authorized by district court rule to modify the scheduling order.

The district courts undoubtedly will develop several prototype scheduling orders for different types of cases. In addition, when no formal conference is held, the court may obtain scheduling information by telephone, mail, or otherwise. In many instances this will result in a scheduling order better suited to the individual case than a standard order, without taking the time that would be required by a formal conference.

Rule 16(b) assures that the judge will take some early control over the litigation, even when its character does not warrant holding a scheduling conference. Despite the fact that the process of preparing a scheduling order does not always bring the attorneys and judge together, the fixing of time limits serves

> to stimulate litigants to narrow the areas of inquiry and advocacy to those they believe are truly relevant and material. Time limits not only compress the amount of time for litigation, they should also reduce the amount of resources invested in litigation. Litigants are forced to establish discovery priorities and thus to do the most important work first.

Report of the National Commission for the Review of Antitrust Laws and Procedures 28 (1979).

Thus, except in exempted cases, the judge or a magistrate when authorized by district court rule will have taken some action in every case within 120 days after the complaint is filed that notifies the attorneys that the case *will* be moving toward trial. Subdivision (b) is reenforced by subdivision (f), which makes it clear that the sanctions for violating a scheduling order are the same as those for violating a pretrial order.

Subdivision (c); Subjects to be Discussed at Pretrial Conferences. This subdivision expands upon the list of things that may be discussed at a pretrial conference that appeared in original Rule 16. The intention is to encourage better planning and management of litigation. Increased judicial control during the pretrial process accelerates the processing and termination of cases. Flanders, *Case Management and Court Management in United States District Courts,* Federal Judicial Center (1977). See also *Report of the National Commission for the Review of Antitrust Laws and Procedures* (1979).

The reference in Rule 16(c)(1) to "formulation" is intended to clarify and confirm the court's power to identify the litigable issues. It has been added in the hope of promoting efficiency and conserving judicial resources by identifying the real issues prior to trial, thereby saving time and expense for everyone. See generally *Meadow Gold Prods. Co. v. Wright,* 278 F.2d 867 (D.C. Cir. 1960). The notion is emphasized by expressly authorizing the elimination of frivolous claims or defenses at a pretrial conference. There is no reason to require that this await a formal motion for summary judgment. Nor is there any reason for the court to wait for the parties to initiate the process called for in Rule 16(c)(1).

The timing of any attempt at issue formulation is a matter of judicial discretion. In relatively simple cases it may not be necessary or may take the form of a stipulation between counsel or a request by the court that counsel work together to draft a proposed order.

Counsel bear a substantial responsibility for assisting the court in identifying the factual issues worthy of trial. If counsel fail to identify an issue for the court, the right to have the issue tried is waived. Although an order specifying the issues is intended to be binding, it may be amended at trial to avoid manifest injustice. See Rule 16(e). However, the rule's effectiveness depends on the court employing its discretion sparingly.

Clause (6) acknowledges the widespread availability and use of magistrates. The corresponding provision in the original rule referred only to masters and limited the function of the reference to the making of "findings to be used as evidence" in a case to be tried to a jury. The new text is not limited and broadens the potential use of a magistrate to that permitted by the Magistrate's Act.

Clause (7) explicitly recognizes that it has become commonplace to discuss settlement at pretrial conferences. Since it obviously eases crowded court dockets and results in savings to the litigants and the judicial system, settlement should be facilitated at as early a stage of the litigation as possible. Although it is not the purpose of Rule 16(b)(7) to impose settlement negotiations on unwilling litigants, it is believed that providing a neutral forum for discussing the subject might foster it. See Moore's *Federal Practice* ¶16.17; 6 Wright & Miller, *Federal Practice and Procedure: Civil* § 1522 (1971). For instance, a judge to whom a case has been assigned may arrange, on his own motion or a at a party's request, to have settlement conferences handled by another member of the court or by a magistrate. The rule does not make settlement conferences mandatory because they would be a waste of time in many cases. See Flanders, *Case Management and Court Management in the United States District Courts,* 39, Federal Judicial Center (1977). Requests for a conference from a party indicating a willingness to talk settlement normally should be honored, unless thought to be frivolous or dilatory.

A settlement conference is appropriate at any time. It may be held in conjuction with a pretrial or discovery conference, although various objectives of pretrial management, such as moving the case toward trial, may not always be compatible with settlement negotiations, and thus a seperate settlement conference may be desirable. See 6 Wright & Miller, *Federal Practice and Procedure: Civil* § 1522, at p. 751 (1971).

In addition to settlement, Rule 16(c)(7) refers to exploring the use of procedures other than litigation to resolve the dispute. This includes urging the litigants to employ adjudicatory techniques outside the courthouse. See, for example, the experiment described in Green, Marks & Olson, *Settling Large Case Litigation: An Alternative Approach,* 11 Loyola of L.A. L.Rev. 493 (1978).

Rule 16(c)(10) authorizes the use of special pretrial procedures to expedite the adjudication of potentially difficult or protracted cases. Some district courts obviously have done so for many years. See Rubin, *The*

Managed Calendar: Some Pragmatic Suggestions About Achieving the Just, Speedy and Inexpensive Determination of Civil Cases in Federal Courts, 4 Just. Sys. J. 135 (1976). Clause 10 provides an explicit authorization for such procedures and encourages their use. No particular techniques have been described; the Committee felt that flexibility and experience are the keys to efficient management of complex cases. Extensive guidance is offered in such documents as the *Manual for Complex Litigation.*

The rule simply identifies characteristics that make a case a strong candidate for special treatment. The four mentioned are illustrative, not exhaustive, and overlap to some degree. But experience has shown that one or more of them will be present in every protracted or difficult case and it seems desirable to set them out. See Kendig, *Procedures for Management of Non-Routine Cases,* 3 Hofstra L.Rev. 701 (1975).

The last sentence of subdivision (c) is new. See Wisconsin Civil Procedure Rule 802.11(2). It has been added to meet one of the criticisms of the present practice described earlier and insure proper preconference preparation so that the meeting is more than a ceremonial or ritualistic event. The reference to "authority" is not intended to insist upon the ability to settle the litigation. Nor should the rule be read to encourage the judge conducting the conference to compel attorneys to enter into stipulations or to make admissions that they consider to be unreasonable, that touch on matters that could not normally have been anticipated to arise at the conference, or on subjects of a dimension that normally require prior consultation with and approval from the client.

Subdivision (d); Final Pretrial Conference. This provision has been added to make it clear that the time between any final pretrial conference (which in a simple case may be the *only* pretrial conference) and trail should be as short as possible to be certain that the litigants make substantial progress with the case and avoid the inefficiency of having that preparation repeated when there is a delay between the last pretrial conference and trial. An optimum time of 10 days to two weeks has been suggested by one federal judge. Rubin, *The Managed Calendar: Some Pragmatic Suggestions About Achieving the Just, Speedy and Inexpensive Determination of Civil Cases in Federal Courts,* 4 Just. Sys. J. 135, 141 (1976). The Committee, however, concluded that it would be inappropriate to fix a precise time in the rule, given the numerous variables that could bear on the matter. Thus the timing has been left to the court's discretion.

At least one of the attorneys who will conduct the trial for each party must be present at the final pretrial conference. At this late date there should be no doubt as to which attorney or attorneys this will be. Since the agreements and stipulations made at this final conference will control the trial, the presence of lawyers who will be involved in it is especially useful to assist the judge in structuring the case, and to lead to a more effective trial.

Subdivision (e); Pretrial Orders. Rule 16(e) does not substantially change the portion of the original rule dealing with pretrial orders. The purpose of an order is to guide the course of the litigation and the language of the original rule making that clear has been retained. No compelling reason has been found for major revision, expecially since this portion of the rule has been interpreted and clarified by over forty years of judicial decisions with comparatively little difficulty. See 6 Wright & Miller, *Federal Practice and Procedure: Civil* §§ 1521-30 (1971). Changes in language therefore have been kept to a minimum to avoid confusion.

Since the amended rule encourages more extensive pretrial management than did the original, two or more conferences may be held in many cases. The language of Rule 16(e) recognizes this possiblity and the corresponding need to issue more than one pretrial order in a single case.

Once formulated, pretrial orders should not be changed lightly; but total inflexibility is undesirable. See, *e.g., Clark v. Pennsylvania R.R. Co.,* 328 F.2d 591 (2d Cir. 1964). The exact words used to describe the standard for amending the pretrial order probably are less important than the meaning given them in practice. By not imposing any limitation on the ability to modify a pretrial order, the rule reflects the reality that in any process of continuous management what is done at one conference may have to be altered at the next. In the case of the final pretrial order, however, a more stringent standard is called for and the words "to prevent manifest injustice," which appeared in the original rule, have been retained. They have the virtue of familarity and adequately describe the restraint the trial judge should exercise.

Many local rules make the plaintiff's attorney responsible for drafting a proposed pretrial order, either before or after the conference. Others allow the court to appoint any of the attorneys to perform the task, and others leave it to the court. See Note, *Pretrial Conference: A Critical Examination of Local Rules Adopted by Federal District Courts,* 64 Va.L.Rev. 467 (1978). Rule 16 has never addressed this matter. Since there is no consensus about which method of drafting the order works best and there is no reason to believe that nationwide uniformity is needed, the rule has been left silent on the point. See *Handbook for Effective Pretrial Procedure,* 37 F.R.D. 225 (1964).

Subdivision (f); Sanctions. Original Rule 16 did not mention the sanctions that might be imposed for failing to comply with the rule. However, courts have not hestitated to enforce it by appropriate measures. See, *e.g., Link v. Wabash R. Co.,* 370 U.S. 626 (1962) (district court's dismissal under Rule 41(b) after plaintiff's attorney failed to appear at a pretrial conference upheld); *Admiral Theatre Corp. v. Douglas Theatre,* 585 F.2d 877 (8th Cir. 1978) (district court has discretion to exclude exhibits or refuse to permit the testimony of a witness not listed prior to trial in contravention of its pretrial order).

To reflect that existing practice, and to obviate dependence upon Rule 41(b) or the court's inherent power to regulate litigation, *cf. Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers,* 357 U.S. 197 (1958), Rule 16(f) expressly provides for imposing sanctions on disobedient or recalcitrant parties, their attorneys, or both in four types of situations. Rodes, Ripple & Mooney, *Sanctions Imposable for Violations of the Federal Rules of Civil Procedure* 65-67, 80-84, Federal Judicial Center (1981). Furthermore, explicit reference to sanctions reenforces the rule's intention to encourage forceful judicial management.

Rule 16(f) incorporates portions of Rule 37(b)(2), which prescribes sanctions for failing to make discovery. This should facilitate application of Rule 16(f), since courts and lawyers already are familiar with the Rule 37 standards. Among the sanctions authorized by the new subdivision are: preclusion order, striking a pleading, staying the proceeding, default judgment, contempt, and charging a party, his attorney, or both with the expenses, including attorney's fees, caused by noncompliance. The contempt sanction, however, is only available for a violation of a court order. The references in Rule 16(f) are not exhaustive.

As is true under Rule 37(b)(2), the imposition of sanctions may be sought by either the court or a party. In addition, the court has discretion to impose whichever sanction it feels is appropriate under the circumstances. Its action is reviewable under the abuse-of-discretion standard. See *National Hockey League v. Metropolitan Hockey Club, Inc.,* 427 U.S. 639 (1976).

V. DEPOSITIONS AND DISCOVERY

Rule 26. General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought it unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

[*See main edition for text of* (*2*) *to* (*4*); (c) *to* (*f*)]

(g) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

Notes of Advisory Committee on Rules—1983 Amendment

Excessive discovery and evasion or resistance to reasonable discovery requests pose significant problems. Recent studies have made some attempt to determine the sources and extent of the difficulties. See Brazil, *Civil Discovery: Lawyers' Views of its Effectiveness, Principal Problems and Abuses,* American Bar Foundation (1980); Connolly, Holleman & Kuhlman, *Judicial Controls and the Civil Litigative Process: Discovery,* Federal Judicial Center (1978); Ellington, *A Study of Sanctions for Discovery Abuse,* Department of Justice (1979); Schroeder & Frank, *The Proposed Changes in the Discovery Rules,* 1978 Ariz. St. L.J. 475.

The purpose of discovery is to provide a mechanism for making relevant information available to the litigants. "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation." *Hickman v. Taylor,* 329 U.S. 495, 507 (1947). Thus the spirit of the rules is violated when advocates attempt to use discovery tools as tactical weapons rather than to expose the facts and illuminate the issues by overuse of discovery or unnecessary use of defensive weapons or evasive responses. All of this results in excessively costly and time-consuming activities that are disproportionate to the nature of the case, the amount involved, or the issues or values at stake.

Given our adversary tradition and the current discovery rules, it is not surprising that there are many opportunities, if not incentives, for attorneys to engage in discovery that, although authorized by the broad, permissive terms of the rules, nevertheless results in delay. See Brazil, *The Adversary Character of Civil Discovery: A Critque and Proposals for Change,* 31 Vand.L.Rev. 1259 (1978). As a result, it has been said that the rules have "not infrequently [been] exploited to the disadvantage of justice." *Herbert v. Lando,* 441 U.S. 153, 179 (1979) (Powell, J., concurring). These practices impose costs on an already overburdened system and impede the fundamental goal of the "just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1.

Subdivision (a); Discovery Methods. The deletion of the last sentence of Rule 26(a)(1), which provided that unless the court ordered otherwise under Rule 26(c) "the frequency of use" of the various discovery methods was not to be limited, is an attempt to address the problem of duplicative, redundant, and excessive discovery and to reduce it. The amendment, in conjunction with the changes in Rule 26(b)(1), is designed to encourage district judges to identify instances of needless discovery and to limit the use of the various discovery devices accordingly. The question may be raised by one of the parties, typically on a motion for a protective order, or by the court on its own initiative. It is entirely appropriate to consider a limitation on the frequency of use of discovery at a discovery conference under Rule 26(f) or at any other pretrial conference authorized by these rules. In considering the discovery needs of a particular case, the court should consider the factors described in Rule 26(b)(1).

Subdivison (b); Discovery Scope and Limits. Rule 26(b)(1) has been amended to add a sentence to deal with the problem of over-discovery. The objective is to guard against redundant or disproportionate discovery by giving the court authority to reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry. The new sentence is intended to encourage judges to be more aggressive in identifying and discouraging discovery overuse. The grounds mentioned in the amended rule for limiting discovery reflect the existing practice of many courts in issuing protective orders under Rule 26(c). See *e.g., Carlson Cos. v. Sperry & Hutchinson Co.,* 374 F.Supp. 1080 (D. Minn. 1974); *Dolgow v. Anderson,* 53 F.R.D. 661 (E.D.N.Y. 1971); *Mitchell v. American Tobacco Co.,* 33 F.R.D. 262 (M.D.Pa. 1963); *Welty v. Clute,* 1 F.R.D. 446 (W.D.N.Y. 1941). On the whole, however, district judges have been reluctant to limit the use of the discovery devices. See, *e.g., Apco Oil Co. v. Certified Transp., Inc.,* 46 F.R.D. 428 (W.D.Mo. 1969). See generally 8 Wright & Miller, *Federal Practice and Procedure: Civil* §§ 2036, 2037, 2039, 2040 (1970).

The first element of the standard, Rule 26(b)(1)(i), is designed to minimize redundancy in discovery and encourage attorneys to be sensitive to the comparative costs of different methods of securing information. Subdivision (b)(1)(ii) also seeks to reduce repetitiveness and to oblige lawyers to think through their discovery activities in advance so that full utilization is made of each deposition, document request, or set of interrogatories. The elements of Rule 26(b)(1)(iii) address the problem of discovery that is disproportionate to the individual lawsuit as measured by such matters as its nature and complexity, the importance of the issues at stake in a case seeking damages, the limitations on a financially weak litigant to withstand extensive opposition to a discovery program or to respond to discovery requests, and the significance of the substantive issues, as measured in philosophic, social, or institutional terms. Thus the rule recognizes that many cases in public policy spheres, such as employment practices, free speech, and other matters, may have importance far beyond the monetary amount involved. The court must apply the standards in an even-handed manner that will prevent use of discovery to wage a war of attrition or as a device to coerce a party, whether financially weak or affluent.

The rule contemplates greater judicial involvement in the discovery process and thus acknowledges the reality that it cannot always operate on a self-regulating basis. See Connolly, Holleman & Kuhlman, *Judicial Controls and the Civil Litigative Process: Discovery* 77, Federal Judicial Center (1978). In an appropriate case the court could restrict the number of depositions, interrogatories, or the scope of a production request. But the court must be careful not to deprive a party of discovery that is reasonably necessary to afford a fair opportunity to develop and prepare the case.

The court may act on motion, or its own initiative. It is entirely appropriate to resort to the amended rule in conjunction with a discovery conference under Rule 26(f) or one of the other pretrial conferences authorized by the rules.

Subdivision (g); Signing of Discovery Requests, Responses, and Objections. Rule 26(g) imposes an affirmative duty to engage in pretrial discovery in a responsible manner that is consistent with the spirit and purposes of Rules 26 through 37. In addition, Rule 26(g) is designed to curb discovery abuse by explicitly encouraging the imposition of sanctions. The subdivision provides a deterrent to both excessive discovery and evasion by imposing a certification requirement that obliges each attorney to stop and think about the legitimacy of a discovery request, a response thereto, or an objection. The term "response" includes answers to interrogatories and to requests to admit as well as responses to production requests.

If primary responsibility for conducting discovery is to continue to rest with the litigants, they must be obliged to act responsibly and avoid abuse. With this in mind, Rule 26(g), which parallels the amendments to Rule 11, requires an attorney or unrepresented party to sign each discovery request, response, or objection. Motions relating to discovery are governed by Rule 11. However, since a discovery request, response, or objection usually deals with more specific subject matter than motions or papers, the elements that must be certified in connection with the former are spelled out more completely. The signature is a certification of the elements set forth in Rule 26(g).

Although the certification duty requires the lawyer to pause and consider the reasonableness of his request, response, or objection, it is not meant to discourage or restrict necessary and legitimate discovery. The rule simply requires that the attorney make a reasonable inquiry into the factual basis of his response, request, or objection.

The duty to make a "reasonable inquiry" is satisfied if the investigation undertaken by the attorney and the conclusions drawn therefrom are reasonable under the circumstances. It is an objective standard similar to the one imposed by Rule 11. See the Advisory Committee Note to Rule 11. See also *Kinee v. Abraham Lincoln Fed. Sav. & Loan Ass'n,* 365 F.Supp. 975 (E.D. Pa. 1973). In making the inquiry, the attorney may rely on assertions by the client and on communications with other counsel in the case as long as that reliance is appropriate under the circumstances. Ultimately, what is reasonable is a matter for the court to decide on the totality of the circumstances.

Rule 26(g) does not require the signing attorney to certify the truthfulness of the client's factual responses to a discovery request. Rather, the signature certifies that the lawyer has made a reasonable effort to assure that the client has provided all the information and documents available to him that are responsive to the discovery demand. Thus, the lawyer's certification under Rule 26(g) should be distinguished from other signature requirements in the rules, such as those in Rules 30(e) and 33.

Nor does the rule require a party or an attorney to disclose privileged communications or work product in order to show that a discovery request, response, or objection is substantially justified. The provisions of Rule 26(c), including appropriate orders after *in camera* inspection by the court, remain available to protect a party claiming privilege or work product protection.

The signing requirement means that every discovery request, response, or objection should be grounded on a theory that is reasonable under the precedents or a good faith belief as to what should be the law. This standard is heavily dependent on the circumstances of each case. The certification speaks as of the time it is made. The duty to supplement discovery responses continues to be governed by Rule 26(e).

Concern about discovery abuse has led to widespread recognition that there is a need for more aggresive judicial control and supervision. *ACF Industries, Inc. v. EEOC,* 439 U.S. 1081 (1979) (certiorari denied) (Powell, J., dissenting). Sanctions to deter discovery abuse would be more effective if they were diligently applied "not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent." *National Hockey League v. Metropolitan Hockey Club,* 427 U.S. 639, 643 (1976). See also Note, *The Emerging Deterrence Orientation in the Imposition of Discovery Sanctions,* 91 Harv. L. Rev. 1033 (1978). Thus the premise of Rule 26(g) is that imposing sanctions on attorneys who fail to meet the rule's standards will significantly reduce abuse by imposing disadvantages therefor.

Because of the asserted reluctance to impose sanctions on attorneys who abuse the discovery rules, see Brazil, *Civil Discovery: Lawyers' Views of its Effectiveness, Principal Problems and Abuses*, American Bar Foundation (1980); Ellington, *A Study of Sanctions for Discovery Abuse*, Department of Justice (1979), Rule 26(g) makes explicit the authority judges now have to impose appropriate sanctions and requires them to use it. This authority derives from Rule 37, 28 U.S.C. § 1927, and the court's inherent power. See *Roadway Express, Inc., v. Piper*, 447 U.S. 752 (1980); *Martin v. Bell Helicopter Co.*, 85 F.R.D. 654, 661-62 (D. Col. 1980); Note, *Sanctions Imposed by Courts on Attorneys Who Abuse the Judicial Process*, 44 U.Chi.L.Rev. 619 (1977). The new rule mandates that sanctions be imposed on attorneys who fail to meet the standards established in the first portion of Rule 26(g). The nature of the sanction is a matter of judicial discretion to be exercised in light of the particular circumstances. The court may take into account any failure by the party seeking sanctions to invoke protection under Rule 26(c) at an early stage in the litigation.

The sanctioning process must comport with due process requirements. The kind of notice and hearing required will depend on the facts of the case and the severity of the sanction being considered. To prevent the proliferation of the sanction procedure and to avoid multiple hearings, discovery in any sanction proceeding normally should be permitted only when it is clearly required by the interests of justice. In most cases the court will be aware of the circumstances and only a brief hearing should be necessary.

VI. TRIALS

Rule 45. Subpoena

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Subpoena for Taking Depositions; Place of Examination.

[*See main edition for text of* (*1*)]

(2) A person to whom a subpoena for the taking of a deposition is directed may be required to attend at any place within 100 miles from the place where that person resides, is employed or transacts business in person, or is served, or at such other convenient place as is fixed by an order of court.

[*See main edition for text of* (*e*) *and* (*f*)]

(As amended Apr. 29, 1985, eff. Aug. 1, 1985.)

Notes of Advisory Committee on Rules—1985 Amendment

Present Rule 45(d)(2) has two sentences setting forth the territorial scope of deposition subpoenas. The first sentence is directed to depositions taken in the judicial district in which the deponent resides; the second sentence addresses situations in which the deponent is not a resident of the district in which the deposition is to take place. The Rule, as currently constituted, creates anomalous situations that often cause logistical problems in conducting litigation.

The first sentence of the present Rule states that a deponent may be required to attend only in the *county* wherein that person resides or is employed or transacts business in person, that is, where the person lives or works. Under this provision a deponent can be compelled, without court order, to travel from one end of that person's home county to the other, no matter how far that may be. The second sentence of the Rule is somewhat more flexible, stating that someone who does not reside in the district in which the deposition is to be taken can be required to attend in the county where the person is served with the subpoena, *or* within 40 miles from the place of service.

Under today's conditions there is no sound reason for distinguishing between residents of the district or county in which a deposition is to be taken and nonresidents, and the Rule is amended to provide that any person may be subpoenaed to attend a deposition within a specified radius from that person's residence, place of business, or where the person was served. The 40-mile radius has been increased to 100 miles.

Rule 52. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

[*See main edition for text of* (*b*)]

(As amended Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985.)

Notes of Advisory Committee on Rules—1983 Amendment

Rule 52(a) has been amended to revise its penultimate sentence to provide explicitly that the district judge may make the findings of fact and conclusions of law required in nonjury cases orally. Nothing in the prior text of the rule forbids this practice, which is widely utilized by district judges. See Christensen, *A Modest Proposal for Immeasurable Improvement*, 64 A.B.A.J. 693 (1978). The objective is to lighten the burden on the trial court in preparing findings in nonjury cases. In addition, the amendment should reduce the number of published district court opinions that embrace written findings.

Notes of Advisory Committee on Rules—1985 Amendment

Rule 52(a) has been amended (1) to avoid continued confusion and conflicts among the circuits as to the standard of appellate review of findings of fact by the court, (2) to eliminate the disparity between the standard of review as literally stated in Rule 52(a) and the practice of some courts of appeals, and (3) to promote nationwide uniformity. See Note, *Rule 52(a): Appellate Review of Findings of Fact Based on Documentary or Undisputed Evidence*, 49 Va. L. Rev. 506, 536 (1963).

Some courts of appeal have stated that when a trial court's findings do not rest on demeanor evidence and evaluation of a witness' credibility, there is no reason to defer to the trial court's findings and the appellate court more readily can find them to be clearly erroneous. See, e.g., *Marcum v. United States*, 621 F.2d 142, 144-45 (5th Cir. 1980). Others go further, holding that appellate review may be had without application of the "clearly erroneous" test since the appellate court is in as good a position as the trial court to review a purely documentary record. See, *e.g., Atari, Inc. v. North American Philips Consumer Electronics Corp.*, 672 F.2d 607, 614 (7th Cir.), *cert. denied*, 459 U.S. 880 (1982); *Lydle v. United States*, 635 F.2d 763, 765 n. 1 (6th Cir. 1981); *Swanson v. Baker Indus., Inc.*, 615 F.2d 479, 483 (8th Cir. 1980); *Taylor v. Lombard*, 606 F.2d 371, 372 (2d Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *Jack Kahn Music Co. v. Baldwin Piano & Organ Co.*, 604 F.2d 755, 758 (2d Cir. 1979); *John R. Thompson Co. v. United States*, 477 F.2d 164, 167 (7th Cir. 1973).

A third group has adopted the view that the "clearly erroneous" rule applies in all nonjury cases even when findings are based solely on documentary evidence or on inferences from undisputed facts. See, *e.g., Maxwell v. Sumner*, 673 F.2d 1031, 1036 (9th Cir.), *cert. denied*, 459 U.S. 976 (1982); *United States v. Texas Education Agency*, 647 F.2d 504, 506-07 (5th Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982); *Constructora Maza, Inc. v. Banco de Ponce*, 616 F.2d 573, 576 (1st Cir. 1980); *In re Sierra Trading Corp.*, 482 F.2d 333, 337 (10th Cir. 1973); *Case v. Morrisette*, 475 F.2d 1300, 1306-07 (D.C. Cir. 1973).

The commentators also disagree as to the proper interpretation of the Rule. *Compare* Wright, *The Doubtful Omniscience of Appellate Courts*, 41 Minn. L. Rev. 751, 769-70 (1957) (language and intent of Rule support view that "clearly erroneous" test should apply to all forms of evidence), *and* 9 C. Wright & A. Miller, *Federal Practice and Procedure: Civil § 2587*, at 740 (1971) (language of the Rule is clear), *with* 5A J. Moore, *Federal Practice ¶52.04, 2687-88 (2d ed. 1982)* (*Rule as written supports broader review of findings based on non-demeanor testimony*).

The Supreme Court has not clearly resolved the issue. See, *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 104 S. Ct. 1949, 1958 (1984); *Pullman Standard v. Swint*, 456 U.S. 273, 293 (1982); *United States v. General Motors Corp.*, 384 U.S. 127, 141 n. 16 (1966); *United States v. United States Gypsum Co.*, 333 U.S. 364, 394-96 (1948).

The principal argument advanced in favor of a more searching appellate review of findings by the district court based solely on documentary evidence is that the rationale of Rule 52(a) does not apply when the findings do not rest on the trial court's assessment of credibility of the witnesses but on an evaluatin of documentary proof and the drawing of inferences from it, thus eliminating the need for any special deference to the trial court's findings. These considerations are outweighed by the public interest in the stability and judicial economy that would be promoted by recognizing that the trial court, not the appellate tribunal, should be the finder of the facts. To permit courts of appeals to share more actively in the fact-finding function would tend to undermine the legitimacy of the district courts in the eyes of litigants, multiply appeals by encouraging appellate retrial of some factual issues, and needlessly reallocate judicial authority.

Rule 53. Masters

(a) Appointment and Compensation. The court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct; provided that this provision for compensation shall not apply when a United States magistrate is designated to serve as a master pursuant to Title 28, U.S.C. § 636(b)(2). The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it. Upon the consent of the parties, a magistrate may be designated to serve as a special master without regard to the provisions of this subdivision.

(c) Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him or evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Federal Rules of Evidence for a court sitting without a jury.

[*See main edition for text of* (*d*) *and* (*e*)]

(f)[1] [Application to Magistrate.] A magistrate is subject to this rule only when the order referring a matter to the magistrate expressly provides that the reference is made under this Rule.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

Notes of Advisory Committee on Rules—1983 Amendment

Subdivision (*a*). The creation of full-time magistrates, who serve at government expense and have no nonjudicial duties competing for their time, eliminates the need to appoint standing masters. Thus the prior provision in Rule 53(a) authorizing the appointment of standing masters is deleted. Additionally, the definition of "master" in subdivision (a) now eliminates the superseded office of commissioner.

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[1] Subdivision heading supplied editorially.

The term "special master" is retained in Rule 53 in order to maintain conformity with 28 U.S.C. § 636(b)(2), authorizing a judge to designate a magistrate "to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States District Courts." Obviously, when a magistrate serves as a special master, the provisions for compensation of masters are inapplicable, and the amendment to subdivision (a) so provides.

Although the existence of magistrates may make the appointment of outside masters unnecessary in many instances, see, *e.g.*, *Gautreaux v. Chicago Housing Authority*, 384 F. Supp. 37 (N.D. Ill. 1974), mandamus denied *sub nom.*, *Chicago Housing Authority v. Austin*, 511 F.2d 82 (7th Cir. 1975); *Avco Corp. v. American Tel. & Tel. Co.*, 68 F.R.D. 532 (S.D. Ohio 1975), such masters may prove useful when some special expertise is desired or when a magistrate is unavailable for lengthy and detailed supervision of a case.

Subdivision (b). The provisions of 28 U.S.C. § 636(b)(2) not only permit magistrates to serve as masters under Rule 53(b) but also eliminate the exceptional condition requirement of Rule 53(b) when the reference is made with the consent of the parties. The amendment to subdivision (b) brings Rule 53 into harmony with the statute by exempting magistrates, appointed with the consent of the parties, from the general requirement that some exceptional condition requires the reference. It should be noted that subdivision (b) does not address the question, raised in recent decisional law and commentary, as to whether the exceptional condition requirement is applicable when *private masters* who are not magistrates are appointed with the consent of the parties. See Silberman, *Masters and Magistrates Part II: The American Analogue*, 50 N.Y.U. L.Rev. 1297, 1354 (1975).

Subdivision (c). The amendment recognizes the abrogation of Federal Rule 43(c) by the Federal Rules of Evidence.

Subdivision (f). The new subdivision responds to confusion flowing from the dual authority for references of pretrial matters to magistrates. Such references can be made, with or without the consent of the parties, pursuant to Rule 53 or under 28 U.S.C. § 636(b)(1)(A) and (b)(1)(B). There are a number of distinctions between references made under the statute and under the rule. For example, under the statute nondispositive pretrial matters may be referred to a magistrate, without consent, for final determination with reconsideration by the district judge if the magistrate's order is clearly erroneous or contrary to law. Under the rule, however, the appointment of a master, without consent of the parties, to supervise discovery would require some exceptional condition (Rule 53(b)) and would subject the proceedings to the report procedures of Rule 53(e). If an order of reference does not clearly articulate the source of the court's authority the resulting proceedings could be subject to attack on grounds of the magistrate's noncompliance with the provisions of Rule 53. This subdivision therefore establishes a presumption that the limitations of Rule 53 are not applicable unless the reference is specifically made subject to Rule 53.

A magistrate serving as a special master under 28 U.S.C. § 636(b)(2) is governed by the provisions of Rule 53, with the exceptional condition requirement lifted in the case of a consensual reference.

References in Text

The Federal Rules of Evidence, referred to in subdiv. (c), are set out in this Appendix.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 67. Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of Title 28, U.S.C., §§ 2041, and 2042; the Act of June 26, 1934, c. 756, § 23, as amended (48 Stat. 1236, 58 Stat. 845), U.S.C. Title 31, § 725v; or any like statute. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

Notes of Advisory Committee on Rules—1983 Amendment

Rule 67 has been amended in three ways. The first change is the addition of the clause in the first sentence. Some courts have construed the present rule to permit deposit only when the party making it claims no interest in the fund or thing deposited. *E.g.*, *Blasin-Stern v. Beech-Nut Life Savers Corp.*, 429 F.Supp. 533 (D. Puerto Rico 1975); *Dinkins v. General Aniline & Film Corp.*, 214 F.Supp. 281 (S.D.N.Y. 1963). However, there are situations in which a litigant may wish to be relieved of responsibility for a sum or thing, but continue to claim an interest in all or part of it. In these cases the deposit-in-court procedure should be available; in addition to the advantages to the party making the deposit, the procedure gives other litigants assurance that any judgment will be collectable. The amendment is intended to accomplish that.

The second change is the addition of a requirement that the order of deposit be served on the clerk of the court in which the sum or thing is to be deposited. This is simply to assure that the clerk knows what is being deposited and what his responsibilities are with respect to the deposit. The latter point is particularly important since the rule as amended contemplates that deposits will be placed in interest-bearing accounts; the clerk must know what treatment has been ordered for the particular deposit.

The third change is to require that any money be deposited in an interest-bearing account or instrument approved by the court.

Rule 71A. Condemnation of Property

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Trial. If the action involves the exercise of the power of eminent domain under the law of the United States, any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensation shall be the tribunal for the determination of that issue; but if there is no such specially constituted tribunal any party may have a trial by jury of the issue of just compensation by filing a demand therefor within the time allowed for answer or within such further time as the court may fix, unless the court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by a commission of three persons appointed by it.

In the event that a commission is appointed the court may direct that not more than two additional persons serve as alternate commissioners to hear the case and replace commissioners who, prior to the time when a decision is filed, are found by the court to be unable or disqualified to perform their duties. An alternate who does not replace a regular commissioner shall be discharged after the commission renders its final decision. Before appointing the members of the commission and alternates the court shall advise the parties of the identity and qualifications of each prospective commissioner and alternate and may permit the parties to examine each such designee. The parties shall not be permitted or required by the court to suggest nominees. Each party shall have the right to object for valid cause to the appointment of any person as a commissioner or alternate. If a commission is appointed it shall have the powers of a master provided in subdivision (c) of Rule 53 and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of Rule 53. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice, prescribed in paragraph (2) of subdivision (e) of Rule 53. Trial of all issues shall otherwise be by the court.

[*See main edition for text of* (i) *to* (l)]

(As amended Apr. 29, 1985, Eff. Aug. 1, 1985.)

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Rule 71A(h) provides that except when Congress has provided otherwise, the issue of just compensation in a condemnation case may be tried by a jury if one of the parties so demands, unless the court in its discretion orders the issue determined by a commission of three persons. In 1980, the Comptroller General of the United States in a Report to Congress recommended that use of the commission procedure should be encouraged in order to improve and expedite the trial of condemnation cases. The Report noted that long delays were being caused in many districts by such factors as crowded dockets, the precedence given criminal cases, the low priority accorded condemnation matters, and the high turnover of Assistant United States Attorneys. The Report concluded that revising Rule 71A to make the use of the commission procedure more attractive might alleviate the situation.

Accordingly, Rule 71A(h) is being amended in a number of respects designed to assure the quality and utility of a Rule 71A commission. First, the amended Rule will give the court discretion to appoint, in addition to the three members of a commission, up to two additional persons as alternate commissioners who would hear the case and be available, at any time up to the filing of the decision by the three-member commission, to replace any commissioner who becomes unable or disqualified to continue. The discretion to appoint alternate commissioners can be particularly useful in protracted cases, avoiding expensive retrials that have been required in some cases because of the death or disability of a commissioner. Prior to replacing a commissioner an alternate would not be present at, or participate in, the commission's deliberations.

Second, the amended Rule requires the court, before appointment, to advise the parties of the identity and qualifications of each prospective commissioner and alternate. The court then may authorize the examination of prospective appointees by the parties and each party has the right to challenge for cause. The objective is to insure that unbiased and competent commissioners are appointed.

The amended Rule does not prescribe a qualification standard for appointment to a commission, although it is understood that only persons possessing background and ability to appraise real estate valuation testimony and to award fair and just compensation on the basis thereof would be appointed. In most situations the chairperson should be a lawyer and all members should have some background qualifying them to weigh proof of value in the real estate field and, when possible, in the particular real estate market embracing the land in question.

The amended Rule should give litigants greater confidence in the commission procedure by affording them certain rights to participate in the appointment of commission members that are roughly comparable to the practice with regard to jury selection. This is accomplished by giving the court permission to allow the parties to examine prospective commissioners and by recognizing the right of each party to object to the appointment of any person for cause.

Rule 72. Magistrates; Pretrial Matters

(a) NONDISPOSITIVE MATTERS. A magistrate to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. The district judge to whom the case is assigned shall consider objections made by the parties, provided they are served and filed within 10 days after the entry of the order, and shall modify or set aside any portion of the magistrate's order found to be clearly erroneous or contrary to law.

(b) DISPOSITIVE MOTIONS AND PRISONER PETITIONS. A magistrate assigned without consent of the parties to hear a pretrial matter dispositive of a claim or defense of a party or a prisoner petition challenging the conditions of confinement shall promptly conduct such proceedings as are required. A record shall be made of all evidentiary proceedings before the magistrate, and a record may be made of such other proceedings as the magistrate deems necessary. The magistrate shall enter into the record a recommendation for disposition of the matter, including proposed findings of fact when appropriate. The clerk shall forthwith mail copies to all parties.

A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate deems sufficient, unless the district judge otherwise directs. Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate with instructions.

(Added Apr. 28, 1983, eff. Aug. 1, 1983.)

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). This subdivision addresses court-ordered referrals of nondispositive matters under 28 U.S.C. § 636(b)(1)(A). The rule calls for a written order of the magistrate's disposition to preserve the record and facilitate review. An oral order read into the record by the magistrate will satisfy this requirement.

No specific procedures or timetables for raising objections to the magistrate's rulings on nondispositive matters are set forth in the Magistrates Act. The rule fixes a 10-day period in order to avoid uncertainty and provide uniformity that will eliminate the confusion that might arise if different periods were prescribed by local rule in different districts. It also is contemplated that a party who is successful before the magistrate will be afforded an opportunity to respond to objections raised to the magistrate's ruling.

The last sentence of subdivision (a) specifies that reconsideration of a magistrate's order, as provided for in the Magistrates Act, shall be by the district judge to whom the case is assigned. This rule does not restrict experimentation by the district courts under 28 U.S.C. § 636(b)(3) involving references of matters other than pretrial matters, such as appointment of counsel, taking of default judgments, and acceptance of jury verdicts when the judge is unavailable.

Subdivision (b). This subdivision governs court-ordered referrals of dispositive pretrial matters and prisoner petitions challenging conditions of confinement, pursuant to statutory authorization in 28 U.S.C. § 636(b)(1)(B). This rule does not extend to habeas corpus petitions, which are covered by the specific rules relating to proceedings under Sections 2254 and 2255 of Title 28.

This rule implements the statutory procedures for making objections to the magistrate's proposed findings and recommendations. The 10-day period, as specified in the statute, is subject to Rule 6(e) which provides for an additional 3-day period when service is made by mail. Although no specific provision appears in the Magistrates Act, the rule specifies a 10-day period for a party to respond to objections to the magistrate's recommendation.

Implementing the statutory requirements, the rule requires the district judge to whom the case is assigned to make a de novo determination of those portions of the report, findings, or recommendations to which timely objection is made. The term "de novo" signifies that the magistrate's findings are not protected by the clearly erroneous doctrine, but does not indicate that a second evidentiary hearing is required. See *United States v. Raddatz,* 417 U.S. 667 (1980). See also Silberman, *Masters and Magistrates Part II: The American Analogue,* 50 N.Y.U. L.Rev. 1297, 1367 (1975). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. See *Campbell v. United States Dist. Court,* 501 F.2d 196, 206 (9th Cir. 1974), cert. denied, 419 U.S. 879, quoted in House Report No. 94-1609, 94th Cong. 2d Sess. (1976) at 3. Compare *Park Motor Mart, Inc. v. Ford Motor Co.,* 616 F.2d 603 (1st Cir. 1980). Failure to make timely objection to the magistrate's report prior to its adoption by the district judge may constitute a waiver of appellate review of the district judge's order. See *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981).

Rule 73. Magistrates; Trial by Consent and Appeal Options

(a) POWERS; PROCEDURE. When specially designated to exercise such jurisdiction by local rule or order of the district court and when all parties consent thereto, a magistrate may exercise the authority provided by Title 28, U.S.C. § 636(c) and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case. A record of the proceedings shall be made in accordance with the requirements of Title 28, U.S.C. § 636(c)(7).

(b) CONSENT. When a magistrate has been designated to exercise civil trial jurisdiction, the clerk shall give written notice to the parties of their opportunity to consent to the exercise by a magistrate of civil jurisdiction over the case, as authorized by Title 28, U.S.C. § 636(c). If, within the period specified by local rule, the parties agree to a magistrate's exercise of such authority, they shall execute and file a joint form of consent or separate forms of consent setting forth such election.

No district judge, magistrate, or other court official shall attempt to persuade or induce a party to consent to a reference of a civil matter to a magistrate under this rule, nor shall a district judge or magistrate be informed of a party's response to the clerk's notification, unless all parties have consented to the referral of the matter to a magistrate.

The district judge, for good cause shown on his own motion or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a magistrate under this subdivision.

(c) NORMAL APPEAL ROUTE. In accordance with Title 28, U.S.C. § 636(c)(3), unless the parties otherwise agree to the optional appeal route provided for in subdivision (d) of this rule, appeal from a judgment entered upon direction of a magistrate in proceedings under this rule will lie to the court of appeals as it would from a judgment of the district court.

(d) OPTIONAL APPEAL ROUTE. In accordance with Title 28, U.S.C. § 636(c)(4), at the time of reference to a magistrate, the parties may consent to appeal on the record to a judge of the district court and thereafter, by petition only, to the court of appeals.

(Added Apr. 28, 1983, eff. Aug. 1, 1983.)

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). This subdivision implements the broad authority of the 1979 amendments to the Magistrates Act, 28 U.S.C. § 636(c), which permit a magistrate to sit in lieu of a district judge and exercise civil jurisdiction over a case, when the parties consent. See McCabe, *The Federal Magistrate Act of 1979,* 16 Harv. J. Legis. 343, 364–79 (1979). In order to exercise this jurisdiction, a magistrate must be specially designated under 28 U.S.C. § 636(c)(1) by the district court or courts he serves. The only exception to a magistrate's exercise of civil jurisdiction, which includes the power to conduct jury and nonjury trials and decide dispositive motions, is the contempt power. A hearing on contempt is to be conducted by the district judge upon certification of the facts and an order to show cause by the magistrate. See 28 U.S.C. § 639(e). In view of 28 U.S.C. § 636(c)(1) and this rule, it is unnecessary to amend Rule 58 to provide that the decision of a magistrate is a "decision by the court" for the purposes of that rule and a "final decision of the district court" for purposes of 28 U.S.C. § 1291 governing appeals.

Subdivision (b). This subdivision implements the blind consent provision of 28 U.S.C. § 636(c)(2) and is designed to ensure that neither the judge nor the magistrate attempts to induce a party to consent to reference of a civil matter under this rule to a magis-

te. See House Rep. No. 96-444, 96th Cong. 1st Sess.
979).

he rule opts for a uniform approach in implement-
the consent provision by directing the clerk to
ify the parties of their opportunity to elect to pro-
d before a magistrate and by requiring the execu-
n and filing of a consent form or forms setting
th the election. However, flexibility at the local
el is preserved in that local rules will determine
notice shall be communicated to the parties, and
al rules will specify the time period within which an
ction must be made.

he last paragraph of subdivision (b) reiterates the
vision in 28 U.S.C. § 636(c)(6) for vacating a refer-
e to the magistrate.

ubdivision (*c*). Under 28 U.S.C. § 636(c)(3), the
mal route of appeal from the judgment of a magis-
e—the only route that will be available unless the
ties otherwise agree in advance—is an appeal by
aggrieved party "directly to the appropriate
ted States court of appeals from the judgment of
magistrate in the same manner as an appeal from
other judgment of a district court." The quoted
utory language indicates Congress' intent that the
e procedures and standards of appealability that
ern appeals from district court judgments govern
eals from magistrates' judgments.

ubdivision (*d*). 28 U.S.C. § 636(c)(4) offers parties
consent to the exercise of civil jurisdiction by a
gistrate an alternative appeal route to that provid-
n subdivision (c) of this rule. This optional appel-
route was provided by Congress in recognition of
fact that not all civil cases warrant the same ap-
ate treatment. In cases where the amount in con-
ersy is not great and there are no difficult ques-
s of law to be resolved, the parties may desire to
id the expense and delay of appeal to the court of
eals by electing an appeal to the district judge. See
Cabe, *The Federal Magistrate Act of 1979*, 16 Harv.
egis. 343, 388 (1979). This subdivision provides that
parties may elect the optional appeal route at the
e of reference to a magistrate. To this end, the
ice by the clerk under subdivision (b) of this rule
l explain the appeal option and the corollary re-
ction on review by the court of appeals. This ap-
ach will avoid later claims of lack of consent to the
nue of appeal. The choice of the alternative appeal
e to the judge of the district court should be made
he parties in their forms of consent. Special appel-
rules to govern appeals from a magistrate to a dis-
judge appear in new Rules 74 through 76.

e 74. Method of Appeal from Magistrate to Dis-trict Judge under Title 28, U.S.C. § 636(c)(4) and Rule 73(d)

) **When Taken.** When the parties have
cted under Rule 73(d) to proceed by appeal
a district judge from a appealable decision
de by a magistrate under the consent provi-
ns of Title 28, U.S.C. § 636(c)(4), an appeal
be taken from the decision of a magistrate
filing with the clerk of the district court a
ice of appeal within 30 days of the date of
ry of the judgment appealed from; but if the
ted States or an officer or agency thereof is
arty, the notice of appeal may be filed by
party within 60 days of such entry. If a
ely notice of appeal is filed by a party, any
er party may file a notice of appeal within
days thereafter, or within the time otherwise
scribed by this subdivision, whichever period
expires.

he running of the time for filing a notice of
eal is terminated as to all parties by the
ely filing of any of the following motions
h the magistrate by any party, and the full time for appeal from the judgment entered by the magistrate commences to run anew from entry of any of the following orders: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59.

An interlocutory decision or order by a magistrate which, if made by a judge of the district court, could be appealed under any provision of law, may be appealed to a judge of the district court by filing a notice of appeal within 15 days after entry of the decision or order, provided the parties have elected to appeal to a judge of the district court under Rule 73(d). An appeal of such interlocutory decision or order shall not stay the proceedings before the magistrate unless the magistrate or judge shall so order.

Upon a showing of excusable neglect, the magistrate may extend the time for filing a notice of appeal upon motion filed not later than 20 days after the expiration of the time otherwise prescribed by this rule.

(b) **Notice of Appeal; Service.** The notice of appeal shall specify the party or parties taking the appeal, designate the judgment, order or part thereof appealed from, and state that the appeal is to a judge of the district court. The clerk shall mail copies of the notice to all other parties and note the date of mailing in the civil docket.

(c) **Stay Pending Appeal.** Upon a showing that the magistrate has refused or otherwise failed to stay the judgment pending appeal to the district judge under Rule 73(d), the appellant may make application for a stay to the district judge with reasonable notice to all parties. The stay may be conditioned upon the filing in the district court of a bond or other appropriate security.

(d) **Dismissal.** For failure to comply with these rules or any local rule or order, the district judge may take such action as is deemed appropriate, including dismissal of the appeal. The district judge also may dismiss the appeal upon the filing of a stipulation signed by all parties, or upon motion and notice by the appellant.

(Added Apr. 28, 1983, eff. Aug. 1, 1983.)

Notes of Advisory Committee on Rules

Subdivision (*a*). This rule governs appeals from decisions of magistrates exercising consensual civil jurisdiction under Rule 73 when the parties elect to appeal to a judge of the district court under subdivision (d) of that rule. Congress specified that such an appeal would be "on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals." See 28 U.S.C. § 636(c)(4). Presumably. Congress intended that the district court follow the same general procedures, including the "clearly erroneous" factual review standard of Civil Rule 52(a), that a court of appeals follows in reviewing a judgment of the district court. However, Congress also provided that "whenever possible" the local rules of the district court shall endeavor to make appeals expeditious and inexpensive. See 28 U.S.C. § 636(c)(4). Since the Federal Rules of Appellate Procedure are designed to cover appeals from a single judge to a three-member appeal tribunal, some modifications have proved desirable in assuring an expeditious appeal from a magistrate to a single district judge. Rules 74 through 76 provide this set of rules governing appeals from magistrates' exercise of consensual jurisdiction.

The time limits in subdivision (a) generally conform to those in Appellate Rule 4(a), except that the period in which a party may move for leave to file a late notice of appeal on grounds of excusable neglect is 20 days, rather than the 30-day period provided for in the Appellate Rules.

The term "appealable decision" as used in this rule embraces the "final decision" concept of 28 U.S.C. § 1291 and permits an appeal from a magistrate to a district judge in those situations in which an appeal from a district judge to the court of appeals would lie. That term, along with the specific provision in the rule permitting appeals of certain interlocutory orders, incorporates by reference the provisions of 28 U.S.C. § 1292 and adopts, by analogy to Section 1292(b), a certification procedure for otherwise unappealable orders "where the order is based on a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation." Although no specific certification procedure is set forth, the rule contemplates that a magistrate may certify such an order for appeal, and the district judge, in his discretion, may allow the appeal. In the interest of expediting the trial, interlocutory appeals of any kind will not stay the proceedings unless the magistrate or district judge finds that the nature of the appeal or its relation to the remaining proceedings requires a stay.

Subdivision (b). The provisions governing the content and service of the notice of appeal conform substantially to Rules 3(c) and 3(d) of the Federal Rules of Appellate Procedure.

Subdivision (c). This subdivision represents a simplified version of Rule 8 of the Federal Rules of Appellate Procedure. Under this subdivision, the district judge is in the position of an appellate judge under Rule 8 of the Appellate Rules when the judge below has refused a stay under Rule 62.

In proceedings under 28 U.S.C. § 636(c), an application for a stay of the judgment under Rule 62 initially will be made to the magistrate. The district judge under this rule may hear an application for a stay of the judgment upon a showing that the magistrate has refused to stay the judgment pending appeal to the distric judge.

Subdivision (d). The provisions governing dismissal are similar to Rule 3(a) (failure to prosecute) and Rule 42(a) (voluntary dismissal) of the Federal Rules of Appellate Procedure.

Rule 75. Proceedings on Appeal from Magistrate to District Judge under Rule 73(d)

(a) APPLICABILITY. In proceedings under Title 28, U.S.C. § 636(c), when the parties have previously elected under Rule 73(d) to appeal to a district judge rather than to the court of appeals, this rule shall govern the proceedings on appeal.

(b) RECORD ON APPEAL.

(1) *Composition.* The original papers and exhibits filed with the clerk of the district court, the transcript of the proceedings, if any, and the docket entries shall constitute the record on appeal. In lieu of this record the parties, within 10 days after the filing of the notice of appeal, may file a joint statement of the case showing how the issues presented by the appeal arose and were decided by the magistrate, and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented.

(2) *Transcript.* Within 10 days after filing the notice of appeal the appellant shall make arrangements for the production of a transcript of such parts of the proceedings as he deems necessary. Unless the entire transcript is to be included, the appellant, within the time provided above, shall serve on the appellee and file with the court a description of the parts of the transcript which he intends to present on the appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, within 10 days after the service of the statement of the appellant, he shall serve on the appellant and file with the court a designation of additional parts to be included. The appellant shall promptly make arrangements for the inclusion of all such parts unless the magistrate, upon motion, exempts the appellant from providing certain parts, in which case the appellee may provide for their transcription.

(3) *Statement in Lieu of Transcript.* If no record of the proceedings is available for transcription, the parties shall, within 10 days after the filing of the notice of appeal, file a statement of the evidence from the best available means to be submitted in lieu of the transcript. If the parties cannot agree they shall submit a statement of their differences to the magistrate for settlement.

(c) TIME FOR FILING BRIEFS. Unless a local rule or court order otherwise provides, the following time limits for filing briefs shall apply.

(1) The appellant shall serve and file his brief within 20 days after the filing of the transcript, statement of the case, or statement of the evidence.

(2) The appellee shall serve and file his brief within 20 days after service of the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee.

(4) If the appellee has filed a cross-appeal, he may file a reply brief limited to the issues on the cross-appeal within 10 days after service of the reply brief of the appellant.

(d) LENGTH AND FORM OF BRIEFS. Briefs may be typewritten. The length and form of briefs shall be governed by local rule.

(e) ORAL ARGUMENT. The opportunity for the parties to be heard on oral argument shall be governed by local rule.

(Added Apr. 28, 1983, eff. Aug. 1, 1983.)

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). 28 U.S.C. § 636(c)(4) provides that whenever possible the local rules of the district court shall endeavor to make appeals from the magistrate to the district judge expeditious and inexpensive. The provisions of this rule are directed to that end in simplifying the record on appeal and permitting typewritten briefs. The availability of oral argument and the length and form of briefs are matters appropriately left to local rule.

Subdivision (b). The provisions governing the composition of the record and the transcript are adapted from Rule 10 of the Federal Rules of Appellate Procedure. The language requiring the appellant to "make arrangements for the production of a transcript" is broad enough to require the party to order a transcript from the court reporter or to make arrangements to transcribe a taped record of the proceedings. The magistrate is to settle any differences regarding the extent of the transcript and to require the appellant to provide for transcription of any additional portions designated by the appellee that are material to the issues on appeal. Naturally, the rule is subject to the operation of 28 U.S.C. § 1915 in the case of a party who is unable to pay such costs.

Although it is not anticipated that an appeal will often be taken from a hearing or trial of which no record was made, the parties do have the option to forego a record in routine matters under 28 U.S.C. § 636(c)(7). In such cases a statement of the evidence will be prepared by the parties (or by the magistrate if the parties cannot agree) from the best available means, including the recollections and notes of the parties and the magistrate.

Subdivision (c). Although the parties, with agreement of the court, can dispense with the filing of briefs, a schedule for the serving and filing of briefs will often be necessary. In lieu of the elaborate provisions of Rules 28 through 32 of the Federal Rules of Appellate Procedure, this rule adopts a simplified approach for the filing and serving of briefs in order to achieve an inexpensive and expeditious appeal from a magistrate's judgment to a district judge. The timing of the appellant's initial brief is tied to the filing of the transcript or statement, instead of the filing of the record (Appellate Rule 31(a)) or the docketing of the appeal, because the rest of the record is already in the hands of the district court clerk and need not be transmitted. This rule does not require payment of a filing fee. Thus the filing of the transcript or statement is all that remains of the traditional concepts of filing the record and docketing the appeal.

The introductory clause of the rule recognizes the desirability of allowing local and individual variations in the filing of briefs, and the numbered clauses prescribe shorter periods than the corresponding intervals allowed by Appellate Rule 31(a). The provision allowing a reply brief for an appellee who has filed a cross-appeal is taken from Appellate Rule 28(c).

Subdivision (d). The use of typewritten briefs is urged as a means of minimizing costs and of expediting appeals from the magistrate to the district judge. The form and length of briefs should be addressed as a matter of local rule in order to avoid resort to the more elaborate provisions of the Federal Rules of Appellate Procedure.

Subdivision (e). The availability of oral argument has been left as a matter for local rule.

Rule 76. Judgment of the District Judge on the Appeal under Rule 73(d) and Costs

(a) Entry of Judgment. When the parties have elected under Rule 73(d) to appeal from a judgment of the magistrate to a district judge, the clerk shall prepare, sign, and enter judgment in accordance with the order or decision of the district judge following an appeal from a judgment of the magistrate, unless the district judge directs otherwise. The clerk shall mail to all parties a copy of the order or decision of the district judge.

(b) Stay of Judgments. The decision of the district judge shall be stayed for 10 days during which time a party may petition the district judge for rehearing, and a timely petition shall stay the decision of the district judge pending disposition of a petition for rehearing. Upon the motion of a party, the decision of the district judge may be stayed in order to allow a party to petition the court of appeals for leave to appeal.

(c) Costs. Except as otherwise provided by law or ordered by the district judge, costs shall be taxed against the losing party; if a judgment of the magistrate is affirmed in part or reversed in part, or is vacated, costs shall be allowed only as ordered by the district judge. The cost of the transcript, if necessary for the determination of the appeal, and the premiums paid for bonds to preserve rights pending appeal shall be taxed as costs by the clerk.

(Added Apr. 28, 1983, eff. Aug. 1, 1983.)

Notes of Advisory Committee on Rules

Subdivision (a). This subdivision, adapted from Rule 36 of the Federal Rules of Appellate Procedure, directs the clerk to enter judgment in accordance with the order or decision of the district judge affirming, reversing, or modifying the judgment of the magistrate and to mail copies of the order or decision to all parties.

Subdivision (b). This subdivision, adapted from Rule 41 of the Federal Rules of Appellate Procedure, stays the effect of the district judge's decision on an appeal from a judgment of the magistrate. The availability of a rehearing by the district judge is contemplated (see Appellate Rule 40), but no particular form of petition is specified by the rule. The initial 10-day stay and the stay pending disposition of a timely petition for rehearing operate automatically upon the magistrate and all parties. Any other stay is at the discretion of the district judge.

Subdivision (c). This provision for costs on appeal is adapted from Rule 39 of the Federal Rules of Appellate Procedure to achieve the inexpensive appellate process envisioned for district judge review of magistrate action. No filing fee is required since a single clerk's office handles the file throughout, and no bond for costs is required. Ordinarily the only costs will be the costs of the transcript and the premium for any supersedeas bond.

XI. GENERAL PROVISIONS

Rule 83. Rules by District Courts

Each district court by action of a majority of the judges thereof may from time to time, after giving appropriate public notice and an opportunity to comment, make and amend rules governing its practice not inconsistent with these rules. A local rule so adopted shall take effect upon the date specified by the district court and shall remain in effect unless amended by the district court or abrogated by the judicial council of the circuit in which the district is located. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public. In all cases not provided for by rule, the district judges and magistrates may regulate their practice in any manner not inconsistent with these rules or those of the district in which they act.

(As amended Apr. 29, 1985, eff. Aug. 1, 1985.)

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Rule 83, which has not been amended since the Federal Rules were promulgated in 1938, permits each district to adopt local rules not inconsistent with the Federal Rules by a majority of the judges. The only other requirement is that copies be furnished to the Supreme Court.

The widespread adoption of local rules and the modest procedural prerequisites for their promulgation have led many commentators to question the soundness of the process as well as the validity of some rules. See 12 C. Wright & A. Miller, *Federal Practice and Procedure: Civil* § 3152, at 217 (1973); Caballero, *Is There an Over-Exercise of Local Rule-Making Powers by the United States District Courts?*, 24 Fed. Bar News 325 (1977). Although the desirability of local rules for promoting uniform practice within a district is widely accepted, several commentators also have suggested reforms to increase the quality, simplicity, and uniformity of the local rules. See Note, *Rule 83 and the Local Federal Rules*, 67 Colum. L. Rev. 1251 (1967), and Comment, *The Local Rules of Civil Procedure in the Federal District Courts—A Survey*, 1966 Duke L.J. 1011.

The amended Rule attempts, without impairing the procedural validity of existing local rules, to enhance the local rulemaking process by requiring appropriate public notice of proposed rules and an opportunity to comment on them. Although some district courts apparently consult the local bar before promulgating rules, many do not, which has led to criticism of a process that has district judges consulting only with each other. See 12 C. Wright & A. Miller, *supra*, § 3152, at 217; Blair, *The New Local Rules for Federal Practice In Iowa*, 23 Drake L. Rev. 517 (1974). The new language subjects local rulemaking to scrutiny similar to that accompanying the Federal Rules, administrative rulemaking, and legislation. It attempts to assure that the expert advice of practitioners and scholars is made available to the district court before local rules are promulgated. See Weinstein, *Reform of Court Rule-Making Procedures* 84-87, 127-37, 151 (1977).

The amended Rule does not detail the procedure for giving notice and an opportunity to be heard since conditions vary from district to district. Thus, there is no explicit requirement for a public hearing, although a district may consider that procedure appropriate in all or some rulemaking situations. See generally, Weinstein, *supra*, at 117-37, 151. The new Rule does not foreclose any other form of consultation. For example, it can be accomplished through the mechanism of an "Advisory Committee" similar to that employed by the Supreme Court in connection with the Federal Rules themselves.

The amended Rule provides that a local rule will take effect upon the date specified by the district court and will remain in effect unless amended by the district court or abrogated by the judicial council. The effectiveness of a local rule should not be deferred until approved by the judicial council because that might unduly delay promulgation of a local rule that should become effective immediately, especially since some councils do not meet frequently. Similarly, it was thought that to delay a local rule's effectiveness for a fixed period of time would be arbitrary and that to require the judicial council to abrogate a local rule within a specified time would be inconsistent with its power under 28 U.S.C. § 332 (1976) to nullify a local rule at any time. The expectation is that the judicial council will examine all local rules, including those currently in effect, with an eye toward determining whether they are valid and consistent with the Federal Rules, promote inter-district uniformity and efficiency, and do not undermine the basic objectives of the Federal Rules.

The amended Rule requires copies of local rules to be sent upon their promulgation to the judicial council and the Administrative Office of the United States Courts rather than to the Supreme Court. The Supreme Court was the appropriate filing place in 1938, when Rule 83 originally was promulgated, but the establishment of the Administrative Office makes it a more logical place to develop a centralized file of local rules. This procedure is consistent with both the Criminal and the Appellate Rules. See Fed. R. Crim. P. 57(a); Fed. R. App. P. 47. The Administrative Office also will be able to provide improved utilization of the file because of its recent development of a Local Rules Index.

The practice pursued by some judges of issuing standing orders has been controversial, particularly among members of the practicing bar. The last sentence in Rule 83 has been amended to make certain that standing orders are not inconsistent with the Federal Rules or any local district court rules. Beyond that, it is hoped that each district will adopt procedures, perhaps by local rule, for promulgating and reviewing single-judge standing orders.

APPENDIX OF FORMS

Form 18-A. Notice and Acknowledgment for Service by Mail

United States District Court for the Southern District of New York

Civil Action, File Number ____

A. B., Plaintiff
v.
C.D., Defendant
} *Notice and Acknowledgment of Receipt of Summons and Complaint*

NOTICE

To: (insert the name and address of the person to be served.)

The enclosed summons and complaint are served pursuant to Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on (insert date).

____
Signature

____
Date of Signature

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned matter at (insert address).

____
Signature

____
Relationship to Entity/Authority to Receive Service of Process

____
Date of Signature

(As amended Apr. 29, 1985, eff. Aug. 1, 1985.)

Form 33. Notice of Right To Consent to the Exercise of Civil Jurisdiction by a Magistrate and Appeal Option

In accordance with the provisions of Title 28, U.S.C. § 636(c), you are hereby notified that the United States magistrates of this district court, in addition to their other duties, upon the consent of all parties in a civil case, may conduct any or all proceedings in a civil case including a jury or nonjury trial, and order the entry of a final judgment.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States magistrate must be entirely voluntary. Only if all the parties to the case consent to the reference to a magistrate will either the judge or magistrate to whom the case has been assigned be informed of your decision.

An appeal from a judgment entered by a magistrate may be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a magistrate may be taken directly to a district judge. Cases in which an appeal is taken to a district judge may be reviewed by the United States court of appeals for this judicial circuit only by way of petition for leave to appeal.

Copies of the Form for the "Consent to Proceed Before a United States Magistrate" and "Election of Appeal to a District Judge" are available from the clerk of the court.

(Added Apr. 28, 1983, eff. Aug. 1, 1983.)

Form 34. Consent To Proceed Before a United States Magistrate, Election of Appeal to District Judge, and Order of Reference

UNITED STATES DISTRICT COURT FOR

THE ________ DISTRICT OF ____________

____

Plaintiff,
vs.
Defendant.
} Docket No. ______

____

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE

In accordance with the provisions of Title 28, U.S.C. § 636(c), the parties to the above-captioned civil matter hereby voluntarily waive their rights to proceed before a judge of the United States district court and consent to have a United States magistrate conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment.

____

____

____
Date

ELECTION OF APPEAL TO DISTRICT JUDGE

[Do not execute this portion of the Consent Form if the parties desire that the appeal lie directly to the court of appeals.]

In accordance with the provisions of Title 28, U.S.C. § 636(c)(4), the parties elect to take any appeal in this case to a district judge.

____

____

____
Date

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-captioned matter be referred to United States Magistrate ________ for all further proceedings and the entry of judgment in accordance with Title 28, U.S.C. § 636(c) and the foregoing consent of the parties.

____
U.S. District Judge

Note: Return this form to the Clerk of the Court only if all parties have consented to proceed before a magistrate.

(Added Apr. 28, 1983, eff. Aug. 1, 1983.)

SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Since their promulgation in 1966, the Supplemental Rules for Certain Admiralty and Maritime Claims have preserved the special procedures of arrest and attachment unique to admiralty law. In recent years, however, these Rules have been challenged as violating the principles of procedural due process enunciated in the United States Supreme Court's decision in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), and later developed in *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974); and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975). These Supreme Court decisions provide five basic criteria for a constitutional seizure of property: (1) effective notice to persons having interests in the property seized, (2) judicial review prior to attachment, (3) avoidance of conclusory allegations in the complaint, (4) security posted by the plaintiff to protect the owner of the property under attachment, and (5) a meaningful and timely hearing after attachment.

Several commentators have found the Supplemental Rules lacking on some or all five grounds. *E.g.*, Batiza & Partridge, *The Constitutional Challenge to Maritime Seizures*, 26 Loy. L. Rev. 203 (1980); Morse, *The Conflict Between the Supreme Court Admiralty Rules and Sniadach-Fuentes: A Collision Course?*, 3 Fla. St. U.L. Rev. 1 (1975). The federal courts have varied in their disposition of challenges to the Supplemental Rules. The Fourth and Fifth Circuits have affirmed the constitutionality of Rule C. *Amstar Corp. v. S/S Alexandros T.*, 664 F.2d 904 (4th Cir. 1981); *Merchants National Bank of Mobile v. The Dredge General G. L.*

Gillespie, 663 F.2d 1338 (5th Cir. 1981), *cert. dismissed*, 456 U.S. 966 (1982). However, a district court in the Ninth Circuit found Rule C unconstitutional. *Alyeska Pipeline Service Co. v. The Vessel Bay Ridge*, 509 F. Supp. 1115 (D. Alaska 1981), *appeal dismissed*, 703 F.2d 381 (9th Cir. 1983). Rule B(1) has received similar inconsistent treatment. The Ninth and Eleventh Circuits have upheld its constitutionality. *Polar Shipping, Ltd. v. Oriental Shipping Corp.*, 680 F.2d 627 (9th Cir. 1982); *Schiffahartsgesellschaft Leonhardt & Co. v. A. Bottacchi S. A. de Navegacion*, 732 F.2d 1543 (11th Cir. 1984). On the other hand, a Washington district court has found it to be constitutionally deficient. *Grand Bahama Petroleum Co. v. Canadian Transportation Agencies, Ltd.*, 450 F. Supp. 447 (W.D. Wash. 1978). The constitutionality of both rules was questioned in *Techem Chem Co. v. M/T Choyo Maru*, 416 F. Supp. 960 (D. Md. 1976). Thus, there is uncertainty as to whether the current rules prescribe constitutionally sound procedures for guidance of courts and counsel. See generally Note, *Due Process in Admiralty Arrest and Attachment*, 56 Tex. L. Rev. 1091 (1978).

Due to the controversy and uncertainty that have surrounded the Supplemental Rules, local admiralty bars and the Maritime Law Association of the United States have sought to strengthen the constitutionality of maritime arrest and attachment by encouraging promulgation of local admiralty rules providing for prompt post-seizure hearings. Some districts also adopted rules calling for judicial scrutiny of applications for arrest or attachment. Nonetheless, the result has been a lack of uniformity and continued concern over the constitutionality of the existing practice. The amendments that follow are intended to provide rules that meet the requirements prescribed by the Supreme Court and to develop uniformity in the admiralty practice.

Rule B. Attachment and Garnishment: Special Provisions

(1) WHEN AVAILABLE; COMPLAINT, AFFIDAVIT, JUDICIAL AUTHORIZATION, AND PROCESS. With respect to any admiralty or maritime claim in personam a verified complaint may contain a prayer for process to attach the defendant's goods and chattels, or credits and effects in the hands of garnishees to be named in the process to the amount sued for, if the defendant shall not be found within the district. Such a complaint shall be accompanied by an affidavit signed by the plaintiff or his attorney that, to the affiant's knowledge, or to the best of his information and belief, the defendant cannot be found within the district. The verified complaint and affidavit shall be reviewed by the court and, if the conditions set forth in this rule appear to exist, an order so stating and authorizing process of attachment and garnishment shall issue. Supplemental process enforcing the court's order may be issued by the clerk upon application without further order of the court. If the plaintiff or his attorney certifies that exigent circumstances make review by the court impracticable, the clerk shall issue a summons and a process of attachment and garnishment and the plaintiff shall have the burden on a post-attachment hearing under Rule E(4)(f) to show that exigent circumstances existed. In addition, or in the alternative, the plaintiff may, pursuant to Rule 4(e), invoke the remedies provided by state law for attachment and garnishment or similar seizure of the defendant's property. Except for Rule E(8) these Supplemental Rules do not apply to state remedies so invoked.

[*See main edition for text of* (*2*) *and* (*3*)]

(As amended Apr. 29, 1985, eff. Aug. 1, 1985.)

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Rule B(1) has been amended to provide for judicial scrutiny before the issuance of any attachment or garnishment process. Its purpose is to eliminate doubts as to whether the Rule is consistent with the principles of procedural due process enunciated by the Supreme Court in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); and later developed in *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974); and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975). Such doubts were raised in *Grand Bahama Petroleum Co. v. Canadian Transportation Agencies, Ltd.*, 450 F. Supp. 447 (W.D. Wash. 1978); and *Schiffahartsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion*, 552 F. Supp. 771 (S.D. Ga. 1982), which was reversed, 732 F.2d 1543 (11th Cir. 1984). But compare *Polar Shipping Ltd. v. Oriental Shipping Corp.*, 680 F.2d 627 (9th Cir. 1982), in which a majority of the panel upheld the constitutionality of Rule B because of the unique commercial context in which it is invoked. The practice described in Rule B(1) has been adopted in some districts by local rule. E.g., N.D. Calif. Local Rule 603.3; W.D. Wash. Local Admiralty Rule 15(d).

The rule envisions that the order will issue when the plaintiff makes a prima facie showing that he has a maritime claim against the defendant in the amount sued for and the defendant is not present in the district. A simple oder with conclusory findings is contemplated. The reference to review by the "court" is broad enough to embrace review by a magistrate as well as by a district judge.

The new provision recognizes that in some situations, such as when the judge is unavailable and the ship is about to depart from the jurisdiction, it will be impracticable, if not impossible, to secure the judicial review contemplated by Rule B(1). When "exigent circumstances" exist, the rule enables the plaintiff to secure the issuance of the summons and process of attachment and garnishment, subject to a later showing that the necessary circumstances actually existed. This provision is intended to provide a safety valve without undermining the requirement of preattachment scrutiny. Thus, every effort to secure judicial review, including conducting a hearing by telephone, should be pursued before resorting to the exigent-circumstances procedure.

Rule B(1) also has been amended so that the garnishee shall be named in the "process" rather than in the "complaint." This should solve the problem presented in *Filia Compania Naviera, S.A. v. Petroship, S.A.*, 1983 A.M.C. 1 (S.D.N.Y. 1982), and eliminate any need for an additional judicial review of the complaint and affidavit when a garnishee is added.

Rule C. Actions in Rem: Special Provisions

[*See main edition for text of* (*1*) *and* (*2*)]

(3) JUDICIAL AUTHORIZATION AND PROCESS. Except in actions by the United States for forfeitures for federal statutory violations, the verified complaint and any supporting papers shall be reviewed by the court and, if the conditions for an action in rem appear to exist, an order so stating and authorizing a warrant for the arrest of the vessel or other property that is the subject of the action shall issue and be delivered to the clerk who shall prepare the warrant and deliver it to the marshal for service. If the property that is the subject of the action consists in whole or in part of freight, or

the proceeds of property sold, or other intangible property, the clerk shall issue a summons directing any person having control of the funds to show cause why they should not be paid into court to abide the judgement. Supplemental process enforcing the court's order may be issued by the clerk upon application without further order of the court. If the plaintiff or his attorney certifies that exigent circumstances make review by the court impracticable, the clerk shall issue a summons and warrant for the arrest and the plaintiff shall have the burden on a post-arrest hearing under Rule E(4)(f) to show that exigent circumstances existed. In actions by the United States for forfeitures for federal statutory violations, the clerk, upon filing of the complaint, shall forthwith issue a summons and warrant for the arrest of the vessel or other property without requiring a certification of exigent circumstances.

[*See main edition for text of* (*4*) *to* (*6*)]

(As amended Apr. 29, 1985, eff. Aug. 1, 1985.)

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Rule C(3) has been amended to provide for judicial scrutiny before the issuance of any warrant of arrest. Its purpose is to eliminate any doubt as to the rule's constitutionality under the *Sniadach* line of cases. *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974); and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975). This was thought desirable even though both the Fourth and the Fifth Circuits have upheld the existing rule. *Amstar Corp. v. S/S Alexandros T.*, 664 F.2d 904 (4th Cir. 1981); *Merchants National Bank of Mobile v. The Dredge General G. L. Gillespie*, 663 F.2d 1338 (5th Cir. 1981), *cert. dismissed*, 456 U.S. 966 (1982). A contrary view was taken by Judge Tate in the *Merchants National Bank* case and by the district court in *Alyeska Pipeline Service Co. v. The Vessel Bay Ridge*, 509 F. Supp. 1115 (D. Alaska 1981), *appeal dismissed*, 703 F.2d 381 (9th Cir. 1983).

The rule envisions that the order will issue upon a prima facie showing that the plaintiff has an action in rem against the defendant in the amount sued for and that the property is within the district. A simple order with conclusory findings is contemplated. The reference to review by the "court" is broad enough to embrace a magistrate as well as a district judge.

The new provision recognizes that in some situations, such as when a judge is unavailable and the vessel is about to depart from the jurisdiction, it will be impracticable, if not impossible, to secure the judicial review contemplated by Rule C(3). When "exigent circumstances" exist, the rule enables the plaintiff to secure the issuance of the summons and warrant of arrest, subject to a later showing that the necessary circumstances actually existed. This provision is intended to provide a safety valve without undermining the requirement of pre-arrest scrutiny. Thus, every effort to secure judicial review, including conducting a hearing by telephone, should be pursued before invoking the exigent-circumstances procedure.

The foregoing requirements for prior court review or proof of exigent circumstances do not apply to actions by the United States for forfeitures for federal statutory violations. In such actions a prompt hearing is not constitutionally required, *United States v. Eight Thousand Eight Hundred and Fifty Dollars*, 103 S.Ct. 2005 (1983); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974), and could prejudice the government in its prosecution of the claimants as defendants in parallel criminal proceedings since the forfeiture hearing could be misused by the defendants to obtain by way of civil discovery information to which they would not otherwise be entitled and subject the government and the courts to the unnecessary burden and expense of two hearings rather than one.

REFERENCES IN TEXT

The act of June 5, 1920, ch. 250, § 30, referred to in subd. (4), is section 30 of act June 5, 1920, ch. 250, 41 Stat. 988, as amended, known as the "Ship Mortgage Act, 1920", which is classified generally to chapter 25 (§ 911 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 984 of Title 46, Appendix, and Tables.

Rule E. Actions in Rem and Quasi in Rem: General Provisions

[*See main edition for text of* (*1*) *to* (*3*)]

(4) EXECUTION OF PROCESS; MARSHAL'S RETURN; CUSTODY OF PROPERTY; PROCEDURES FOR RELEASE.

[*See main edition for text of* (*a*) *to* (*e*)]

(*f*) *Procedure for Release From Arrest or Attachment.* Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules. This subdivision shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to Title 46, U.S.C. §§ 603 and 604[1] or to actions by the United States for forfeitures for violation of any statute of the United States.

[*See main edition for text of* (*5*) *to* (*9*)]

(As amended Apr. 29, 1985, eff. Aug. 1, 1985.)

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Rule E(4)(f) makes available the type of prompt post-seizure hearing in proceedings under Supplemental Rules B and C that the Supreme Court has called for in a number of cases arising in other contexts. See *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975); *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974). Although post-attachment and post-arrest hearings always have been available on motion, an explicit statement emphasizing promptness and elaborating the procedure has been lacking in the Supplemental Rules. Rule E(4)(f) is designed to satisfy the constitutional requirement of due process by guaranteeing to the shipowner a prompt post-seizure hearing at which he can attack the complaint, the arrest, the security demanded, or any other alleged deficiency in the proceedings. The amendment also is intended to eliminate the previously disparate treatment under local rules of defendants whose property has been seized pursuant to Supplemental Rules B and C.

The new Rule E(4)(f) is based on a proposal by the Maritime Law Association of the United States and on local admiralty rules in the Eastern, Northern, and Southern Districts of New York. E.D.N.Y. Local Rule 13; N.D.N.Y. Local Rule 13; S.D.N.Y. Local Rule 12. Similar provisions have been adopted by other maritime districts. E.g., N.D. Calif. Local Rule 603.4; W.D.

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[1] See References in Text note below.

La. Local Admiralty Rule 21. Rule E(4)(f) will provide uniformity in practice and reduce constitutional uncertainties.

Rule E(4)(f) is triggered by the defendant or any other person with an interest in the property seized. Upon an oral or written application similar to that used in seeking a temporary restraining order, see Rule 65(b), the court is required to hold a hearing as promptly as possible to determine whether to allow the arrest or attachment to stand. The plaintiff has the burden of showing why the seizure should not be vacated. The hearing also may determine the amount of security to be granted or the propriety of imposing counter-security to protect the defendant from an improper seizure.

The foregoing requirements for prior court review or proof of exigent cirumstances do not apply to actions by the United States for forfeitures for federal statutory violations. In such actions a prompt hearing is not constitutionally required, *United States v. Eight Thousand Eight Hundred and Fifty Dollars*, 103 S.Ct. 2005 (1983); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974), and could prejudice the government in its prosecution of the claimants as defendants in parallel criminal proceedings since the forfeiture hearing could be misused by the defendants to obtain by way of civil discovery information to which they would not otherwise be entitled and subject the government and the courts to the unnecessary burden and expense of two hearings rather than one.

REFERENCES IN TEXT

Sections 603 and 604 of Title 46, referred to in subd. (4)(f), were repealed by Pub. L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, section 1 of which enacted Title 46, Shipping.

RULES OF EVIDENCE FOR UNITED STATES COURTS AND MAGISTRATES

(As amended to January 1, 1986)

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 704. Opinion on Ultimate Issue

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

(As amended Pub. L. 98-473, title II, § 406, Oct. 12, 1984, 98 Stat. 2067.)

1984 AMENDMENT

Pub. L. 98-473 designated existing provisions as subd. (a), inserted "Except as provided in subdivision (b)", and added subd. (b).

ARTICLE XI. MISCELLANEOUS RULES

Rule 1101. Applicability of Rules

[*See main edition for text*]

(Pub. L. 93-595, § 1, Jan. 2, 1975, 88 Stat. 1947; Pub. L. 94-149, § 1(14), Dec. 12, 1975, 89 Stat. 806; Pub. L. 95-598, title II, §§ 251, 252, Nov. 6, 1978, 92 Stat. 2673; Pub. L. 97-164, title I, § 142, Apr. 2, 1982, 96 Stat. 45.)

REFERENCES IN TEXT

Section 4578 of the Revised Statutes (46 U.S.C. 679), referred to in subsec. (e), was repealed and reenacted as section 11104(b)-(d) of Title 46, Shipping, by Pub. L. 98-89, §§ 1, 2(a), 4(b), Aug. 26, 1983, 97 Stat. 500.

"An Act authorizing suits against the United States in admirality [sic] for damage caused by and salvage service rendered to public vessels belonging to the United States, and for other purposes," approved Mar. 3, 1925 (46 U.S.C. 781-790), referred to in subsec. (e), is act Mar. 3, 1925, ch. 428, 43 Stat. 1112, as amended, known as the "Public Vessels Act", which is classified generally to chapter 22 (§ 781 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 46, Appendix, and Tables.

1978 AMENDMENT

Subd. (a). Pub. L. 95-598, § 252, directed the amendment of this subd. by adding "the United States bankruptcy courts," after "the United States district courts,", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Pub. L. 95-598, § 251(a), struck out ", referees in bankruptcy," after "United States magistrates".

Subd. (b). Pub. L. 95-598, § 251(b), substituted "title 11, United States Code" for "the Bankruptcy Act".

RULES OF THE UNITED STATES CLAIMS COURT

(Effective October 1, 1982, as revised February 15, 1984, and amended to January 1, 1986)

General Order No. 1

General Order No. 1 of the United States Claims Court, October 7, 1982, provided that:

"The United States Claims Court inherits substantially all of the jurisdiction, caseload and grand tradition of the United States Court of Claims. To assure continuity in carrying out the business of the court, and to promote the interests of justice and service to the public, it is ordered as follows:

"(1) All published decisions of the United States Court of Claims are accepted as binding precedent for the United States Claims Court, unless and until modified by decisions of the United States Court of Appeals for the Federal Circuit or the United States Supreme Court.

"(2) Every order, decision and ruling entered by the trial or appellate divisions of the United States Court of Claims in cases now pending before the United States Claims Court is adopted in its entirety and will be given full force and effect, unless and until a judge of the United States Claims Court determines such order should be modified, amended or rescinded.

"(3) The United States Claims Court will be the custodian of all records of the United States Court of Claims.

"(4) The United States Claims Court will provide for the publication of all United States Court of Claims decisions which have been certified for publication in the United States Court of Claims Reporter."

General Order No. 3

IT IS ORDERED that the attached rules [set out below] are adopted as the Rules of the United States Claims Court effective October 1, 1982.

October 7, 1982

By the Court
Alex Kozinski
Chief Judge

General Order No. 9

IT IS ORDERED this date that the attached rules [set out below] are adopted as the Rules of the United States Claims Court effective February 15, 1984.

January 27, 1984

By the Court
Alex Kozinski
Chief Judge

General Order No. 11

IT IS ORDERED this date that the attached rules [set out below] are adopted as the Rules of the United States Claims Court effective November 1, 1985.

October 28, 1985

By the Court
Alex Kozinski
Chief Judge

RULES

TITLE I. SCOPE OF RULES—ONE FORM OF ACTION

Rule

1. Scope of Rules.
   - (a) Scope.
   - (b) Federal Rules of Civil Procedure.
2. One Form of Action.

TITLE II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

3. Commencement of Action.
   - (a) Complaint; Filing Period.
   - (b) Date of Filing.
   - (c) Copies.
4. Process.
   - (a) Service upon the United States.
   - (b) Copies.
   - (c) Proof and Date of Service.
5. Service and Filing of Other Papers.
   - (a) Service; When Required.
   - (b) Same; How Made.
   - (c) Filing.
   - (d) Filing with the Court Defined.
   - (e) Proof of Service.
6. Time.
   - (a) Computation.
   - (b) Enlargement.
   - (c) Additional Time After Service by Mail.
   - (d) When Time Begins To Run.

TITLE III. PLEADINGS AND MOTIONS

7. Pleadings Allowed; Form of Motions.
   - (a) Pleadings.
   - (b) Motions and Other Papers.
   - (c) Demurrers, Pleas, Etc., Abolished.
8. General Rules of Pleading.
   - (a) Claims for Relief.
   - (b) Defenses; Form of Denials.
   - (c) Affirmative Defenses.
   - (d) Effect of Failure To Deny.
   - (e) Pleading To Be Concise and Direct; Consistency.
   - (f) Construction of Pleadings.
9. Pleading Special Matters.
   - (a) Capacity.
   - (b) Fraud, Mistake, Condition of the Mind.
   - (c) Conditions Precedent.
   - (d) Official Document or Act.
   - (e) Judgment.
   - (f) Time and Place.
   - (g) Special Damage.

Rule

- (h) Special Matters Required in Complaint.

10. Form of Pleadings.
- (a) Caption; Names of Parties.
- (b) Paragraphs; Separate Statements.
- (c) Adoption by Reference; Exhibits.

11. Signing of Pleadings, Motions, and Other Papers; Sanctions.

12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings.
- (a) When Presented.
- (b) How Presented.
- (c) Motion for Judgment on the Pleadings.
- (d) Preliminary Hearings.
- (e) Motion for More Definite Statement.
- (f) Motion To Strike.
- (g) Consolidation of Defenses in Motion.
- (h) Waiver of Preservation of Certain Defenses.
- (i) Suspension of Discovery.

13. Counterclaim.
- (a) Compulsory Counterclaims.
- (b) Permissive Counterclaims.
- (c) Counterclaim Exceeding Opposing Claim.
- (d) Counterclaim Against the United States [not used].
- (e) Counterclaim Maturing or Acquired After Pleading.
- (f) Omitted Counterclaim.
- (g) Cross-Claim Against Co-Party [not used].
- (h) Joinder of Additional parties [not used].
- (i) Separate Trials; Separate Judgments.

14. Third-Party Practice.
- (a) When Third Parties May Be Brought In.
- (b) Content of Motion for Notice to Third Parties.
- (c) Issuance and Service of Notice.
- (d) Service of Notice by Publication.
- (e) Contents of Motion for Summons to Third Parties.
- (f) Issuance and Service of Summons.
- (g) Pleadings of Third Parties.

15. Amended and Supplemental Pleadings.
- (a) Amendments.
- (b) Amendments To Conform to the Evidence.
- (c) Relation Back of Amendments.
- (d) Supplemental Pleadings.
- (e) Form and Filing.

16. Pretrial Conferences; Scheduling; Management.
- (a) Pretrial Conferences; Objectives.
- (b) Scheduling and Planning.
- (c) Subjects To Be Discussed at Pretrial Conferences.
- (d) Final Pretrial Conference.
- (e) Pretrial Orders.
- (f) Sanctions.

TITLE IV. PARTIES

17. Parties Plaintiff and Defendant; Capacity.
- (a) Real Party in Interest.
- (b) Capacity To Sue or Be Sued.
- (c) Infants or Incompetent Persons.

18. Joinder of Claims and Remedies.
- (a) Joinder of Claims.
- (b) Joinder of Remedies.

19. Joinder of Persons Needed for Just Adjudication.
- (a) Persons To Be Joined If Feasible.
- (b) Determination by Court Whenever Joinder Not Feasible.

Rule

- (c) Pleading Reasons for Nonjoinder.
- (d) Exception of Class Actions.

20. Permissive Joinder of Parties.
- (a) Permissive Joinder.
- (b) Separate Trials.

21. Misjoinder and Non-Joinder of Parties.

23. Class Actions.

24. Intervention.
- (a) Intervention of Right.
- (b) Permissive Intervention.
- (c) Procedure.

25. Substitution of Parties.
- (a) Death.
- (b) Incompetency.
- (c) Transfer of Interest.
- (d) Public Officers; Death or Separation from Office [not used].

TITLE V. DEPOSITIONS AND DISCOVERY

26. General Provisions Governing Discovery.
- (a) Discovery Methods.
- (b) Discovery Scope and Limits.
- (c) Protective Orders.
- (d) Sequence and Timing of Discovery.
- (e) Supplementation of Responses.
- (f) Discovery Conference.
- (g) Signing of Discovery Requests, Responses, and Objections.

27. Discovery To Perfect Complaint or Pending Appeal.
- (a) Preliminary Complaint.
- (b) Pending Appeal.
- (c) Perpetuation by Action [not used].

28. Persons Before Whom Depositions May Be Taken.
- (a) Within the United States.
- (b) In Foreign Countries.
- (c) Disqualification for Interest.
- (d) Fees.

29. Stipulations Regarding Discovery Procedure.

30. Depositions upon Oral Examination.
- (a) When Depositions May Be Taken.
- (b) Notice of Examination: General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.
- (c) Examination and Cross-Examination; Record of Examination: Oath; Objections.
- (d) Motion To Terminate or Limit Examination.
- (e) Submission To Witness; Changes; Signing.
- (f) Certification and Filing by Officer; Exhibits; Copies; Notice of Completion.
- (g) Failure To Attend or To Serve Subpoena; Expenses.

31. Depositions upon Written Questions.
- (a) Serving Questions; Notice.
- (b) Officer To Take Responses and Prepare Record.
- (c) Notice of Receipt.

32. Use of Depositions in Court Proceedings.
- (a) Use of Depositions.
- (b) Objections to Admissibility.
- (c) Effect of Taking or Using Depositions [not used].
- (d) Effect of Errors and Irregularities in Depositions.

33. Interrogatories to Parties.
- (a) Availability; Procedures for Use.
- (b) Scope; Use at Trial.
- (c) Option To Produce Business Records.

Rule
- 34. Production of Documents and Things and Entry upon Land for Inspection and Other Purposes.
  - (a) Scope.
  - (b) Procedure.
  - (c) Persons Not Parties [not used].
  - (d) Calls.
- 35. Physical and Mental Examination of Persons.
  - (a) Order for Examination.
  - (b) Report of Examining Physician.
- 36. Requests for Admission.
  - (a) Request for Admission.
  - (b) Effect of Admission.
- 37. Failure To Make or Cooperate in Discovery; Sanctions.
  - (a) Motion for Order Compelling Discovery.
  - (b) Failure To Comply with Order.
  - (c) Expenses on Failure To Admit.
  - (d) Failure of Party To Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.
  - (e) Subpoena of Person in Foreign Country [not used].
  - (f) Expenses Against United States [not used].
  - (g) Failure To Participate in the Framing of a Discovery Plan.

TITLE VI. TRIALS

- 39. Trial.
  - (a) By the Court.
  - (b) Reporting Arrangements; Return of Transcript.
- 40. Assignment of Cases for Trial.
- 41. Dismissal of Actions.
  - (a) Voluntary Dismissal; Effect Thereof.
  - (b) Involuntary Dismissal; Effect Thereof.
  - (c) Dismissal of Counterclaim or Third-Party Claim.
  - (d) Costs of Previously Dismissed Action.
- 42. Consolidation; Separate Trials.
  - (a) Consolidation.
  - (b) Separate Trials.
  - (c) Separate Determination of Liability.
- 43. Taking of Testimony.
  - (a) Form.
  - (b) Affirmation in Lieu of Oath.
  - (c) Evidence on Motions.
  - (d) Interpreters.
- 44. Proof of Official Record.
  - (a) Authentication.
  - (b) Lack of Record.
  - (c) Other Proof.
  - (d) Proof of Rules and Regulations.
- 44.1. Determination of Foreign Law.
- 45. Subpoena.
  - (a) For Attendance of Witnesses: Form; Issuance.
  - (b) For Production of Documentary Evidence.
  - (c) Service.
  - (d) Subpoena for Taking Depositions; Place of Examination.
  - (e) Subpoena for a Hearing or Trial.
  - (f) Contempt.
- 46. Exceptions Unnecessary.
- 52. Findings by the Court.
  - (a) Effect.
  - (b) Amendment.
- 53. Masters.
  - (a) Appointment and Compensation.
  - (b) Reference.
  - (c) Powers.
  - (d) Proceedings.
  - (e) Report.

TITLE VII. JUDGMENT

- 54. Judgments; Costs.
  - (a) Definition; Form.
  - (b) Judgment upon Multiple Claims or Involving Multiple Parties.
  - (c) Demand for Judgment.
  - (d) Costs.
- 55. Default.
  - (a) Entry.
  - (b) Judgment.
  - (c) Setting Aside Default.
  - (d) Plaintiffs; Counterclaimants.
  - (e) Judgment Against the United States.
- 56. Summary Judgment.
  - (a) For Claimant.
  - (b) For Defending Party.
  - (c) Motion and Proceedings Thereon.
  - (d) Procedures.
  - (e) Case Not Fully Adjudicated on Motion.
  - (f) Form of Affidavits; Further Testimony; Defense Required.
  - (g) When Affidavits Are Unavailable.
  - (h) Affidavits Made in Bad Faith.
- 57. Declaratory Judgments.
- 58. Entry of Judgment.
- 59. New Trials; Rehearings; Amendment of Judgments; Reconsideration.
  - (a) Grounds.
  - (b) Time for Motion and Response.
  - (c) On Initiative of Court.
  - (d) Motion To Alter or Amend a Judgment.
- 60. Relief from Judgment or Order.
  - (a) Clerical Mistakes.
  - (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.
- 60.1. Remand; Extension or Termination of Stay of Proceedings on Remand; Disposition of Case.
  - (a) Remand.
  - (b) Extension or Termination of Stay of Proceedings on Remand; Disposition of Case.
- 61. Harmless Error.
- 62. Stay of Proceedings To Enforce a Judgment.
  - (a) Automatic Stay; Exceptions—Injunctions and Patent Accountings.
  - (b) Stay on Motion for New Trial or for Judgment.
  - (c) Injunction Pending Appeal.
  - (d) Stay upon Appeal.
  - (e) Stay in Favor of the United States or Agency Thereof.
  - (f) Power of Appellate Court Not Limited.
  - (g) Stay of Judgment as to Multiple Claims or Multiple Parties.
- 63. Disability or Disqualification of a Judge.
  - (a) Disability.
  - (b) Voluntary Disqualification.
  - (c) Affidavit of Bias or Prejudice.

TITLE VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

- 65. Injunctions.
  - (a) Preliminary Injunction.
  - (b) Temporary Restraining Order; Notice; Hearing; Duration.
  - (c) Security.
  - (d) Form and Scope of Injunction or Restraining Order.
  - (e) Employer and Employee.
  - (f) Procedures.

Rule
65.1. Security: Proceedings Against Sureties.
    (a) Proceedings.
    (b) Sureties.
68. Offer of Judgment.

TITLE IX. APPEALS

72. Notice of Appeal.

TITLE X. COURT AND CLERK

77. Court and Clerk.
    (a) Name.
    (b) Seal.
    (c) Court Always Open.
    (d) Citations.
    (e) Judicial Power.
    (f) Assignment of Cases.
    (g) Signing of Orders for Absent Judges.
    (h) Trials and Hearings; Orders in Chambers.
    (i) Clerk's Office and Orders by Clerk.
    (j) Notice of Orders or Judgments.
    (k) Fee Schedule.
    (l) Scheduling Courtrooms.
    (m) Officers and Employees of the Court; Practice of Law.
77.1. Case Management.
    (a) Responsibility.
    (b) Scheduling.
77.2. Clerk Authorized To Act on Certain Motions.
    (a) Motions Enumerated.
    (b) Maximum Time Allowable.
    (c) Denial of Motions for Enlargement.
    (d) Review by the Court.
77.3. Withdrawal of Papers and Exhibits.
    (a) Temporary Withdrawal.
    (b) Withdrawal for Trial.
    (c) Permanent Withdrawal.
    (d) Physical Exhibits.
77.4. Taxation of Costs.
    (a) Filing Bill of Costs.
    (b) Objections.
    (c) Costs in Settlements.
78. Motions Day.
79. Books and Records Kept by the Clerk and Entries Therein.
    (a) Docket.
    (b) Judgments and Orders.
    (c) Indices; Calendars.
    (d) Other Books and Records of the Clerk.
80. Reporter; Record or Transcript as Evidence.
    (a) Reporter.
    (b) Preparation of Transcript and Exhibits.
    (c) Copies of Transcript.
    (d) Report or Transcript as Evidence.

TITLE XI. GENERAL PROVISIONS

81. Attorneys.
    (a) Attorneys Eligible To Practice.
    (b) Admission to Practice.
    (c) Disbarment.
    (d) Attorneys of Record.
    (e) Application for Attorneys' Fees and Expenses.
82. Form, Size and Duplication of all Papers.
    (a) General.
    (b) Duplication.
    (c) Form and Size.
    (d) Date.
    (e) Telephone Number.
83. Number of Copies.
83.1. Content of Briefs or Memoranda; Length of Briefs or Memoranda.
    (a) Content of Briefs or Memoranda.
    (b) Length of Briefs or Memoranda.
83.2. Time for Filing.
    (a) Responses and Objections.

Rule
    (b) Replies.
    (c) Motions Under Rules 12(b), 12(c) and 56.
    (d) Leave of Court.
    (e) Cross-motions.
    (f) Reconsideration of Orders.
84. Transfers and Referrals.
    (a) Transfers from Other Courts.
    (b) Referral of Cases by the Comptroller General.
85. Title.
86. Effective Date.

APPENDICES

A. Instructions to Reporters; Forms.
B. Procedures for Processing Complaints of Judicial Misconduct Pursuant to 28 U.S.C. § 372(c).
C. Procedure in Common Carrier Cases.
D. Procedure in Congressional Reference Cases (28 U.S.C. §§ 1492, 2509).
E. Application for Attorneys' Fees Under Equal Access to Justice Act.
F. United States Claims Court Rules of Disciplinary Enforcement.
G. Procedures Before Trial.
H. Motions.
I. Bill of Costs.

* * * * *

The rules of the United States Claims Court are based upon the Federal Rules of Civil Procedure. (Fed. R. Civ. P. or the Federal Rules). For ease of reference to rulings in Federal Rules Decisions on comparable rules, chapter titles and rule numbers of the Claims Court rules follow closely the Fed. R. Civ. P. Amendments and additions to the Federal Rules have been made as required to give effect to the jurisdictional differences of the Claims Court. Federal Rules which are not applicable to the Claims Court have been omitted, and subdivisions of the Federal Rules that have not been used, either in amended or supplemented form, are so designated.

Federal Rules of Civil Procedure Omitted

Rule
22. Interpleader.
23.1. Derivative Actions by Shareholders.
23.2. Actions Relating to Unincorporated Associations.
38. Jury Trial of Right.
47. Jurors.
48. Juries of Less than Twelve—Majority Verdict.
49. Special Verdicts and Interrogatories.
50. Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict.
51. Instructions to Jury; Objection.
64. Seizure of Person or Property.
66. Receivers Appointed by Federal Courts.
67. Deposit in Court.
69. Execution.
70. Judgment for Specific Acts; Vesting Title.
71. Process in Behalf of and Against Persons Not Parties.
71A. Condemnation of Property.
73. Appeal to a Court of Appeals.
74. Joint Appeals to the Supreme Court or to a Court of Appeals.
75. Record on Appeal to a Court of Appeals.

Rule
76. Record on Appeal to a Court of Appeals; Agreed Statement.

* * * * *

RULES OF THE UNITED STATES CLAIMS COURT

The United States Claims Court was created by the Federal Courts Improvement Act of 1982 (Pub. L. No. 97-164, 96 Stat. 25 (1982)). It inherited substantially all of the jurisdiction formerly exercised by the United States Court of Claims. Section 139(b)(1) of the Act, 28 U.S.C. § 2503(b), authorizes the United States Claims Court to prescribe rules of practice and procedure for its proceedings.

TITLE I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. Scope of Rules

(a) Scope. (1) These rules govern all proceedings in actions filed in the United States Claims Court on or after October 1, 1982, and all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending on October 1, 1982, would not be feasible or would work an injustice. In such event the court by order shall adapt the prior procedures of the United States Court of Claims as required. These rules shall be cited as "RUSCC." (2) These rules shall be construed to secure the just, speedy, and inexpensive determination of every action. (3) In all cases not provided for by rule, a judge may regulate the applicable practice in any manner not inconsistent with these rules.

(b) Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure applicable to civil actions tried by the court sitting without a jury and in effect on August 1, 1985, have been incorporated in these rules to the extent that they appropriately can be applied to proceedings in this court.

Rule 2. One Form of Action

There shall be one form of action to be known as a "civil action."

TITLE II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencement of Action

(a) Complaint; Filing Period. A civil action in this court shall be commenced by filing a complaint with the Clerk of the Court. *See* Rule 77(f)(2).

(b) Date of Filing. (1) The records of the clerk, including the date stamped on the complaint, shall be final and conclusive evidence of the date on which a complaint was filed, in the absence of the filing and allowance of a motion under subdivision (b)(2) of this rule.

(2)(A) A party plaintiff who contends that the effective date of his complaint should properly be a date earlier than that shown by the clerk's records may seek a corrective order from the court by means of a motion.

(B) Upon motion of a party plaintiff supported by a proper showing that the clerk's records are factually incorrect, the court will correct the records by order.

(C) In a situation where a complaint is stamped by the clerk after the last date allowed by a statute of limitations for the filing of the complaint, if the complaint was received by the clerk through the mail, it may, by order of court, upon motion of the party plaintiff, be deemed to have been filed on the last date allowed if there is a proper showing (i) that the complaint was sent by registered or certified mail, properly addressed to the clerk of the court at 717 Madison Place, N.W., Washington, D.C. 20005, and with return receipt requested; (ii) that it was deposited in the mail sufficiently in advance of the last date allowed for filing to provide for receipt by the clerk on or before such date in the ordinary course of the mail; and (iii) that the party plaintiff as sender exercised no control over the mailing between the deposit of the complaint in the mail and its delivery.

(c) Copies. Plaintiff shall file an original and 7 copies of the complaint. *See* Rule 83.

Rule 4. Process

(a) Service upon the United States. Service of the complaint upon the United States shall be made through the delivery by the clerk of the court to the Attorney General, or to an agent designated by authority of the Attorney General, of copies of the complaint in numbers prescribed by subdivision (b) of this rule.

(b) Copies. The clerk shall serve on the Attorney General or his designated agent 5 copies of the complaint.

(c) Proof and Date of Service. At the time the clerk serves a complaint the clerk shall enter the fact of service on the docket, and such entry shall be prima facie evidence of service. For the purposes of this rule, the date of service shall be the date of filing with the clerk.

Rule 5. Service and Filing of Other Papers

(a) Service; When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties.

(b) Same; How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing, but filing is not.

(c) Filing. All papers after the complaint required to be served upon a party shall be filed with the court, except that depositions upon oral examination and notices thereof, written questions, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless on order of court. *See* Rule 83.

(d) Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. All matters are to be brought to the attention of a judge through formal filings rather than by correspondence; letters are not to be directed to a judge unless specifically requested.

(e) Proof of Service. (1) Service shall be made by the party, attorney of record or any other person acting under the attorney of record's direction. The person making service shall execute a certificate of service that contains the following information:

(A) the day and manner of service;

(B) the person and/or entity served; and

(C) the method of service employed (*e.g.*, personal, mail, substituted, etc.).

(2) The certificate of service shall be attached to the original document and copies thereof. If service other than by mail is used and it is impractical to attach the certificate at time of filing, such certificate may be filed subsequently.

(3) The court may at any time allow the certificate to be amended or supplied unless to do so would result in material prejudice to the substantial rights of any party.

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(i), "legal holiday" includes New Year's Day, Inauguration Day, King's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, or any other day appointed as a holiday by the President or the Congress of the United States.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) order the period enlarged if request therefor is made by motion showing good cause before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 52(b), 59(b), (d), and (e), and 60(b), except to the extent and under the conditions stated in them. Every motion for enlargement of time must set forth therein the specific number of additional days requested, the date to which the enlargement is to run, the extent to which the time for the performance of the particular act has been previously enlarged, and the reason or reasons upon which the motion for enlargement is based. Motions for enlargement will not be granted on the basis of nonspecific assertions that counsel has been delayed because of the press of other business. Where a motion for enlargement is based on the occurrence of some unanticipated event, counsel must file the motion promptly upon learning of the event. In general, motions for enlargement must be filed at the earliest practicable time and make a persuasive showing that counsel has been working on the matter diligently or has been prevented from doing so by significant matters beyond counsel's control. Motions for enlargements of time must contain a representation that the moving party has discussed the motion with opposing counsel and a statement whether an opposition will be filed or, if opposing counsel cannot be consulted, an explanation of the efforts made to do so.

(c) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a paper except a court order, and the service is made by mail, 3 days shall be added to the prescribed period.

(d) When Time Begins To Run. In computing any period of time prescribed or allowed by these rules, or by order of court, or by any applicable statute, the period of time shall commence to run on the day after the service of a paper or the filing of a court order, unless otherwise particularly specified in these rules.

TITLE III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions

(a) Pleadings. There shall be a complaint and an answer; and if the answer contains a counterclaim or offset or a plea of fraud, there shall be a reply thereto. There shall be such third-party pleadings as are permitted by Rule 14. No other pleading shall be allowed, except that the court may order a reply to an answer, or a responsive pleading to a third-party complaint or answer.

(b) Motions and Other Papers. (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought, and shall comply with Appendix H. Any motion, objection, or response may be accompanied by a brief or memorandum, and, if necessary, by supporting affidavits. Any motion may be accompanied by a proposed order.

(2) The rules applicable to captions, and other matters of form of pleadings apply to all motions and other papers provided for by these rules. *See* Rules 10(a), 82, 83.1.

(3) All motions shall be signed in accordance with Rule 11. *See* Rule 83.

(c) **Demurrers, Pleas, Etc., Abolished.** Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

Rule 8. General Rules of Pleading

(a) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) **Defenses; Form of Denials.** A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specifiy so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) **Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) **Effect of Failure To Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) **Pleading To Be Concise and Direct; Consistency.** (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) **Construction of Pleadings.** All pleadings shall be so construed as to do substantial justice.

Rule 9. Pleading Special Matters

(a) **Capacity.** It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) **Fraud, Mistake, Condition of the Mind.** In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) **Conditions Precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) **Official Document or Act.** In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) **Judgment.** In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) **Time and Place.** For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(h) Special Matters Required in Complaint. The complaint shall include:

(1) *Action by Other Tribunal or Body.* Any action on the claim taken by Congress or by any department or agency of the United States, or in any judicial proceeding, including any in the Tax Court of the United States.

(2) *Citations of Statutes, Regulations, Orders.* A clear citiation of the Act of Congress, regulation of an executive department or agency, or Executive order of the President, where the claim is founded upon such an act, regulation, or order.

(3) *Contracts or Treaties.* If the claim is founded upon a contract or treaty with the United States, a description of the contract or treaty sufficient to identify it. In addition, the plaintiff shall plead the substance of those portions of the contract or treaty on which he relies or, at his election, annex to the complaint a copy of the contract or treaty, indicating the provisions thereof on which he relies.

(4) *Patent Suits.* In any patent suit, the claim or claims of the patent or patents alledged to be infringed.

(5) *Ownership of Claim; Assignment.* Where the plaintiff is the owner by assignment or other transfer of the claim, in whole or in part, when and upon what consideration the assignment or transfer was made.

(6) *Tax Refund Suits.* In any action for refund of federal tax, for each tax year or period for which a refund is sought, the amount, date, and place of each payment to be refunded; the date and place the return (if any) was filed; the name and address of the taxpayer or taxpayers appearing on the tax return; the date and place the claim for refund was filed; the name and address of the taxpayer or taxpayers appearing on the claim; and the identification number shown on the return for each plaintiff.

Rule 10. Form of Pleadings

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties (*See* Rule 20(a)), the United States being designated as the party defendant in every case, but in other pleadings and other papers it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes unless otherwise indicated, but the adverse party shall not be deemed to have admitted the truth of the allegations in such exhibit merely because he has failed to deny them explicitly.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by the attorney of record in his individual name, whose address and telephone number shall be stated. *See* Rule 83. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Any stipulation for a money judgment shall be signed by an authorized representative of the Attorney General. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

(a) When Presented. The United States shall file its answer to the complaint within 60 days after the service of the pleading in which the claim is asserted. After service of an answer containing a counterclaim, offset, or plea of fraud, plaintiff shall have 20 days within which to file a reply to the counterclaim, offset or plea of fraud. If a reply to an answer or a responsive pleading to a third-party complaint or answer is ordered by the court, the reply or responsive pleading shall be filed within 20 days after service of the order unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time, as follows, unless a different time is fixed by order of the court: (1) if the court denies or partially denies or partially allows the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be filed within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be filed within 10 days after the service of the more definite statement.

(b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4) failure to state a claim upon which relief can be granted. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (4) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) **Motion for Judgment on the Pleadings.** After the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) **Preliminary Hearings.** The defenses specifically enumerated (1)-(4) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) **Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleadings. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) **Motion To Strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) **Consolidation of Defenses in Motion.** A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) **Waiver of Preservation of Certain Defenses.**

(1) A defense of lack of jurisdiction over the person or insufficiency of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, and an objection of failure to state a legal defense to a claim, may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(i) **Suspension of Discovery.** The filing of a motion pursuant to Rules 12(b), 12(c), or 56 shall not suspend discovery unless for good cause shown on separate motion the court in its discretion so orders.

Rule 13. Counterclaim

(a) **Compulsory Counterclaims.** The answer shall state as a counterclaim any claim which, at the time of serving the answer, the defendant has against any plaintiff, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the answer need not state the claim if at the time the action was commenced the claim was the subject of another pending action.

(b) **Permissive Counterclaims.** The answer may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) **Counterclaim Exceeding Opposing Claim.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amoun or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the United States. [Not used.]

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the defendant after serving its pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When the defendant fails to set up a counterclaim through oversight, inadvertence or excusable neglect, or when justice requires, it may by leave of court set up the counterclaim by amendment.

(g) Cross-Claim Against Co-Party. [Not used.]

(h) Joinder of Additional Parties. [Not used.]

(i) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 14. Third-Party Practice

(a) When Third Parties May Be Brought In. (1) The court, on its own motion or on the motion of a party, may notify any person with legal capacity to sue and be sued and who is alleged to have an interest in the subject matter of any pending action to appear as a party and assert his interest (if any) therein.

(2) On motion of the United States, the court may summon any third person against whom the United States may be asserting a claim or contingent claim for the recovery of money paid by the United States in respect of the transaction or matter which constitutes the subject matter of the suit to appear as a party and defend his interest, if any, in such suit.

(3) A motion made by the plaintiff under subdivision (a)(1) hereof shall be filed at the time the complaint is filed. Copies and service of such a motion shall be as provided in Rules 3(c) and 4. A motion made by the United States under subdivision (a)(1) or (2) hereof shall be filed on or before the date on which the answer is required to be filed. For good cause shown, the court may allow any such motion to be filed at a later time.

(b) Content of Motion for Notice to Third Parties. A party desiring to bring in a third party pursuant to subdivision (a)(1) of this rule shall file with the clerk a written motion which shall

(1) state the name and address of such person, if known;

(2) if the address of such person is unknown, or if such person resides outside the jurisdiction of the United States, or there is good reason why service on such person cannot be had, be accompanied by an affidavit showing why service cannot be had on such person and stating the last-known address of such person; and

(3) set forth the interest which such person appears to have in the action.

(c) Issuance and Service of Notice. (1) If the court, on its own motion or on the motion of a party, orders any third person to be notified pursuant to subdivision (a)(1) of this rule, the clerk shall issue an original and 1 copy of the notice for each third person to be notified. The notice shall contain the names of the parties and a statement of the time within which such third person may appear and shall state that in case the third party fails to appear and assert a claim in the subject matter of the action, his claim or interest therein shall forever be barred. The notice shall indicate that it is accompanied by a copy of the pleadings, which shall be attached by the moving party.

(2) Upon the issuance of such notice upon motion of a party, the notice shall be delivered by the clerk to the moving party, who shall at his expense cause the same to be served on the person to be notified by registered or certified mail, return receipt requested, with the moving party to file with the clerk the return of such service, which return shall include the copy of the notice with return receipt attached.

(3) When the court directs the issuance of a notice to a third person on its own motion, each of the existing parties shall, on request of the clerk, deliver to the clerk a sufficient number of copies of pleadings filed by such party to provide the third party to be notified with a copy of each of such pleadings, and the clerk shall forthwith issue such notice as specified in subdivision (c)(1) of this rule and shall forward the same with accompanying copies of the pleadings to the Attorney General for service as provided in subdivision (c)(2) of this rule.

(4) When service of the notice required by subdivision (c)(1) hereof is to be effected upon a third person in a foreign country, service of the notice may be made by the moving party or the court (as required by subdivisions (c)(2) and (3) hereof), and proof of such service may be made in the manner authorized by Rule 4(i) of the Federal Rules of Civil Procedure.

(d) Service of Notice by Publication. Where, upon motion of a party, the court under subdivision (a)(1) of this rule directs the issuance of a notice to a person upon whom service cannot be had, the moving party shall cause such notice to be published in a newspaper of general circulation in a place designated in the order, for a specified time, not less than once in each of 4 successive weeks. On or before the day of the first publication, the moving party shall send a copy of the notice by registered or certified mail to such person at his last-known address and shall file with the clerk an affidavit showing such mailing. The moving party shall procure an affidavit of the publisher showing that publication of the notice has been had as required by the order and shall file such affidavit with the clerk, who shall make an entry on his docket that publication has been had. The affidavit of mailing and the publisher's affidavit, together with the clerk's entry, shall constitute proof of service by publication. Service shall be deemed complete on the date of the last publication. The costs of such service by publication shall be paid by the party at whose instance it was made.

(e) Contents of Motion for Summons to Third Parties. When the United States is asserting a claim for damages or other demand against a third person for the recovery of money paid by the

United States in respect of the transaction or matter which constitutes the subject matter of any pending action and desires to have such third person brought in pursuant to subdivision (a)(2) of this Rule 14, it shall file a written motion, which shall comply with the requirements of subdivision (b) of this rule and which shall be accompanied by an appropriate pleading setting forth the claim or contingent claim which it is asserting against such third person.

(f) Issuance and Service of Summons. If the court, on motion of the United States, summons a third person pursuant to subdivision (a)(2) of this rule to answer a claim or contingent claim asserted by the United States, the clerk shall issue an original and 1 copy of such summons for each person to be summoned. The summons shall contain the names of the parties and a statement of the time within which the party summoned is required to appear and answer. The summons shall also state that the United States is asserting a claim against such person, as described in the accompanying pleading of the United States, and shall further state that if such third person fails to appear and answer the claim asserted by the United States, judgment *pro confesso* may be entered against such third person upon the claim of the United States to the same extent as if said third person had appeared and admitted the truth of all the allegations made on behalf of the United States. The summons shall indicate that it is accompanied by a copy or copies of all pleadings filed in said action, naming such pleadings which shall be attached by the moving party. Upon issuance of the summons, the clerk shall deliver the summons to the Attorney General for personal service and the return of such service shall be made directly to the clerk of this court.

(g) Pleadings of Third Parties. Within 40 days after service upon a third person of a notice or summons issued pursuant to this Rule 14, such person may file a complaint setting forth his interest, if any, in the subject matter of the action and the nature of his claim against the United States, or an answer, or both, which pleadings shall comply with the requirements of these rules with respect to the filing of original complaints and answers, except that only an original and two copies of a complaint are to be filed with proof of service.

Rule 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend his pleadings once as a matter of course at any time before a response is served or, if the response is one to which no further response is permitted and the action has not been scheduled for trial, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments To Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to file a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statements of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

(e) Form and Filing. Every amendment to a pleading shall (1) include so much of the prior pleading as may be required to show clearly how the pleading is to stand amended; (2) comply with the rules for caption, designation, and signature; (3) carry designation as the first, second, or subsequent amended pleading; and (4) comply with the requirements of Rules 82 and 83, except that upon a proper showing, by motion filed with the court or during pretrial conference or at trial, that the proposed amendments are minor in character or of such brevity as to warrant the use of pasters or interlineation, the court may waive the requirements of this subdivision (e)(4).

Rule 16. Pretrial Conferences; Scheduling; Management

(a) Pretrial Conferences; Objectives. (1) All procedures before trial shall be governed by Appendix G. (2) In any action, the court in its discretion by appropriate order may direct the attorneys for the parties and any unrepresented parties to confer and/or exchange

(i) lists containing the names and addresses of all witnesses they respectively expect to call at trial,

(ii) lists of the documentary exhibits which they respectively intend to offer at trial,

(iii) written statements of material matters of fact as to which they respectively believe there is no substantial controversy,

(iv) written statements of issues of fact and law they respectively believe are in dispute, and

(v) such other matters as may be directed by the court.

(3) In any action, the court may in its discretion direct the attorneys for the parties and any unprepresented parties to appear before it for a conference, or conferences, before trial or to arrange a telephone conference, or conferences for such purposes as

(i) expediting the disposition of the action;

(ii) establishing early and continuing control so that the case will not be protracted because of lack of management;

(iii) discouraging wasteful pretrial activities;

(iv) improving the quality of the trial through more thorough preparation;

(v) facilitating the settlement of the case; and

(vi) such other matters as may aid in the disposition of the action.

(b) Scheduling and Planning. After the initial status report or conference, the court shall enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery.

The scheduling order also may include

(4) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(5) any other matters appropriate in the circumstances of the case.

(c) Subjects To Be Discussed at Pretrial Conferences. The participants at any conference under this rule may consider and take action with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6) the advisability of referring matters to a master;

(7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

(8) the form and substance of the pretrial order;

(9) the disposition of pending motions;

(10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems, and

(11) such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(d) Final Pretrial Conference. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including the program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) Pretrial Orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken, except that after the final pretrial conference the court may recite the contents of its order, other than scheduling matters, on the record. The pretrial order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the court, upon motion or its own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the court shall require the party or the attorney representing him or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorneys' fees, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

TITLE IV. PARTIES

Rule 17. Parties Plaintiff and Defendant; Capacity

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity To Sue or Be Sued. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. A partnership or other unincorporated association which has no capacity by law of its state may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States. The capacity to sue or be sued of a representative appointed by a judicial tribunal shall be determined by the order of the judicial tribunal appointing or authorizing the representative and the law of the state or other authoirty under which the judicial tribunal exercises jurisdiction.

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem.

Rule 18. Joinder of Claims and Remedies

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, or third-party claim, may join, either as independent or as alternate claims, as many claims as he has against an opposing party.

(b) Joinder of Remedies. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties.

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) Persons To Be Joined If Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made an involuntary plaintiff.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have and adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to provisions of Rule 23.

Rule 20. Permissive Joinder of Parties

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. A plaintiff need not be interested in obtaining all the relief demanded. Where two or more plaintiffs demand separate judgments, the complaint shall state the judgment demanded by each plaintiff, shall list the plaintiffs alphabetically in the caption (on the basis of surnames where individuals are involved), and shall assign to each plaintiff demanding a separate judgment a number to be used as a distinguishing subnumeral ((1), (2), etc.) to the docket number of the case. No such multiple-party complaint may be amended by any such party by adding any new party plaintiff. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 21. Misjoinder and Non-Joinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. No new party plaintiff shall be added to a complaint filed by multiple plaintiffs upon motion of any such multiple plaintiffs. Any claim against a party may be severed and proceeded with separately.

Rule 23. Class Actions

A motion to certify a class action shall be filed with the complaint and comply with Rule 3(c), with service to be made as provided in Rule 4. The court shall determine in each case whether a class action may be maintained and under what terms and conditions.

Rule 24. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall file with the court a motion to intervene. The motion shall (1) state the grounds therefor, (2) be accompanied by a pleading setting forth the claim or defense for which intervention is sought, and (3) be served in accordance with Rule 5. The same procedure shall be followed when a statute of the United States gives a right to interevene.

Rule 25. Substitution of Parties

(a) Death. (1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party, and shall be served as provided in Rule 5. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs in an action in which the right sought to be enforced survives only to the surviving plaintiffs, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers; Death or Separation From Office. [Not used.]

TITLE V. DEPOSITIONS AND DISCOVERY

Rule 26. General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; requests for admission; and calls.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, the limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) *Trial Preparation: Materials.* Subject to the provisions of subdivision (b)(3) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(3) *Trial Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(3)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(3)(A)(ii) and (b)(3)(B) of this rule; and (ii) with respect to discovery obtained under subdivision (b)(3)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(3)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, *see* Appendix G ¶8, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Discovery Conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court may do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court may enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

(g) **Signing of Discovery Requests, Responses, and Objections.** Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by the attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay, or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Rule 27. Discovery To Perfect Complaint or Pending Appeal

(a) **Preliminary Complaint.** (1) *Complaint.* When a plaintiff cannot state a case with the requisite particularity without an examination of documents or things or other information in the possession of the United States, and he has been unable upon application to obtain a sufficient examination of such documents or things or other information, such plaintiff may file a complaint stating his claim as far as is in his power. The complaint shall state specifically (A) that it is filed under this Rule 27; (B) the subject matter of a claim cognizable by this court, with as much particularity as plaintiff can provide; and (C) a description of the documents or things or other information required as definite as plaintiff can provide. Within 30 days after filing such preliminary complaint, plaintiff shall file a motion for leave to take depositions upon oral examination or written questions, to submit requests for admission or written interrogatories, or for production of documents or things or permission to enter upon land or other property for inspection and other purposes, or such combination thereof as may be needed to obtain from the proper department or agency of the United States such documents or things or other information as may be deemed necessary.

(2) *Order.* If plaintiff's motion is allowed, the court by order shall designate the persons whose depositions may be taken, the subject matter of the examination, and whether the depositions shall be taken on oral examination or written interrogatories. The order shall specify the extent of other discovery permitted, and a date for completion of all discovery thereunder.

(3) *Amended Complaint.* Plaintiff shall file an amended complaint within 30 days after the discovery has been completed. Defendant need not respond to a preliminary complaint filed under this rule, but shall answer or otherwise respond to the amended complaint in accordance with these rules for answering an original complaint. If plaintiff's motion is not allowed, or if an amended complaint is not filed after the requested documents or things or other information is furnished or obtained, defendant shall file such responsive pleading or motion within such time as the court may direct.

(b) **Pending Appeal.** If an appeal has been taken from a judgment of the court or before the taking of an appeal if the time therefor has not expired, on motion the court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in this court. The party who desires to perpetuate the testimony may file a motion for leave to take the depositions that shows (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions.

(c) **Perpetuation by Action.** [Not used.]

Rule 28. Persons Before Whom Depositions May Be Taken

(a) Within the United States. Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held or before a person appointed by the court. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rules 30, 31, and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) In Foreign Countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States; or (2) before a person commissioned by the court and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony; or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(d) Fees. The party at whose instance the deposition is taken shall be responsible for the payment of the officer's fees for taking, transcribing, and returning the deposition.

Rule 29. Stipulations Regarding Discovery Procedure

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may be made only with the approval of the court.

Rule 30. Depositions upon Oral Examination

(a) When Depositions May Be Taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the complaint upon the United States. Leave is not required (1) if the United States has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination: General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone. (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by the plaintiff if the notice (A) states that the person to be examined is more than 100 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If the party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic or electronic means. The stipulation or order shall designate the person before whom the deposition shall be taken and the manner of recording, preserving and filing the deposition and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a transcription made at his own expense. Any objections under subdivision (c), any

changes made by the witness, his signature identifying the deposition as his own or the statement of the officer that is required if the witness does not sign, as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone. For the purposes of this rule and Rules 28(a), 37(b)(1) and 45(d), a deposition taken by telephone is taken at the place where the deponent is to answer questions propounded to him.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Federal Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion To Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If it is impractical to make such a motion personally or in writing, the moving party or deponent may do so by telephone, provided the opposing party has a fair opportunity to participate. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission To Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Completion. (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. The officer shall securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall have it delivered or mailed by registered or certified mail to the party taking the deposition. Unless otherwise ordered by the court, the deposition shall not be filed with the court.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them he may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to and returned with the deposition, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall serve prompt notice of the receipt of the deposition to all other parties.

(g) Failure To Attend or To Serve Subpoena; Expenses. (1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorneys' fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorneys' fees.

Rule 31. Depositions upon Written Questions

(a) Serving Questions; Notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer To Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and deliver or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(c) Notice of Receipt. When the deposition is received, the party taking it shall promptly give notice thereof to all other parties.

Rule 32. Use of Depositions in Court Proceedings

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions, in addition to Appendix G ¶16 governing the use of depositions as substantive evidence:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Federal Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership, or association, or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing and the judge after timely request has refused to authorize a subpoena to the witness or to set a trial in closer proximity to the place of residence of the witness, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any State and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Federal Rules of Evidence.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

[(c) Effect of Taking or Using Depositions.] (Not used; abrogated Nov. 20, 1972, eff. July 1, 1974.)

(d) Effect of Errors and Irregularities in Depositions. (1) *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.* (A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) *As to Completion and Return of Deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, delivered or mailed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subd. (a)(1), are set out in this Appendix.

Rule 33. Interrogatories to Parties

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon the United States after service of the complaint. The form of interrogatories is governed by Appendix G ¶7.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections, if any, within 30 days after the service of the interrogatories, except that the defendant may serve answers or objections within 45 days after service of the complaint upon the defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) Option To Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Rule 34. Production of Documents and Things and Entry upon Land for Inspection and Other Purposes

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody, or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon the United States after service of the complaint. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that the United States may serve a response within 45 days after service of the complaint. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties. [Not Used.]

(d) Calls. (1) *Issuance.* Pursuant to 28 U.S.C. § 2507(a), the court at any time (A) may call upon any department or agency of the United States for any information or papers it deems necessary to be filed with the clerk within a specified time, or

(B) in any case appropriate for a computation by a department or agency of the United States, the court, upon the motion of a party or on its own motion, may issue a call for the computation. Within 30 days after the clerk has served notice of the filing of the computation, each party shall file with the clerk its acceptance or rejection of the computation. A rejection shall be accompanied by a statement of the reasons therefor.

(2) *Refusal of Compliance.* The head of any department or agency of the United States may refuse to comply with such a call when, in his opinion, compliance will be injurious to the public interest. Such refusal may be made known by a communication signed by the head of the department or agency and filed with the clerk.

Rule 35. Physical and Mental Examination of Persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician. (1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses, and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

Rule 36. Requests for Admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to facts including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon the United States after service of the complaint. The form of requests for admission and answers is governed by Appendix G ¶7.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, the defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the complaint. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(d), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

Rule 37. Failure To Make or Cooperate in Discovery; Sanctions

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) *Appropriate Court.* [Not Used.]

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. *See* Appendix G ¶8. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) *Evasive or Incomplete Answer.* For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) *Award of Expenses of Motion.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure To Comply with Order. (1) *Sanctions Against a Deponent.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of court.

(2) *Sanctions Against a Party.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court may make such orders in regard to the failure as are just and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings unless the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure To Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorneys' fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party To Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorneys' fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

[(e) Subpoena of Person in Foreign Country.] (Not used; abrogated Apr. 29, 1980, eff. Aug. 1, 1980.)

[(f) Expenses Against United States.] (Not used; repealed Oct. 21, 1980, eff. Oct. 1, 1981.)

(g) Failure To Participate in the Framing of a Discovery Plan. If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorneys' fees, caused by the failure.

TITLE VI. TRIALS

Rule 39. Trial

(a) By the Court. All contested issues of fact and law shall be tried at a location selected by the court.

(b) Reporting Arrangements; Return of Transcript. (1) *Record of Proceedings.* The court will by contract furnish a reporter to take down the trial proceedings and transcribe the same in any trial held in any State of the United States or the District of Columbia. Unless otherwise ordered by the court for good cause shown, the court will not furnish a reporter at any trial held at any other place.

(2) *Reporter; Control.* The reporter shall be under the jurisdiction and control of the judge.

(3) *Return of Transcript and Exhibits.* Unless otherwise ordered by the judge, the reporter shall file the transcript of trial proceedings, including the exhibits admitted in evidence or designated to accompany the transcript, with the clerk within 30 days after the conclusion of the trial session at which such proceedings were had. The filing may be accomplished by personal delivery of the transcript and exhibits to the clerk's office or by enclosing them in a packet and transmitting them to the Clerk, United States Claims Court, 717 Madison Place, N.W., Washington, D.C. 20005, in sufficient time for the transcript and exhibits to be filed within the prescribed period. The obligation for

the filing of the transcript and exhibits within the prescribed period rests upon the reporter.

Rule 40. Assignment of Cases for Trial

Assignment of cases for trial is the responsibility of the judge to whom the case is assigned, and may be made (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the court deems expedient. All trials shall be scheduled by the judge by order filed with the clerk. Precedence shall be given to actions entitled thereto by any statute of the United States.

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal; Effect Thereof. (1) *By Plaintiff; by Stipulation.* Subject to the provisions of an order under Rule 23 and of any statute of the United States, an action may be dismissed by the plaintiff without order of court (A) by filing a notice of dismissal at any time before service of the answer or a response, whichever first occurs, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in this court or in any court of the United States an action based on or including the same claim.

(2) *By Order of Court.* Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by the United States prior to the service upon it of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal; Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, the court may dismiss on its own motion or defendant may move for dismissal of an action or any claim. After the plaintiff has completed the presentation of his evidence, defendant, without waiving its right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a response is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Rule 42. Consolidation; Separate Trials

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, counterclaims, third-party claims, or issues.

(c) Separate Determination of Liability. Upon stipulation of the parties, approved by the court, or upon order of the court, a trial may be limited to the issues of law and fact relating to the right of a party to recover, reserving the determination of the amount of recovery, if any, for further proceedings. In any case, whether or not a stipulation or order has been made under this subdivision (c), the court, upon determining that a party is entitled to recover, may reserve determination of the amount of the recovery for further proceedings. Any motion for reconsideration shall be filed not later than 10 days after a separate determination of liability.

Rule 43. Taking of Testimony

(a) Form. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an Act of Congress or by these rules, or the Federal Rules of Evidence.

(b) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(c) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(d) Interpreters. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct and may be taxed ultimately as costs, in the discretion of the court.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subd. (a), are set out in this Appendix.

Rule 44. Proof of Official Record

(a) Authentication. (1) *Domestic.* An official record kept within the United States, or any State, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) *Foreign.* A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced as provided in any treaty or federal statute or by an official publication thereof or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the attesting person or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (A) admit an attested copy without final certification or (B) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

(d) Proof of Rules and Regulations. In a trial, or in making or opposing a motion, a party relying on a rule or regulation shall submit the full authentic text thereof for inclusion in the record, unless it is published in the Federal Register or in the Code of Federal Regulations. A rule or regulation so furnished need not be certified. The court may require the appropriate party to furnish the full authentic texts of additional rules or regulations not published in the Federal Register or in the Code of Federal Regulations.

Rule 44.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in text, are set out in this Appendix.

Rule 45. Subpoena

(a) For Attendance of Witnesses: Form; Issuance. Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service. A subpoena may be served by the marshal, his deputy, or any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. *See* 28 U.S.C. § 1821. When the subpoena is issued on behalf of the United States, fees and mileage need not be tendered.

(d) Subpoena for Taking Depositions; Place of Examination. (1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the clerk of subpoenas for the persons named or described therein. Proof of service may be made by filing with the clerk a copy of the notice together with a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A witness may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person or at such other convenient place as is fixed by an order of court.

(e) **Subpoena for a Hearing or Trial.** (1) At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the clerk. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place that is within 100 miles of the place of the hearing or trial specified in the subpoena or at a place within the state where a state statute or rule of court permits service of a subpoena issued by a state court of general jurisdiction sitting in the place where the court is held; but the court upon proper application and good cause shown may authorize the service of a subpoena at any other place.

(2) A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as provided in 28 U.S.C. § 1783.

(f) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court.

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

Rule 52. Findings by the Court

(a) **Effect.** In all actions tried upon the facts, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

(b) **Amendment.** Upon motion of a party made not later than 10 days after entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. The question of the sufficiency of the evidence to support the findings may be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment.

Rule 53. Masters

(a) **Appointment and Compensation.** The court in which any action is pending may appoint a special master therein, subject to the approval of the chief judge. As used in these rules the word "master" includes a referee, an auditor, an examiner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) **Reference.** A reference to a master shall be the exception and not the rule. Save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires its.

(c) **Powers.** The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Federal Rules of Evidence for a court sitting without a jury.

(d) **Proceedings.** (1) *Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed *ex parte* or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) *Witnesses.* The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) *Statement of Accounts.* When matters of accounting are in issue before the master, he may presecribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) **Report.** (1) *Contents and Filing.* The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and unless otherwise directed by the order of reference, and shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) *Acceptance of Report.* The court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion. The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) *Stipulation as to Findings.* The effect of a master's report is the same whether or not the parties have consented to the reference; but when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(4) *Draft Report.* Before filing his report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

TITLE VII. JUDGMENT

Rule 54. Judgments; Costs

(a) **Definition; Form.** "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, or the record of prior proceedings.

(b) **Judgment upon Multiple Claims or Involving Multiple Parties.** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all parties.

(c) **Demand for Judgment.** A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) **Costs.** Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States shall be imposed only to the extent permitted by law. *See* Rule 77.4.

Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) Judgment. Judgment by default may be entered as follows:

(1) *By the Clerk.* When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) *By the Court.* In all other cases, the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing, if any, on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs; Counterclaimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment Against the United States. No judgment by default shall be entered against the United States unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim or counterclaim, or to obtain a declaratory judgment may, at any time after the expiration of 60 days from the commencement of the action in this court or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim or counterclaim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Procedures. The following procedures shall be followed with respect to motions for summary judgment:

(1) The moving (or cross-moving) party shall file, together with its motion, a separate document titled Proposed Findings of Uncontroverted Fact. This document shall contain concise, separately numbered paragraphs setting forth all of the material facts upon which the party bases its motion and as to which the party believes there is no genuine dispute. Each paragraph shall contain citations to the opposing party's pleadings or to documentary evidence (such as affidavits or exhibits) filed with the motion or otherwise part of the record in the case.

(2) The opposing party shall file, together with its opposition (or cross-motion), a separate document titled Statement of Genuine Issues. This document shall respond (by reference to specific paragraph numbers) to those Proposed Findings of Uncontroverted Fact as to which it claims there is a genuine dispute. The party shall state the precise nature of its disagreement and give its version of the events, supported by record citations. The opposing party may also file Proposed Findings of Uncontroverted Fact as to any relevant matters not covered by the moving party's statement.

(3) The parties may dispense with the documents called for in subdivision (d)(1)-(2) of this rule if they file, no later than the time of the initial motion, a comprehensive stipulation of all of the material facts upon which they intend to rely.

In determining any motion for summary judgment, the court will, absent persuasive reason to the contrary, deem the material facts claimed and adequately supported by the moving party to be established, except to the extent that such material facts are included in the Statement of Genuine Issues and are controverted by affidavit or other written or oral evidence.

(e) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(f) Form of Affidavits; Further Testimony; Defense Required. *See* Appendix H ¶1. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(g) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(h) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 57. Declaratory Judgments

The procedure for obtaining a declaratory judgment pursuant to 28 U.S.C. § 1491(a) and § 1507 shall be in accordance with these rules. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 58. Entry of Judgment

Subject to the provisions of Rule 54(b), (1) upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.

Rule 59. New Trials; Rehearings; Amendment of Judgments; Reconsideration

(a) Grounds. (1) A new trial or rehearing or reconsideration may be granted to all or any of the parties and on all or part of the issues, for any of the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United States. On a motion under this rule, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(2) The court, at any time while a suit is pending before it, or after proceedings for review have been instituted, or within 2 years after the final disposition of the suit, may grant the United States a new trial and stay the payment of any judgment upon satisfactory evidence, cumulative or otherwise, that any fraud, wrong, or injustice has been done the United States.

(b) Time for Motion and Response. Except as provided in subdivision (a)(2) of this rule, a motion for a new trial or rehearing shall be filed not later than 10 days after the entry of the judgment. No response may be filed to a motion for rehearing or reconsideration. However, the court will not rule in favor of such a motion without first requesting by order a response to it.

(c) On Initiative of Court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial or rehearing for any reason for which it might have granted a new trial or rehearing on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial or rehearing, timely filed, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(d) Motion To Alter or Amend a Judgment. A motion to alter or amend the judgment shall be filed not later than 10 days after entry of the judgment.

Rule 60. Relief from Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action or relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 60.1. Remand; Extension or Termination of Stay of Proceedings on Remand; Disposition of Case

(a) Remand. (1) *Issuance of Remand Order.* At the request of a party or on its own motion, the court may in any case within its jurisdiction by order remand appropriate matters to any administrative or executive body or official with such direction as may be deemed proper and just.

(2) *Content of Remand Order.* An order of remand shall (A) delineate the area of further consideration or action deemed warranted on the remand, and (B) fix the extent to which, and the duration of the period (not to exceed 6 months) during which court proceedings shall be stayed.

(3) *Service of Order.* A certified copy of any order issued pursuant to this rule shall be served by the clerk on the administrative or executive body or official to whom the order is directed. A copy of the order shall be served on each party in conformity with Rule 5.

(4) *Transmittal of Administrative Record.* Following service of the order as provided for in this rule, the clerk shall transmit the administrative record, if any, to the Department of Justice for return to the administrative or executive body or official to whom the order of remand is directed.

(5) *Advice of Administrative Action.* In every case in which an order of remand is entered pursuant to this rule, the attorney of record for the party so designated in the order of remand shall report to the court the status of proceedings on remand at intervals of 90 days or less, beginning with the date of the order.

(b) Extension or Termination of Stay of Proceedings on Remand; Disposition of Case. (1) *Extension.* If the administrative or executive body or official has not, during the period of stay provided for in an order of remand pursuant to subdivision (a) of this rule, rendered a decision on the matter remanded, the party to whom opportunity was afforded to obtain further administrative consideration shall, by motion pursuant to Rule 6, request an extension of the stay of proceedings, or, by motion pursuant to Rule 7, request the initiation of proceedings toward otherwise disposing of the case.

(2) *Disposition at Administrative Level.* If, during the period of the stay of proceedings as provided for in a remand order, the parties dispose of the case at the administrative level, the plaintiff shall file a motion to dismiss the case with prejudice.

(3) *Decision on Remand.* Upon completion of proceedings pursuant to an order of remand under subdivision (a) of this rule, the administrative or executive body or official to whom the order was directed shall forward to the clerk for filing 4 copies of the decision or final action on remand. A copy of such decision or action shall be served on each party by the clerk.

(4) *Action by the Parties.* Within 30 days after the filing of a decision or final action pursuant to subdivision (3) of this rule, each party shall file with the clerk a notice, indicating whether or not the decision or final action on remand affords a satisfactory basis for disposition of the claim at the administrative level, or whether further proceedings before the court are deemed required, and, if such proceedings are desired, what those proceedings should be. A copy of such notice shall be served on each adverse party in conformity with Rule 5. Thereafter, the court will enter an order prescribing the procedure to be followed, either specially or pursuant to the rules of the court, or take such other action as may be deemed appropriate.

Rule 61. Harmless Error

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stay of Proceedings To Enforce a Judgment

(a) Automatic Stay; Exceptions—Injunctions and Patent Accountings. Except as stated herein, no proceedings shall be taken for enforcement of a judgment until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction, or a judgment or order directing an accounting in an action pursuant to 28 U.S.C. § 1498, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay upon Appeal. When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in Favor of the United States or Agency Thereof. When an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(g) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Rule 63. Disability or Disqualification of a Judge

(a) Disability. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(b) Voluntary Disqualification. A judge shall withdraw from a case when required by 28 U.S.C. § 455, and, at any time, may withdraw from a case if otherwise he deems himself disqualified by bias or prejudice.

(c) Affidavit of Bias or Prejudice. (1) Whenever a party to any proceeding makes and files an affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge, if he determines that the affidavit is sufficient and timely, shall proceed no further therein, but another judge shall be assigned to hear such proceeding. The ruling of the judge shall be by order.

(2) The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed as soon as practicable after the facts upon which the affidavit is based become known to the party, but not less than 10 days before a scheduled trial date, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

TITLE VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 65. Injunctions

(a) Preliminary Injunction. (1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party.

(2) *Consolidation of Hearing with Trial on Merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial.

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) **Security.** No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, or of an officer or agency thereof.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) **Form and Scope of Injunction or Restraining Order.** Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) **Employer and Employee.** These rules do not modify any statute of the United States relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee.

(f) **Procedures.** (1) An application for a temporary restraining order and/or preliminary injunction shall be filed with the clerk along with the complaint, unless the complaint has been filed previously. The application shall be accompanied by the proposed order(s), affidavits, supporting memoranda, and other documents upon which plaintiff intends to rely. The application also shall be accompanied by a statement of plaintiff's counsel that he has hand delivered or caused to be hand delivered two copies of each of the foregoing documents to the office of the attorney in charge of the Commercial Litigation Branch, Civil Division, Department of Justice, Room 740, Todd Building, 550 11th Street, N.W., Washington, D.C. 20530.

(2) If plaintiff's attorney knows the name and address of the apparent successful bidder, he shall give him notice by telephone or telegram of the intended filing of the application, and shall certify in the application whether or not he has done so. With respect to notice to interested parties, *see* RUSCC 14(a).

(3) The apparent successful bidder may enter an appearance at any hearing on the application for temporary restraining order if it advises the court of its intention to move to intervene pursuant to RUSCC 24(a)(2) or has moved to intervene before the hearing.

(4) The clerk promptly will inform the parties personally or by telephone of the judge to whom the case has been assigned and the time and place for the hearing, if any, on the application for the restraining order.

(5) Except in an emergency, the court will not consider ex parte applications for a temporary restraining order.

Rule 65.1. Security: Proceedings Against Sureties

(a) **Proceedings.** Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

(b) **Sureties.** Acceptable sureties on bonds shall be those bonding companies holding certificates of authority from the Secretary of the Treasury. (*See* the latest U.S. Treasury Dept. Circ. 570.) When a court decision provides for the giving of security, the clerk will furnish counsel with the appropriate bond form.

Rule 68. Offer of Judgment

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof, and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

TITLE IX. APPEALS

Rule 72. Notice of Appeal

Review of a decision of this court shall be obtained by filing an original and 4 copies of a notice of appeal with the clerk within the time and manner prescribed for appeals to United States courts of appeals from United States district courts as provided for in Rule 4(a) of the Federal Rules of Appellate Procedure.

TITLE X. COURT AND CLERK

Rule 77. Court and Clerk

(a) **Name.** The name of the court, as fixed by 28 U.S.C. § 171, is the "United States Claims Court."

(b) **Seal.** The seal of the court shall be the American eagle, similar to that represented in the arms of the United States, engraved on a circular piece of brass or steel, with these words in the margin: "United States Claims Court" on the upper part and "Reipublicae Civibusque" in the other part of the margin. Writs and process of this court shall be under the seal of the court and signed by the clerk.

(c) **Court Always Open.** The court will not hold formal terms, but shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning process, and of making and directing all interlocutory motions, orders, and rules. The Office of the Clerk of the Court is open from the hours 8:45 a.m. to 5:15 p.m. on business days. A night box is provided for filing with the Office of the Clerk of the Court between the hours of 5:15 p.m. and 12:00 midnight on any business day for papers due that day. The night box will be locked promptly at midnight of each business day. The box is attached to the gate at the garage entrance on H Street. It is suggested that counsel telephone the clerk's office by 9:30 a.m. of the next day as to receipt. ((202) 633-7261)

(d) **Citations.** Decisions published by the United States Court of Claims may be cited as statements of substantive law applicable to actions in this court.

(e) **Judicial Power.** The judicial power of the United States Claims Court with respect to any action, suit, or proceeding, except congressional reference cases, shall be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

(f) **Assignment of Cases.** (1) After the complaint has been served on the United States, or after recusal or disqualification of a judge to whom a case has been assigned, the case shall be assigned forthwith to a judge on the basis of random selection by the clerk, except that related cases shall be assigned to the judge who has been assigned the earliest case filed. With the consent of the judge to whom a case has been assigned, the chief judge may reassign any case if he deems such action necessary for the efficient administration of justice.

(2) At the time a civil action is filed, or as soon as known thereafter, the attorney shall file and serve on all parties who have appeared a Notice of Related Case(s), stating whether any pending action and the action being filed appear

(A) to arise from the same or substantially identical transactions, happenings or events; or

(B) to call for determination of the same or substantially identical questions; or

(C) likely for other reasons to entail substantial duplication of labor if heard by different judges.

It shall be the continuing duty of the attorney in any case to bring promptly to the attention of the court, by the filing of a Notice of Related Case(s), all facts which in the opinion of the attorney appear relevant to a determination whether such action and one or more pending actions, under the criteria and procedures set forth in this subdivision, should be heard by the same judge.

(g) **Signing of Orders for Absent Judges.** If the judge to whom the action is assigned is not available and there is an emergency necessitating an order, the matter shall be presented to the chief judge, or in his absence, to another judge designated by him.

(h) **Trials and Hearings; Orders in Chambers.** All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any other place designated by order or with the consent of all parties affected thereby.

(i) **Clerk's Office and Orders by Clerk.** The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and the following holidays: New Year's Day, Inauguration Day, King's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications in the clerk's office for issuing process, process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

(j) **Notice of Orders or Judgments.** Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry in the manner provided for in Rule 5 upon each party who is not in default for failure to appear and shall make a note in the docket of the service. Such service is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure.

(k) Fee Schedule. (1) Fees for services rendered by the clerk are payable in advance; all checks are to be made payable to "Clerk, United States Claims Court."

(2) Fees are:

Admission to practice and certificate thereof	$15.00
Certificate of Good Standing	$3.00
Filing complaint	$60.00
Filing intervening complaint	$60.00
Certifying any document or paper	$2.00
Reproducing any record, entry or other paper for a maximum of 50 pages	$0.50 per page
Filing Notice of Appeal	$70.00 (includes $5.00 fee for notice of appeal and $65.00 Court of Appeals filing fee)

Such other fees as authorized by the Judicial Conference of the United States, except that no fees are to be charged for services rendered on behalf of the United States.

(*l*) Scheduling Courtrooms. The clerk shall schedule the use of courtrooms in Washington, D.C., and shall be responsible for all arrangements for courtrooms and other facilities required by the court at locations other than in Washington, D.C.

(m) Officers and Employees of the Court; Practice of Law. No person serving as a judge or in any other position with this court shall practice as an attorney or counselor in any court or before any agency of the United States, or otherwise engage in the practice of law, while continuing in that position, except when he represents himself or some member of his immediate family; and neither a judge nor a secretary, law clerk or other person occupying a position with that judge, after separating from a position with this court, shall ever participate, by way of any form of professional consultation or assistance (to anyone other than the court), in any case pending on that judge's docket during such person's term of service.

General Order No. 7

The United States Claims Court Advisory Council is established to advise the judges on matters pertaining to the administration of the court and its relationship to the bar and the public. The council shall operate as follows:

A. Organization

(1) The council shall consist of 17 members who shall serve staggered three-year terms. The chief judge shall fill any vacancies.

(2) The chief judge may also appoint a senior adviser to the council who shall serve at the discretion of the chief judge.

(3) The chief judge shall designate one of the judges in active service as a liaison member between the court and the council.

(4) The council shall meet at such times and places as agreed upon by the members. All members of the council, including the senior adviser and the liaison member, may attend these meetings and participate in the discussions. The chief judge shall provide facilities at the court to accommodate meetings of the council.

(5) Council members shall elect a chairman and other officers, designate committees and take all other steps appropriate to the conduct of the council's business. Each member, except the liaison member and senior adviser, shall be entitled to vote on matters before the council.

B. Relationship to the court

(1) The council may consider any matters its members deem relevant to the operation of the court. The council may transmit its recommendations to the court informally or formally by letter from the chairman to the chief judge.

(2) The council shall promptly consider and make a recommendation on any matter referred to it by the court.

(3) The court may consider any recommendation of the council and take such action as it deems appropriate.

April 5, 1983

BY THE COURT
ALEX KOZINSKI
Chief Judge

Rule 77.1. Case Management

(a) Responsibility. Case management is the responsibility of the judge to whom the case is assigned, with the assistance of the clerk, where appropriate. Each judge shall manage assigned cases so as to provide for the prompt dispatch of business. The judge may determine motions and cases on the merits without oral argument upon written statements of reasons in support and opposition. In the absence of the judge to whom a case is assigned, the chief judge, or, in his absence, a delegate of the chief judge, may act on behalf of the assigned judge.

(b) Scheduling. (1) All conferences, oral argument, trials, and other appearances shall be scheduled by the judge by order filed with the clerk. In an emergency, the judge may schedule conferences with counsel for the parties by such informal directions as may be appropriate.

(2) Each judge may establish regular times and places at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but each judge at any time or place and on such notice, if any, as any judge considers reasonable may make orders for the advancement, conduct, and hearing of actions.

Rule 77.2. Clerk Authorized To Act on Certain Motions

(a) Motions Enumerated. Any motion for enlargement of time to answer or respond to the complaint, for substitution of counsel, for the permanent withdrawal of papers or exhibits theretofore filed by the parties, or for waiver of duplication requirements, which requires action by the court, may be acted upon by the clerk of the court if (1) the motion states that opposing counsel has no objection, (2) no opposition to the motion has been timely filed, or (3) opposing counsel files a consent.

(b) Maximum Time Allowable. In acting on motions for enlargement of time under subdivision

(a) of this rule, the total enlargement of time allowed by the clerk with respect to any matter shall not exceed 30 days.

(c) Denial of Motions for Enlargement. The clerk may deny forthwith a motion requesting an enlargement of time if it requires action by the court, and fails to comply with the provisions of Rule 6(b); *provided*, that the denial shall state specifically that it is without prejudice to the filing, within 10 days after service of such denial, of a renewed motion for enlargement complying with the provisions of Rule 6(b).

(d) Review by the Court. Any action taken under this rule may be suspended, altered, or rescinded by the court for cause shown or sua sponte.

Rule 77.3. Withdrawal of Papers and Exhibits

(a) Temporary Withdrawal. The attorney of record for either party, or a party not represented by an attorney, may, except where the court otherwise directs, temporarily withdraw papers and exhibits on file in the clerk's office for a period not to exceed 30 days; *provided*, that upon notice from the clerk, the attorney or party may be required to return such papers and exhibits before the expiration of the 30-day period. The attorney or party withdrawing such papers and exhibits shall be required to sign and leave with the clerk a proper receipt describing the papers and exhibits so withdrawn.

(b) Withdrawal for Trial. The reporter engaged to transcribe the evidence may temporarily withdraw all papers and exhibits for use during any trial session. Upon the withdrawal of papers and exhibits for trial, the reporter shall sign a blanket receipt for such papers and exhibits, and they shall remain in his custody until returned to the clerk's office.

(c) Permanent Withdrawal. No papers or exhibits shall be permanently withdrawn from the clerk's office except on motion for good cause shown and upon such terms as the court may order.

(d) Physical Exhibits. All physical exhibits will be disposed of by the clerk after notice to the parties unless withdrawn by a party within 90 days after the final disposition of the case.

Rule 77.4. Taxation of Costs

(a) Filing Bill of Costs. A prevailing party may request the clerk to tax allowable costs by filing a Bill of Costs as set forth in Appendix I within 30 days after the date of the entry of judgment.

No extensions of time under this rule will be permitted and the failure of a prevailing party to timely file a Bill of Costs shall constitute a waiver of any claim for costs.

(b) Objections to Bill of Costs. (1) An adverse party may object to the Bill of Costs or any item claimed therein by filing objections within 14 days after the service of the Bill of Costs. Within 7 days after service of the objections, the prevailing party may file a reply. Unless a conference is scheduled by the clerk, the taxation of costs or any disallowance will be made by the clerk on the record.

(2) A party may request the court to review the clerk's action by filing a motion within 5 days after action by the clerk. The court's review of the clerk's action will be made on the existing record unless otherwise ordered.

(c) Costs in Settlements. The clerk will not tax costs on any action terminated by settlement wherein the judgment is entered pursuant to Rule 68 or is dismissed pursuant to Rule 41(a). Settlement agreements must resolve any issue relating to costs. In the absence of special agreement, each party will bear its own costs.

Rule 78. Motions Day

A judge may establish by order in any case regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of.

Rule 79. Books and Records Kept by the Clerk and Entries Therein

(a) Docket. The clerk shall keep a book known as "docket" of such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, and judgments shall be entered chronologically in the docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made.

(b) Judgments and Orders. The clerk shall keep, in such form and manner as the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

(c) Indices; Calendars. Suitable indices of the docket and of every judgment and order referred to in subdivision (b) of this rule shall be kept by the clerk under the direction of the court.

(d) Other Books and Records of the Clerk. The clerk shall also keep such other books and records as may be required from time to time by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

Rule 80. Reporter; Record or Transcript as Evidence

(a) Reporter. The clerk, as authorized by the Director of the Administrative Office of the United States Courts, by negotiated contract, will arrange for reporting services for all trial proceedings, and any other proceedings that require a verbatim transcript, held by the court.

(b) Preparation of Transcript and Exhibits. The preparation of the transcript of trial proceedings, including the exhibits, shall be in conformity with the Instructions to Reporters and Forms contained in Appendix A of these rules.

(c) Copies of Transcript. The parties may obtain copies of the transcript from the reporter at prices fixed in the reporting contract.

(d) Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing which was reported is admissible in evidence at a later trial, it may be proved by the transcript thereof as duly certified and filed.

TITLE XI. GENERAL PROVISIONS

Rule 81. Attorneys

(a) Attorneys Eligible To Practice. Only attorneys who are members of the bar of this court and who comply with these rules may enter an appearance, file pleadings, and practice in this court. All attorneys who were members in good standing of the bar of the United States Court of Claims are eligible to practice herein. The clerk's office will not accept for filing any pleading, motion or other paper that is not signed by the attorney of record in the case or by a member of this bar authorized to sign the attorney of record's name on his behalf.

(b) Admission to Practice. (1) *Qualifications; Oath.* Any person of good moral character who has been admitted to practice in the Supreme Court of the United States, or the highest court of any state, territory, possession, or the District of Columbia, or the United States Court of Appeals for the Federal Circuit and is in good standing therein, may be admitted to practice in this court upon oral motion or by verified application, as provided in this rule, and upon taking or subscribing to the following oath:

> I, ________, do solemnly swear (or affirm) that I will support the Constitution of the United States and that I will demean myself in an upright manner as an attorney of this court, so help me God.

(2) *Upon Oral Motion.* (A) *In Washington, D.C.:* An oral motion for admission may be made by a member of the bar of this court before any judge, and the judge or the clerk shall administer the oath; (B) *Outside Washington, D.C.:* An oral motion for admission may be made by a member of the bar of this court before a judge outside Washington, D.C., who shall administer the oath. As a preliminary to the motion, the attorney who moves the admission shall submit to the judge the appropriate form obtained from the judge and completed by the applicant. In the absence of an oral motion for admission in conformity with this subdivision, the applicant may advise the judge of his qualifications as set forth in subdivision (b)(1) of this rule. Upon consideration thereof, and upon representation by the attorney that he will promptly apply to the clerk for admission by verified application as provided in subdivision (b)(3) of this rule, the judge may permit the applicant to participate in the particular proceeding.

(3) *By Verified Application.* Without need for appearing in person, admission may be made upon presentation to the clerk of a verified application (forms for which may be obtained from the clerk) showing that the applicant is possessed of the qualifications described in subdivision (b)(1) of this rule. The application shall be accompanied by (A) a certificate of a judge or of the clerk of any of the courts specified in subdivision (b)(1) that the applicant is a member of the bar of such court and is in good standing therein; (B) two letters or signed statements of members of the bar of this court or of the Supreme Court of the United States, not related to the applicant, stating that the applicant is personally known to them, that he possesses all the qualifications required for admission to the bar of this court, that they have examined his application, and that they affirm that his personal and professional character and standing are good; and (C) an oath in the form prescribed in subdivision (b)(1) of this rule, signed by the applicant and administered by an officer authorized to administer oaths in the state, territory, possession, or the District of Columbia, where the oath is administered, or as permitted by 28 U.S.C. § 1746.

(4) *Fee for Admission.* Unless the applicant is an attorney representing the United States before this court, an admission fee of $15 shall be paid in advance in cash or by check payable to "Clerk, United States Claims Court."

(5) *Admission of Foreign Attorneys.* An attorney, barrister, or advocate who is qualified to practice in the highest court of any foreign state may be specially admitted for purposes limited to a particular case. He shall not, however, be authorized to act as attorney of record. In the case of such applicants, the oath shall not be required and there shall be no fee. Such admission shall be only on written motion of a member of the bar of this court, filed with the clerk at least 3 days prior to the consideration of the motion by the court.

(c) Disbarment. Superseded by Appendix F effective May 7, 1984.

(d) Attorneys of Record. (1) *One for Each Party.* There shall be but one attorney of record for a party in any case at any one time, and such attorney of record shall be an individual (and not a firm) who has been admitted to practice before this court. Any other attorneys assisting the attorney of record shall be designated as of counsel.

(2) *Appearance.* For parties other than the United States, the attorney of record shall include on the initial pleading or paper said attorney's name, address, and telephone number. For the United States the attorney who is to appear as the attorney of record shall file with the clerk and serve on all other parties a notice of appearance setting forth the identical information. The attorneys of record for all parties shall promptly file with the clerk and serve on all other parties a notice of any change in address or telephone number.

(3) *Change by Parties Other than the United States.* A party other than the United States may by leave of court on motion change his attorney at any time. The motion may be signed by said party in person or by the newly designated attorney accompanied by an affidavit of appointment executed by such attorney. If the consent of the previous attorney of record is

annexed to or endorsed on the motion, substitution shall be accomplished by an appropriate entry on the docket by the clerk. When the motion is not thus shown to have the consent of the previous attorney, he shall be served with the motion, and shall have 14 days to show cause why the motion should not be allowed.

(4) *Change by the United States:* A new notice of appearance shall be filed and served on all parties by the United States whenever a case is reassigned to another attorney.

(5) *Withdrawal of Attorney.* No attorney of record for a plaintiff or a third party may withdraw his appearance except by leave of the court on motion and after notice is served on his client.

(6) *Death of Attorney.* If the attorney of record dies, a suggestion of his death shall be made, and a motion to substitute another attorney admitted to practice before this court may be made by the plaintiff.

(7) *Pro Se.* An individual may represent himself or a member of his immediate family as a party before the court. Any other party, however, must be represented by an attorney who is admitted to practice in this court. A corporation may only be represented by counsel. The terms "counsel" or "attorney" in these rules shall include pro se litigants.

(e) Application for Attorneys' Fees and Expenses. (1) *Applications.* Applications for fees and expenses shall be filed with the clerk within 30 days after final judgment, as defined in 28 U.S.C. § 2412(d)(2)(G) for the payment of money, or for the dismissal of the complaint, or of a final order in a renegotiation case determining the amount, if any, of excessive profits, or of a declaratory judgment pursuant to 28 U.S.C. §§ 1491 or 1507. Any application subject to 28 U.S.C. § 2412(d) shall include the information required by that section and any claim for fees and expenses incurred in the prosecution of the application, and shall include the completed form as shown in Appendix E to these rules. The application and supporting statements shall be under oath. Each item shall be separately stated and supported.

(2) *Response and Reply.* The responding party shall have 28 days from the service of an application pursuant to subdivision (e)(1) of this rule to file a response, to which plaintiff may reply within 14 days.

(3) *Proceedings.* After the filing of an application, and response and reply (if any), the judge will enter an order prescribing the procedure to be followed, either specially or pursuant to the rules of the court, or take such other action as may be deemed appropriate.

(As amended May 7, 1984.)

General Order No. 5

To assure that motions for admission to the bar of the court are heard on a regular basis, it is ordered as follows:

(1) Motions for admission will be heard every Thursday which is not a legal holiday as defined by RUSCC 6(a).

(2) Applicants for admission must appear in the clerk's office no later than 9:30 a.m. to pay the admission fee and fill out the necessary papers. See RUSCC 81(b).

(3) Motions will be heard promptly at 10:00 a.m. in Courtroom No. 4, Room 501, National Courts Building, 717 Madison Place, N.W., Washington, D.C. 20005.

December 20, 1982

By the Court
ALEX KOZINSKI
Chief Judge

Rule 82. Form, Size and Duplication of all Papers

(a) General. All papers to be filed with the clerk shall be duplicated and filed in conformity with these rules as to methods of duplication, form, size, and number of copies. The clerk shall refuse to file any paper which is not in substantial conformity with this rule or not in clear type.

(b) Duplication. All requirements of duplication may be satisfied by the use of any photocopy method capable of producing a clear black image on white paper, but not including ordinary carbon copy, *provided*, that in each instance the duplication shall conform to the requirements of subdivision (c) of this rule as to paper, size, form, and pagination.

(c) Form and Size. All papers pursuant to the provisions of this rule shall be duplicated on pages not exceeding 8½ by 11 inches, with type matter not exceeding 6½ by 8½ inches. Papers duplicated shall be double spaced (except that quoted and indented material and footnotes may be single spaced), and, if covering both sides of the sheet, shall be duplicated on paper of sufficient quality that the duplication process does not bleed through the sheet; shall be bound or attached on the left margin and unfolded, in book form; and shall have legible margins when bound or attached. Such pages need not be justified on the right margin. The first page of each separate document shall be numbered 1. Page numbers shall be in large, distinct type and shall appear in the bottom center margin of the page.

(d) Date. Each paper shall bear the date it is signed on the signature page.

(e) Telephone Number. The telephone number (including area code) of the attorney of record must appear beneath the signature line of every pleading or other paper.

Rule 83. Number of Copies

Except as provided in Rule 3(c), the parties shall file an original and 2 copies of each other paper required by these rules to be filed with the clerk. In congressional reference cases, an original and 4 copies of each such paper shall be filed. All copies shall be identical, or otherwise conformed, to the original.

Rule 83.1. Content of Briefs or Memoranda; Length of Briefs or Memoranda

(a) Content of Briefs or Memoranda. (1) *Initial Brief or Memorandum.* Except in briefs or memoranda of 10 pages or less, the first brief or memorandum due (normally the plaintiff's brief or memorandum) shall contain, under proper headings and arranged in the following order:

(A) a table of contents or index, including the specific contents of any appendix or appendices to the brief or memorandum, listing the various items in the appendix, including the number and description of every item and exhibit which is being reproduced, together with the number of the page at which the item appears. *See also* subdivision (G) of Rule 83.1(a)(1);

(B) a table of constitutional provisions, treaties, statutes, regulations, and cases cited, giving the volume and page in the official edition where they may be found, and arranging the cases in alphabetical order. All U.S. Claims Court orders and opinions published in the United States Claims Court Reporter shall be cited to that reporter;

(C) a succinct statement of the questions involved, setting forth each question separately;

(D) a concise statement of the case, containing all that is material to the consideration of the questions presented, with appropriate reference to specific findings, the stipulation of facts, or other pertinent portions of the record, and setting out verbatim in the brief or memorandum or in an appendix thereto the pertinent portions of constitutional provisions, treaties, statutes, and regulations, as well as the texts of all administrative decisions directly involved in the case (unless previously reproduced in or as an exhibit to the complaint); the appendix (or appendices) to the brief or memorandum shall be numbered consecutively within themselves so as to enable the court more easily to find and read the material in the appendix (or appendices);

(E) the argument, exhibiting clearly the points of fact and of law being presented, and citing the authorities relied upon;

(F) a conclusion, indicating the relief sought; and

(G) if an appendix is used, there shall be, at the beginning of the brief or memorandum itself, a table of contents or index listing the various items in the appendix, including the number and description of every exhibit which is being reproduced, together with the number of the page of the appendix at which the item begins.

(2) *Opposing Brief or Memorandum.* An opposing or answering brief or memorandum (normally the defendant's brief or memorandum) shall conform to the requirements set out in subdivision (a)(1) of this rule, except that the items referred to in subdivisions (C) and (D) of that subdivision need not be included unless the party is dissatisfied with the presentation by the other side.

(3) *Reply Brief or Memorandum.* A reply brief or memorandum shall conform to the requirements of subdivision (a)(2) of this rule.

(4) *General.* Briefs or memoranda must be compact, concise, logically arranged, and free from burdensome, irrelevant, immaterial, and scandalous matter. Briefs or memoranda not complying with this rule may be disregarded by the court.

(b) Length of Briefs or Memoranda. (1) Except by leave of the court on motion, principal briefs or memoranda shall not exceed 40 pages by any process of duplicating or copying, exclusive of (A) pages containing tables of contents, citations to constitutional provisions, treaties, statutes, regulations, and cases, and (B) any appendix setting out verbatim the pertinent portions of constitutional provisions, treaties, statutes, regulations, agency or board decisions, court decisions, excerpts from transcripts of testimony, and documentary exhibits.

(2) Except by leave of the court on motion, reply briefs or memoranda shall not exceed 20 pages by any process of duplication or copying or 30 pages where an opposition to a motion is included.

(3) A brief or memorandum previously filed may not be incorporated by reference; any such incorporation will be disregarded. A party wishing to rely upon a previously filed brief or memorandum may do so by reproducing in an appendix either (A) excerpts thereof now relied upon, or (B) the entire brief or memorandum. In either event, the party shall identify the total number of pages considered pertinent in a footnote which is to appear on the first page of the brief or memorandum. The pages so identified shall be included in the maximum allowable length set forth in subdivisions (1) and (2) of this rule.

(4) A motion for leave to exceed the page limitation set forth in subdivisions (1) or (2) of this rule shall be filed with the clerk prior to the duplication of the brief or memorandum and at least 10 days in advance of the date for the filing of the brief or memorandum, and shall show good cause therefor. A response to such a motion for leave shall not be permitted.

Rule 83.2. Time for Filing

(a) Responses and Objections. Unless otherwise provided in these rules or by order of the court, responses or objections to written motions shall be filed within 14 days after service of the motion.

(b) Replies. Replies to responses or objections shall be filed within 7 days after service of the response or objection.

(c) Motions Under Rules 12(b), 12(c), and 56. Responses to these motions shall be filed within 28 days after service of the motion and replies thereto within 14 days of the service of the response.

(d) Leave of Court. If the subject filing is pursuant to leave of court on motion by a party, time for any response runs from date of filing and not date of service.

(e) Cross-motions. Where the responding party files a cross-motion, it shall be contained in the same document as the response to the original motion; the response to the cross-motion shall be contained in the same document as the reply subject to page limitations in Rule 83.1(b)(2). Where a cross-motion is filed, the parties shall have the same times to respond and to reply to the cross-motion as to an original motion.

(f) Reconsideration of Orders. A motion for reconsideration of an order shall be filed not later than 10 days after the date thereof. No response may be filed to a motion for rehearing or reconsideration. However, the court will not rule in favor of such a motion without first requesting by order a response to it.

Rule 84. Transfers and Referrals

(a) Transfers from Other Courts. (1) *Filing and Fee.* When the transfer of a case from another court to this court is permitted by law, the case shall be filed in this court upon the receipt by the clerk of a certified copy of the record made in the other court, including the order of that court granting the transfer. The clerk shall serve a notice of this filing on the parties as provided in Rule 5. Where all required fees in the other court are shown to have been paid, no filing fee will be required.

(2) *Complaint; Copies.* Eight copies of the complaint, containing the necessary changes in the caption and duplicated in conformity with Rule 82, filed in the other court shall be filed with the clerk of this court within 28 days after the filing required in subdivision (a)(1) of this rule. In lieu thereof and within the same time period, an original and 7 copies of an amended complaint may be filed in conformity with the rules of this court setting forth the claim or claims transferred. Service will be made on the United States as provided in Rule 4.

(3) *Procedure.* After the filing and service as provided for in subdivision (a)(2) of this rule, all further proceedings shall be in accordance with the rules prescribed for cases filed in this court in the first instance.

(b) Referral of Cases by the Comptroller General. (1) *Service of Notice; Time for Response.* Upon the filing of a case referred to the court by the Comptroller General, the clerk shall serve a notice, as provided in Rule 5, on each person whose name and address are shown by the papers transmitted and who appears to be interested in the subject matter of the reference, which notice shall set forth the filing of the reference and state that the person notified appears to have an interest therein and that such person shall have 90 days after such service within which to appear and assert his claim by filing a complaint in accordance with Rule 3. At the same time, the clerk shall forward a copy of each such notice to the Attorney General.

(2) *Procedure After Notice.* After the service of notice upon the interested person or persons, all further proceedings for the disposition of the case shall be in accordance with the rules prescribed herein for other cases.

(3) *Failure of Party To Appear.* If no interested plaintiff appears and files his complaint within the time specified in the notice served by the clerk, the case shall be submitted to the court upon the papers filed and upon such evidence, if any, as may be produced by the Attorney General.

Rule 85. Title

These rules may be known as the Rules of the United States Claims Court.

Rule 86. Effective Date

These rules as revised are effective on November 1, 1985.

APPENDIX A

INSTRUCTIONS TO REPORTERS; FORMS

Reference is made to Rules 39(b) and 80(b) for reporting arrangements, including the requirement for the recording of proceedings, the control of the reporter, and the return of the transcript and exhibits.

The following instructions and forms are intended to guide reporters in preparing the transcripts of testimony taken and proceedings had before the judges of the United States Claims Court.

1. Caption Page. There shall be stated on the caption page: (a) the style of the cause in which the testimony is taken; (b) the place and date of its taking; (c) the identity of the party by whom each witness is called; (d) the name of the judge; and (e) the appearances of counsel. *See* Form A.

2. Testimony. It shall appear in the transcript of the proceedings and testimony by whom each witness was examined and cross-examined. At the top of each page shall appear the name of the witness and the nature of his examination, such as "Roe-direct," "Roe-cross," "Roe-redirect."

3. Preparation of Transcript. The reporter shall transcribe all testimony on nontransparent white paper, either 8½ inches wide by 11 inches long, or 8 inches wide by 10½ inches long, bound on the left margin. The pages shall be numbered consecutively, with a minimum of 25 lines per page.

It is not necessary for the witnesses to sign the transcripts of their testimony.

4. Exhibits. All exhibits offered by either of the parties shall bear the caption and number of the case, the exhibit numbers (in figures), whether for plaintiff or defendant unless the court provides for the offering parties to otherwise designate their exhibits, and the number of sheets in each exhibit. All exhibits admitted in evidence or designated to accompany the transcript shall accompany and be filed with the transcript of the testimony, but shall not be affixed thereto.

5. Certificate of Reporter. The reporter shall append to the transcript of the testimony a certificate similar to Form B. The certificate shall be signed by the reporter.

6. Index. At the beginning of each volume of the transcript of testimony, there shall be an index containing (a) the names of the witnesses examined, citing the pages of the transcript where direct, cross-, redirect, or recross-examination of the respective witnesses began; and (b) the exhibits in the case, first for the plaintiff and then for the defendant, with a brief statement of the nature of each of the exhibits and with references to the pages of the transcript where said respective exhibits were (1) offered and (2) received in evidence. In addition, upon the preparation of the final transcript, where the number of pages exceeds 500, a master index containing the same information shall be prepared and bound separately.

FORM A

IN THE UNITED STATES CLAIMS COURT

No. ____

John Doe, Plaintiff

v.

The United States, Defendant

Chicago, Illinois,

Monday, __________, 19___, 10 a.m.

Testimony for Plaintiff (or Defendant)

The parties met, pursuant to notice of the court, at the time above stated, in Room 1614, United States Courthouse and Federal Building, Chicago, Illinois.

Present: Hon. A. B. See, Judge; John A. Jones, Esq., counsel for plaintiff; and William B. Smith, Esq., counsel for defendant.

Testimony on behalf of the plaintiff (or defendant) was taken as follows:

Richard Roe, a witness produced on behalf of the plaintiff (or defendant), having first been duly sworn by said court, was examined, and in answer to interrogatories testified as follows:

Q. State your name, etc.

A. ________________________________.

Q. Have you, etc.?

A. ________________________________.

FORM B

Certificate of Reporter

I, X. Y. Zee, reporter, hereby certify that at the time and place aforesaid, I did cause to be taken down and transcribed the proceedings in this case, including the questions propounded to and the answers given by said witnesses so called by plaintiff (or defendant), and that the foregoing record is a correct transcript of the proceedings and testimony so had therein.

In witness whereof I have hereunto set my hand this day of , 19 .

(Signed) X. Y. ZEE,

Reporter, 200 Equitable Building, Chicago, Ill.

APPENDIX B

PROCEDURES FOR PROCESSING COMPLAINTS OF JUDICIAL MISCONDUCT PURSUANT TO 28 U.S.C. § 372(c)

1. Any person alleging that a judge of this court has engaged in conduct prejudicial to the effective and expeditious administration of the business of the court or alleging that such a judge is unable to discharge all the duties of office by reason of mental or physical disability may file with the clerk of this court a written complaint (original plus 3 copies) containing a brief statement of the facts constituting such conduct.

2. Upon receipt of a complaint filed under paragraph 1, the clerk shall promptly transmit such complaint to the chief judge of this court, or, if the conduct complained of is that of the chief judge, to that judge in regular active service next senior in date of commission (hereafter, for purposes of these procedures only, included in the term "chief judge"). The clerk shall simultaneously transmit a copy of the complaint to the judge whose conduct is the subject of the complaint.

3. (a) After expeditiously reviewing a complaint, the chief judge by written order stating his reasons, may:

(1) dismiss the complaint, if he finds it to be (i) not in conformity with paragraph 1, (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous; or

(2) conclude the proceeding if he finds that appropriate corrective action has been taken.

(b) The chief judge shall transmit copies of his written order to the complainant and to the judge whose conduct is the subject of the complaint.

4. If the chief judge does not enter an order under paragraph 3, such judge shall promptly:

(a) appoint himself and two judges of this court to a special committee to investigate the facts and allegations contained in the complaint;

(b) certify the complaint and any other documents pertaining thereto to each member of such committee; and

(c) provide written notice to the complainant and the judge whose conduct is the subject of the complaint of the action taken under this paragraph.

5. Each committee appointed under paragraph 4 shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the chief judge for the court. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the court.

6. Upon receipt of a report filed under paragraph 5, the court by majority vote:

(a) may conduct any additional investigation which it considers to be necessary;

(b) shall take such action as is appropriate to assure the effective and expeditious administration of the business of the court, including, but not limited to, any of the following actions:

(1) reporting to the United States Court of Appeals for the Federal Circuit a recommendation for removal pursuant to the procedures and standards provided by 28 U.S.C. § 176;

(2) ordering that, on a temporary basis for a time certain, no further cases be assigned to any judge whose conduct is the subject of a complaint;

(3) censuring or reprimanding such judge, by means of private communication;

(4) censuring or reprimanding such judge, by means of public announcement; or

(5) ordering such other action as it considers appropriate under the circumstances; and

(c) shall immediately provide written notice to the complainant and to such judge of the action taken under this paragraph.

7. In conducting any investigation under this Appendix B, the court, or a special committee appointed under paragraph 4, shall have full

subpoena powers as provided in 28 U.S.C. § 332(d).

8. A complainant or judge aggrieved by a final order of the chief judge under paragraph 3 may petition the court for review thereof. A complainant or judge aggrieved by an action by the court under paragraph 6 may petition the Judicial Conference of the United States for review thereof.

9. (a) Adequate prior notice of any investigation will be given in writing to the judge whose conduct is the subject of the complaint.

(b) The judge whose conduct is the subject of the complaint will be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the committee or court, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally.

(c) These procedures are a matter of public record, and any such rule promulgated by the court may be modified by the Judicial Conference.

10. No judge whose conduct is the subject of an investigation shall serve upon a special committee appointed under paragraph 4, or as a member of the court pursuant to paragraph 5, until all related proceedings under this paragraph have been finally terminated.

11. No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before the court.

12. All papers, documents, and records or proceedings related to investigations under this Appendix B shall be confidential and shall not be disclosed by any person in any proceeding unless:

(a) the court releases any such material; or

(b) authorized in writing by the judge who is the subject of the complaint or by the chief judge of this court.

13. Each written order to implement any action under paragraph 6(b), which is issued by the court, shall be made available to the public through the clerk of this court. Unless contrary to the interests of justice, each order issued under this paragraph shall be accompanied by written reasons therefor.

APPENDIX C

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I. CARRIER'S REQUEST FOR ADMISSION OF FACTS

1. Time for Filing Request. In every suit filed by a common carrier for the recovery of freight and/or passenger transportation charges, the carrier shall, at the time the complaint is filed or within 30 days thereafter, file with the clerk of the court a request for admission by the defendant of the genuineness of any relevant documents described in and exhibited with the request and of the truth of the material matters of fact relied on by the carrier for recovery in the action.

2. Form and Content of Request. The request shall conform to the following requirements:

(A) Duplication. The request, with accompanying schedules and documents, may be typewritten, or may be printed, mimeographed, or otherwise mechanically reproduced from a typewritten original, provided that all copies filed with the clerk shall be clearly legible and that the words and figures shown therein shall be in large enough type to be read without difficulty.

(B) Copies; Filing; Service. If the request accompanies the complaint, copies and service of such request shall be as provided in Rules 3(c) and 4. If the request is filed subsequent to the filing of the complaint, copies and service of such request shall be as provided in Rules 5, and 83, except that (5) copies shall be served on the defendant in lieu of a copy.

(C) Signature of Attorney. The request shall be signed by the attorney of record for the plaintiff.

(D) Numbered Paragraphs; Material Facts. The statements contained therein shall be properly separated and numbered and shall consist of specific statements of material facts which the plaintiff expects to prove as opposed to general allegations of the kind used in pleadings.

(E) Attachments. There shall be attached to the request copies of any contracts, letters, or other documents (excluding tariffs and other documents referred to in the schedules required by paragraphs 2(G) and 2(I) hereof) which plaintiff proposes to offer in evidence, in order that the genuineness of such documents may be admitted by the defendant and the necessity of calling a witness to identify the same may be avoided.

(F) Nature of Dispute; Statement of Issues. The statement in the request shall be sufficiently explicit to show the nature of the dispute and the specific reason or reasons why the plaintiff believes it is entitled to recover higher rates or charges than those allowed by the Government. The word "dispute" as used in the preceding sentence, means the shipment or shipments with respect to which the General Accounting Office or other agency of the Government determined that the carrier's charges had been overpaid or refused to pay the carrier's supplemental bills covering such shipments, rather than subsequent shipments which are not in dispute except for the fact that the overpayments determined as to the shipments in dispute have been deducted from the amount of the carrier's bills covering such subsequent shipments. In order to show the nature of the dispute there shall be attached to or included in plaintiff's request a "statement of the issues" which, with respect to each group of the carrier's bills involving the same issue, shall consist of a brief narrative statement of such issue with a reference to (1) court decisions involving the same issue, or (2) the tariffs or other authority relied upon by plaintiff, and the tariffs or other authority which plaintiff believes defendant relied upon in making deductions for claimed overpayments to the carrier or in refusing to pay the carrier's supplemental bills for claimed undercharges.

(G) Schedule: Claim for Transportation of Property. Where the claim is for the recovery of charges for the transportation of *property* for the Government, there shall be attached to the request a detailed schedule, prepared by or under the supervision of the general auditor, comptroller, or other principal accounting officer of the carrier. The schedule shall contain the following factual information:

(1) List of Carrier's Bills in Dispute. The number of each of the carrier's bills for the shipments in dispute (as distinguished from the number of a subsequent bill from which the GSA made a deduction following its determination of an overpayment on the bill in dispute).

(2) Detail for Each Bill of Lading. For each bill of lading in dispute, covered by each bill referred to in (1) above, the following facts:

(a) the number and symbol of each bill of lading;

(b) the date of the shipment;

(c) the origin and the destination of the shipment;

(d) a description of the commodity or commodities shipped, including a description of the packing where this affects the rate;

(e) car number and initial;

(f) the weight of the shipment, including the minimum carload weight when greater than the actual weight;

(g) when the shipment in dispute consists of one or more carloads of mixed commodities, a description of the different commodities, and the respective weight thereof loaded in each car, including minimum carload weights where such weights affect the rates;

(h) the rates claimed for each article in the shipment and for any accessorial services;

(i) the total freight charges on each bill of lading;

(j) amounts refunded by carrier, if any, and the dates thereof;

(k) if the overpayment determined by GSA or other agency has been deducted from the carrier's subsequent bill or bills, the number of such subsequent bill or bills, the amount deducted, and the date thereof;

(*l*) the total amount paid the carrier;

(m) the balance due;

(n) a specific reference to the item or items in designated tariffs authorizing the charges claimed, including the classification rating if necessary, and authorization for any accessorial charges claimed; or to a Section 22 quotation;

(o) the Government file reference number as obtained from GSA notice of overcharge, the Certificate of Indebtedness, or other document issued by the GSA, or, in the event there is no GSA reference number, the name of the Government paying agency and bureau, the disbursing office voucher number, and the date of payment;

(p) if the shipment in dispute consists in whole or in part of a through transit movement, (1) the through assessable charges from the original point of shipment to the final destination, including a description of the commodity, the transited weight, the through rate, the tariff or special authority for the through rate used, and, if local tonnage is involved, the weight thereof, the points between which local tonnage moved, and the rates and charges assessed against such tonnage; (2) details of the net amounts paid to and beyond the transit station, including references to the "inbound" and "outbound" shipments by bill of lading number and symbol; date of shipment, origin and destination, weight rate, and the net amounts paid to the respective "inbound" and "outbound" carriers, naming them and identifying the bill numbers on which such payments were made; and (3) the balance due, *i.e.*, the difference between the through assessable charges, including the charges on local tonnage, if any, and the respective net amounts paid on the "inbound" and "outbound" shipments; and

(q) a brief statement as to the basis for the claim or other brief statement which the carrier deems necessary to explain the peculiarities of the shipment.

(3) Computation for Typical Bill of Lading. Following the listing of the information herein required with respect to each group of carrier's bills involving the same issue or basis of freight charge computation, the carrier shall either (i) include in the schedule a computation of the freight charges for that bill of lading, setting forth the basis or formula used, and referring to the specific items in particular tariffs or other authority which it relied upon for that purpose, or (ii) attach a worksheet showing such computation and information with respect to each typical bill of lading.

(H) Certification and Signature of Carrier: Property. The schedule shall be certified by the general auditor, comptroller, or principal accounting officer of the carrier, as follows:

I, ______________, the ______________
(Name) (Title)
______________, of the ______________
(Name of Carrier)
______________________________,

do hereby certify that the above and foregoing schedule has been prepared from the books and records of said company for use in a suit in the United States Claims Court, entitled __________ v. The United States, No. ___, and that to the best of my knowledge, information, and belief the matters contained therein are true and correct.

To certify which, witness my hand at ______________ this ___ day of __________, 19___.

____
(Signature of auditor, comptroller, or principal accounting officer.)

(I) Schedule: Claim for Transportation of Passengers. Where the claim is for the recovery of charges for the transportation of *passengers* for account of the Government, there shall be attached to the request a schedule, prepared by or under the supervision of the general auditor, comptroller, or other principal accounting officer of the carrier. The schedule shall contain the following factual information:

(1) List of Carriers' Bills in Dispute. The number of each of the carrier's bills in dispute (as distinguished from the number of a subsequent bill from which the GSA made a deduction following its determination of an overpayment on the bill in dispute).

(2) Detail: Each Transportation Request or Warrant. For each transportation request or warrant in dispute, covered by each bill referred to in (1) above, the following facts:

(a) the symbol and number of each Government transportation request or warrant in dispute;
(b) the date of service;
(c) the origin and destination of the travel;
(d) the class or type of service;
(e) whether the travel was "one way" or "round trip";
(f) the number of the special movement, if any;
(g) the route of travel;
(h) the number of persons that traveled;
(i) the gross per capita fare;
(j) the assessable passenger charges;
(k) the amount paid, and by what Government office and where located;
(*l*) amounts refunded by carrier, if any, and the dates thereof, and the Government office to which refunded and where located;
(m) where an overpayment was determined by the Government and deducted from a carrier's subsequent bill, the number of such subsequent bill, the amount of the deduction, and the date thereof;
(n) the total amount paid, and by what Government office and where located;
(o) the balance due;
(p) the tariff reference and item or special rate authority;
(q) the Government file reference; and
(r) a brief statement as to the basis for the claim, including, where appropriate, a brief explanation showing the extent to which the ticket issued by the carrier was not used, and the value of the unused part of the ticket.

(J) Certification and Signature of Carrier: Passengers. The schedule covering the transportation of passengers shall be certified in the same manner as provided in (H) above, except that where a request includes schedules pertaining to claims for both the transportation of passengers and freight, one certification shall suffice for all schedules.

3. Plaintiff's Noncompliance: Consequences. In the event a plaintiff in any action within the purview of this Appendix fails or refuses to comply with the provisions hereof, the judge may (1) refuse to allow it to support designated claims or prohibit it from introducing in evidence designated documents or items of testimony, or (2) take other appropriate action, which may include a dismissal of the complaint or any part thereof.

II. DEFENDANT'S RESPONSE

4. Time for Filing; Order. Promptly after the filing of the plaintiff's request, the judge to whom the case is assigned shall, by order filed with the clerk, fix a reasonable time within which the defendant shall file its response to the request. A copy of such order shall be served on the parties as provided in Rule 5.

5. **Copies; Service; Signature.** The defendant's response shall consist of an original and two copies to be filed with the clerk and with service to be made on plaintiff as provided in Rule 5. The response shall be signed by defendant's attorney of record and shall comply with the terms of paragraph 2(A) hereof.

6. **Agreement; Modification; Denial.** The defendant shall file such response within the time fixed by the order, agreeing to the separate items of fact, modifying the same in accordance with the facts known by the defendant, specifically denying the same, or setting forth in detail the reasons why it cannot truthfully admit or deny designated portions of the request.

7. **Defendant's Statement of Issues.** If defendant does not agree with plaintiff's "statement of the issues," it shall attach to or include in the response its "statement of the issues," which, with respect to each group of the carrier's bills involving the same issue, shall consist of a brief narrative statement of the issue (as defendant contends) with reference to (1) a court decision involving the same issue, or (2) the tariffs or other authority relied upon by defendant.

8. **Verification of Carrier's Computations.** If the defendant finds that the schedule attached to plaintiff's request, or any portion thereof affecting the amount claimed, is incorrect on the basis of the tariffs, Section 22 quotations, or other authority relied on by plaintiff in its request, there shall be attached to the response a schedule prepared by the defendant, setting forth the facts and figures as to the amount of freight charges which defendant asserts would be due on each carrier's bill if the court holds that the tariffs or other authorities relied on by plaintiff in its request are applicable, and showing how the defendant arrived at any changes or corrections in the amounts claimed by plaintiff.

9. **Schedule: Defendant's Basis for Applicable Charges.** If the defendant claims that the tariffs, Section 22 quotations, or other authority relied on by plaintiff are inapplicable with respect to any of the carrier's bills listed in plaintiff's request, there shall be attached to the response a schedule prepared by the defendant, setting forth the facts and figures in detail as to the amount of freight or passenger charges defendant claims is due on each disputed carrier's bill and containing a specific reference to the item or items in designated tariffs, Section 22 quotations, or other authority relied on by defendant in support of its contention. The schedule shall also comply with the terms of paragraph 2(G)(3) hereof.

10. **Failure To Deny or Respond Within Specified Time: Consequences.** Except where the response details the reasons why the defendant cannot admit or deny a particular statement in the request, any fact not so modified or denied in the response shall be deemed admitted, and the failure of the defendant to file its response within the time specified by the judge shall be taken as an admission of all of the facts as set forth in the request.

11. **Qualified Denial of Facts Available to Defendant: Consequences.** Where the request sets forth any facts that are within the knowledge of the General Services Administration or of the department or agency of the defendant for which the transportation was performed—and these specifically include but are not limited to the facts and figures which plaintiff, by this order, is directed to include in its schedules—a response stating that defendant cannot truthfully admit or deny such facts, or a denial based on a lack of knowledge by defendant's attorney of record, shall be deemed an admission thereof, *provided*, that such a response shall not be deemed an admission if accompanied by the sworn statement of the official in charge of the records that a search has been made for the necessary documents or information and that the documents or information cannot be found.

12. **Relation to Pleadings; Time for Filing Answer or Counterclaim.** In all cases to which this procedure applies, the time for filing defendant's answer and any counterclaim asserted by it may, without regard to the provisions of Rules 12 and 13, be contemporaneous with the date fixed by the judge for filing defendant's response to plaintiff's request, *provided, however*, that the period of limitations provided by 49 U.S.C. § 16(3)(d) within which the defendant may file a counterclaim is not extended by any rule set forth in this Appendix or by any order pursuant thereto. At its option, the defendant may include the response in its answer or counterclaim, which pleadings, nevertheless, shall otherwise comply with the rules applicable to them.

REFERENCES IN TEXT

49 U.S.C. § 16(3)(d), referred to in text, was repealed and reenacted as part of section 11706(d) of Title 49, Transportation, by Pub. L. 95-473, § 4(b), Oct. 13, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49.

III. ACCEPTANCE OF RESPONSE: PRETRIAL: JUDGMENT

13. **Plaintiff's Acceptance of Response.** If a plaintiff is willing to accept the amount shown to be due it in defendant's response, or, where a counterclaim has been filed, is willing to accept the net amount shown to be due plaintiff in the response after deducting the amount of defendant's counterclaim, plaintiff's attorney of record shall sign and file with the clerk an original typewritten and 2 carbon copies of a statement entitled "Plaintiff's Acceptance of the Amount Defendant Admits Is Due," stating therein that the response shows that a specified sum is due plaintiff or, where a counterclaim has been filed, that the response shows that the net amount of the counterclaim is a specified sum, and that plaintiff consents to the entry of judgment in the amount specified in favor of plaintiff in full settlement and satisfaction of all claims asserted in the complaint and request for admission of facts.

14. **Pretrial Conference; Fixing Amount of Recovery.** When plaintiff does not file an acceptance of the amount shown to be due in the response, a pretrial conference shall be held for the pur-

pose of (1) resolving all issues and recording an agreement for the entry of judgment or for a dismissal of the complaint or any part thereof, or (2) segregating the carrier's bills in dispute from those not in controversy and fixing the amount that either party would be entitled to recover in the event of a decision in its favor, and/or (3) taking any other action that may aid in the prompt disposition of the suit.

15. **Entry of Judgment.** Where all material issues are disposed of through the filing by plaintiff of its acceptance of the amount shown to be due in defendant's response, or at a pretrial conference, or by the defendant's failure to file its response within the time fixed by the judge, judgment may be entered without further proceedings.

IV. CASES WITHIN PRIMARY JURISDICTION OF INTERSTATE COMMERCE COMMISSION

16. **Referral to Interstate Commerce Commission: Defendant's Motion for.** In any suit subject to the terms of this order, if defendant contends, whether on the basis of the freight charge computations used by plaintiff or on the basis of the freight charge computations used by defendant, that any of the carrier's bills listed in the request raise issues within the primary jurisdiction of the Interstate Commerce Commission and intends to move the court to refer such issues to that agency, defendant shall file the motion with the clerk at the time fixed for the filing of its response under this order. The motion shall contain: (1) an identification of the carrier's bills involved unless all the bills in suit are included in the motion; (2) a description of the commodities shipped and a statement respecting any other factors which are pertinent to the issues covered by the motion; (3) a reference to the applicable tariffs and a copy of the pertinent provisions thereof; (4) a precise statement of the issue or issues to be referred; and (5) a statement as to whether the Interstate Commerce Commission has construed the cited tariffs in prior decisions or has clarified the facts underlying them, citing the pertinent decisions, if any.

17. **Plaintiff's Response to Defendant's Motion for Referral.** Plaintiff's response to the motion shall be filed within 30 days after service of the motion, and shall state whether plaintiff concurs in the motion. If plaintiff contends that the Interstate Commerce Commission has construed the tariffs referred to in defendant's motion or has clarified the factors underlying them in previous decisions, the response shall cite such decision.

18. **Referral to Interstate Commerce Commission: Plaintiff's Motion for.** If plaintiff, in any case subject to the terms of this order, contends that any of the carrier's bills in suit raise issues within the primary jurisdiction of the Interstate Commerce Commission and intends to move the court to refer such issues to that agency, plaintiff's motion shall be filed not later than 30 days from the date defendant's response is filed and shall conform to the requirements of paragraph 16 hereof.

19. **Defendant's Response to Plaintiff's Motion for Referral.** Defendant's response to plaintiff's motion shall conform to the requirements of paragraph 17 above.

20. **Effect of Filing Referral Motion.** The trial of any case subject to the terms of this order in which a motion for referral is filed shall be deferred until final action on the motion.

21. **Failure To File Referral Motion in Specified Time: Consequences.** The failure of either party to file, within the time prescribed above, a motion requesting the court to refer a pending case or any part thereof to the Interstate Commerce Commission may be deemed good cause for denying any such motion thereafter filed.

APPENDIX D

PROCEDURE IN CONGRESSIONAL REFERENCE CASES

(28 U.S.C. §§ 1492, 2509)

1. **Purpose.** The Federal Courts Improvement Act of 1982, amended 28 U.S.C. §§ 1492 and 2509, to authorize either House of Congress to refer bills to the chief judge of the United States Claims Court for investigation and report to the appropriate House. Procedures promulgated by the chief judge applicable to such congressional reference cases are specified herein. The rules of the United States Claims Court, to the extent feasible, are to be applied in congressional reference cases.

2. **Service of notice.** Upon referral of a bill to the chief judge by either House of the Congress, the clerk shall docket the reference and serve a notice, as provided in Rule 5, on each person whose name and address is shown by the papers transmitted and who appears to have an interest in the subject matter of the reference. The notice shall set forth the filing of the reference and state that the person notified appears to have an interest therein and that such person shall have 90 days within which to file a complaint. The clerk shall forward a copy of each such notice to the Attorney General.

3. **Complaint.** Any person served with notice who desires to assert a claim may do so by filing a complaint in accordance with Rules 3(c), 8, and 9 (or a preliminary complaint under Rule 27(a)) of the rules of this Court, except that the complaint shall be captioned as provided in paragraph 6.

4. **Failure of party to appear.** If no interested person files a complaint within the time specified in the notice served by the clerk, the case may be reported upon the papers filed and upon such evidence, if any, as may be produced by the Attorney General.

5. **Hearing officer; review panel.** Upon the filing of a complaint, the chief judge by order will designate a judge of the court to serve as hearing officer and a panel of three judges to serve as a reviewing body. One of the review panel members will be designated by the chief judge as presiding officer of the panel.

6. **Captions.** All pleadings, motions, and any other papers of the parties, and all subpoenas,

orders and reports of a hearing officer and review panel, shall be captioned as follows:

CONGRESSIONAL REFERENCE
To The
UNITED STATES CLAIMS COURT

Congressional Reference No. _____

7. **Subpoenas.** Each hearing officer and each review panel shall have authority to do and perform any acts which may be necessary or proper for the efficient performance of their duties, including the power of subpoena and the power to administer oaths and affirmations. Subpoenas requiring travel of more than 100 miles to place of trial must have attached thereto an order of approval by the chief judge.

8. **Hearing officer report.** The hearing officer shall conduct such proceedings and utilize such rules of the United States Claims Court as may be required to determine the facts, including facts relating to delay or laches, facts bearing upon the question whether the bar of any statute of limitation should be removed, or facts claimed to excuse the claimant for not having resorted to any established legal remedy. The hearing officer shall find the facts specially. The hearing officer's findings shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the hearing officer to judge the credibility of witnesses. The hearing officer shall append to the findings of fact conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant. The report shall be filed with the clerk, and served by the clerk on the parties.

9. **Acceptance or exceptions.** Within 30 days after service of the report, each party shall file either, (a) a notice of intention to except to the report or (b) a notice accepting the report.

10. **Review panel consideration and report.** The findings and conclusions of the hearing officer, together with the record of the case, shall be considered by the review panel. When a party or parties have filed a notice of intention to accept, the presiding officer by order shall establish a schedule for the parties to file briefs on exceptions to the hearing officer's findings and conclusions and requests for oral argument before the panel. The chief judge will entertain no appeals or requests for review of any rulings or actions by a hearing officer or a review panel. No case shall be returned to the hearing officer unless so ordered by the review panel. On the basis of the entire record, the panel, by majority vote, shall adopt or modify the findings or the conclusions of the hearing officer and shall file its report with the clerk, for service on the parties.

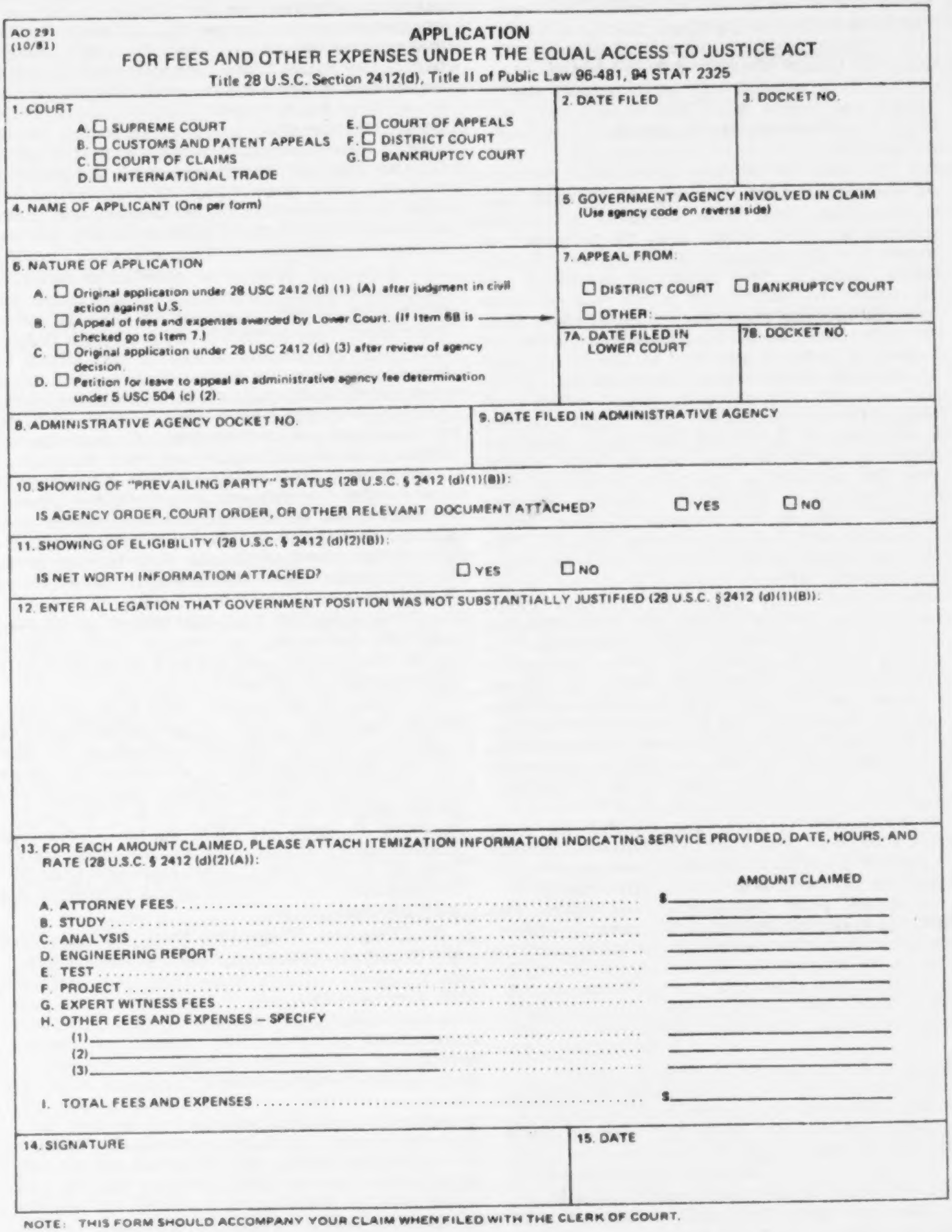
11. **Rehearing.** Within 10 days after service of the report of the review panel, any party may file a motion for rehearing to alter or amend the report. The motion shall state with particularity any contention of law or fact which the movant believes has been overlooked or misapprehended, and shall contain argument in support thereof. Oral argument in support of the motion shall not be permitted. No response to a motion for rehearing is required, but will be considered if filed within 10 days from the date the motion for rehearing is filed. No time extension shall be allowed for filing such a response. If the motion for rehearing is granted, the review panel shall take such further action as in its discretion may be required by the circumstances of the particular case.

12. **Transmittal to Congress.** When all proceedings are concluded, the report of the review panel shall be transmitted by the chief judge to the appropriate House of Congress.

13. **Admission to practice.** Any attorney representing a claimant in a congressional reference case may file (and appear as attorney of record in) the proceeding if he is a member of the bar of the United States Claims Court or, if not, upon certification to the clerk that he is a member in good standing of the bar of the highest court of any state in the Union (or the District of Columbia). Any claimant (except a corporation) in a congressional reference case may proceed pro se.

14. **Filing fees.** Filing fees as set by Rule 77(k) are required in congressional reference cases.

APPENDIX E



AO 291
(10/81)

APPLICATION
FOR FEES AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

Title 28 U.S.C. Section 2412(d), Title II of Public Law 96-481, 94 STAT 2325

1. COURT
   - A. ☐ SUPREME COURT
   - B. ☐ CUSTOMS AND PATENT APPEALS
   - C. ☐ COURT OF CLAIMS
   - D. ☐ INTERNATIONAL TRADE
   - E. ☐ COURT OF APPEALS
   - F. ☐ DISTRICT COURT
   - G. ☐ BANKRUPTCY COURT

2. DATE FILED

3. DOCKET NO.

4. NAME OF APPLICANT (One per form)

5. GOVERNMENT AGENCY INVOLVED IN CLAIM (Use agency code on reverse side)

6. NATURE OF APPLICATION
   - A. ☐ Original application under 28 USC 2412 (d) (1) (A) after judgment in civil action against U.S.
   - B. ☐ Appeal of fees and expenses awarded by Lower Court. (If Item 6B is checked go to Item 7.) ⟶
   - C. ☐ Original application under 28 USC 2412 (d) (3) after review of agency decision.
   - D. ☐ Petition for leave to appeal an administrative agency fee determination under 5 USC 504 (c) (2).

7. APPEAL FROM:
☐ DISTRICT COURT ☐ BANKRUPTCY COURT
☐ OTHER: ____________________

7A. DATE FILED IN LOWER COURT

7B. DOCKET NO.

8. ADMINISTRATIVE AGENCY DOCKET NO.

9. DATE FILED IN ADMINISTRATIVE AGENCY

10. SHOWING OF "PREVAILING PARTY" STATUS (28 U.S.C. § 2412 (d)(1)(B)):
IS AGENCY ORDER, COURT ORDER, OR OTHER RELEVANT DOCUMENT ATTACHED? ☐ YES ☐ NO

11. SHOWING OF ELIGIBILITY (28 U.S.C. § 2412 (d)(2)(B)):
IS NET WORTH INFORMATION ATTACHED? ☐ YES ☐ NO

12. ENTER ALLEGATION THAT GOVERNMENT POSITION WAS NOT SUBSTANTIALLY JUSTIFIED (28 U.S.C. § 2412 (d)(1)(B)):

13. FOR EACH AMOUNT CLAIMED, PLEASE ATTACH ITEMIZATION INFORMATION INDICATING SERVICE PROVIDED, DATE, HOURS, AND RATE (28 U.S.C. § 2412 (d)(2)(A)):

	AMOUNT CLAIMED
A. ATTORNEY FEES	$________
B. STUDY	________
C. ANALYSIS	________
D. ENGINEERING REPORT	________
E. TEST	________
F. PROJECT	________
G. EXPERT WITNESS FEES	________
H. OTHER FEES AND EXPENSES – SPECIFY	
(1) ________	________
(2) ________	________
(3) ________	________
I. TOTAL FEES AND EXPENSES	$________

14. SIGNATURE

15. DATE

NOTE: THIS FORM SHOULD ACCOMPANY YOUR CLAIM WHEN FILED WITH THE CLERK OF COURT.

ADMINISTRATIVE AGENCY CODES

(Use the following abbreviations for the U.S. Government Agency involved in claim (Item 5))

BENEFITS REVIEW BOARD	BRB
CIVIL AERONAUTICS BOARD	CAB
CIVIL SERVICE COMMISSION (U.S.)	CSC
CONSUMER PRODUCTS SAFETY COMMISSION	CPSC
COPYRIGHT ROYALTY TRIBUNAL	CRT
DEPARTMENT OF AGRICULTURE	AGRI
DEPARTMENT OF COMMERCE	COMM
DEPARTMENT OF DEFENSE	DOD
DEPARTMENT OF EDUCATION	EDUC
DEPARTMENT OF ENERGY	DOE
DEPARTMENT OF HEALTH, EDUCATION & WELFARE	HEW
DEPARTMENT OF HEALTH & HUMAN SERVICES	HHS
DEPARTMENT OF HOUSING & URBAN DEVELOPMENT	HUD
DEPARTMENT OF INTERIOR	DOI
DEPARTMENT OF JUSTICE	DOJ
DEPARTMENT OF LABOR (Except OSHA)	LABR
DEPARTMENT OF TRANSPORTATION, NATIONAL TRANSPORTATION SAFETY BOARD	TRAN
DEPARTMENT OF THE TREASURY (Except IRS)	TREA
DRUG ENFORCEMENT AGENCY	DEA
ENVIRONMENTAL PROTECTION AGENCY	EPA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	EEOC
FEDERAL AVIATION AGENCY	FAA
FEDERAL COAL MINE SAFETY BOARD	FCMS
FEDERAL COMMUNICATIONS COMMISSION	FCC
FEDERAL DEPOSIT INSURANCE CORPORATION	FDIC
FEDERAL ELECTION COMMISSION	FEC
FEDERAL ENERGY AGENCY	FEA
FEDERAL ENERGY REGULATORY COMMISSION	FERC
FEDERAL HOME LOAN BANK BOARD	FHLB
FEDERAL LABOR RELATIONS AUTHORITY	FLRA
FEDERAL MARITIME BOARD	FMBD
FEDERAL MARITIME COMMISSION	FMC
FEDERAL MINE SAFETY & HEALTH ADMINISTRATION	MSHA
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION	MSHR
FEDERAL RESERVE SYSTEM	FRS
FEDERAL TRADE COMMISSION	FTC
FOOD & DRUG ADMINISTRATION	FDA
GENERAL SERVICES ADMINISTRATION	GSA
IMMIGRATION & NATURALIZATION SERVICE	INS
INTERNAL REVENUE SERVICE (Except TAX COURT)	IRS
INTERSTATE COMMERCE COMMISSION	ICC
MERIT SYSTEMS PROTECTION BOARD	MSPB
NATIONAL LABOR RELATIONS BOARD	NLRB
NUCLEAR REGULATORY COMMISSION	NRC
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION	OSHA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION	OSHC
OFFICE OF MANAGEMENT & BUDGET	OMB
OFFICE OF PERSONNEL MANAGEMENT	OPM
OFFICE OF WORKERS COMPENSATION PROGRAM	OWCP
PATENT OFFICE	PATO
POSTAL RATE COMMISSION (U.S.)	PRC
POSTAL SERVICE (U.S.)	USPS
RR RETIREMENT BOARD	RRRB
SECURITIES & EXCHANGE COMMISSION	SEC
SMALL BUSINESS ADMINISTRATION	SBA
TAX COURT, INTERNAL REVENUE SERVICE	TXC

APPENDIX F

UNITED STATES CLAIMS COURT RULES OF DISCIPLINARY ENFORCEMENT

The United States Claims Court, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or admitted for the purpose of a particular proceeding pursuant to RUSCC 81(b)(5), promulgates the following Rules of Disciplinary Enforcement superseding all of its other Rules pertaining to disciplinary enforcement heretofore promulgated.

Rule I. Attorneys Convicted of Crimes

A. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before this Court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, this Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, this Court may set aside such order when it appears in the interest of justice so to do.

B. The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

C. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

D. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, this Court shall, in addition to suspending that attorney in accordance with the provisions of this Appendix, refer the matter to counsel for the institution of a disciplinary proceeding before this Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

E. Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a serious crime, this Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before this Court; provided, however, that this Court may in its discretion make no reference with respect to convictions for minor offenses.

F. An attorney suspended under the provisions of this Appendix will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by this Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

Rule II. Discipline Imposed by Other Courts; Disbarment on Consent or Representation in Other Courts

A. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other court of the United States or District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this Court of such action.

B. Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from the Bar of any other court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

C. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another court or upon accepting disbarment on consent or resignation, this Court shall forthwith issue a notice directed to the attorney containing:

1. a copy of the judgment or order from the other court or a copy of the communication indicating disbarment on consent or resignation; and
2. an order to show cause directing that the attorney inform this Court within 30 days after service of that order upon the attorney, personally or by mail of any claim by the attorney predicated upon the grounds set forth in E. hereof that the imposition of the identical discipline by this Court would be unwarranted and the reasons therefor.

D. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

E. Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of C. above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

1. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

2. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or
3. that the imposition of the same discipline by this Court would result in grave injustice; or
4. that the misconduct established is deemed by this Court to warrant substantially different discipline.

Where this Court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

F. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Court.

G. This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

Rule III. Standards for Professional Conduct

A. For misconduct defined in this Appendix and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, publicly reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.

B. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this Court is the American Bar Association Model Rules of Professional Conduct, as amended from time to time by the Association, except as otherwise provided by specific Rule of this Court.

Rule IV. Disciplinary Proceedings

A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by this Appendix, the Judge shall refer the matter to the Chief Judge for determination whether the matter should be referred to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

B. Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney the disposition of which in the judgment of the counsel should be awaited before further action by this Court is considered or for any other valid reason, counsel shall file with this Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

C. To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent-attorney to show cause within 30 days after service of that order upon that attorney, personally, or by mail, why the attorney should not be disciplined.

D. Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, the Chief Judge shall set the matter for prompt hearing before one or more Judges of this Court.

Rule V. Disbarment on Consent While Under Disciplinary Investigation or Prosecution

A. Any attorney admitted to practice before this Court who is the subject of an investigation into or a pending proceeding involving allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

1. the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
2. the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;
3. the attorney acknowledges that the material facts so alleged are true; and
4. the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

B. Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

C. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Appendix shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

Rule VI. Reinstatement

A. *After Disbarment or Suspension.* An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with this Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this Court, except as provided in Rule I F. of the Appendix.

B. *Time of Application Following Disbarment.* A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least one year from the effective day of the disbarment.

C. *Hearing on Application.* Petitions for reinstatement by a disbarred or suspended attorney under this Appendix shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more Judges of this Court. The Judge or Judges assigned to the matter shall within 30 days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or to the administration of justice, or subversive of the public interest.

D. *Deposit for Costs of Proceeding.* Petitions for reinstatement under this Appendix shall be accompanied by an advance cost deposit in an amount to be set from time to time by this Court to cover anticipated costs of the reinstatement proceeding.

E. *Conditions of Reinstatement.* If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the Judge or Judges before whom the matter is heard, upon the furnishing of proof of competency and learning in law, which proof may include certification by the Bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

F. *Successive Petitions.* No petition for reinstatement under this Appendix shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

Rule VII. Attorneys Specially Admitted

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding pursuant to RUSCC 81(b)(5), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

Rule VIII. Service of Papers and Other Notices

A. Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at his last known address. If service by registered or certified mail is ineffective, this Court shall enter an order as appropriate to effect service.

B. Service of any other papers or notices required by this Appendix shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at his last known address or the respondent-attorney at the address indicated in the most recent pleading or other document filed in the course of any proceeding.

Rule IX. Appointment of Counsel

This Court shall appoint as counsel one or more members of the Bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under this Appendix, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

Rule X. Payment of Fees and Costs

At the conclusion of any disciplinary investigation or prosecution, if any, under this Appendix, counsel may make application to this Court for an order awarding reasonable fees and reimbursing costs expended in the course of such disciplinary investigation or prosecution. Any such order shall be submitted to the Clerk of this Court which shall pay the amount required thereunder from the funds collected pursuant to Rule XI E.

Rule XI. Duties of the Clerk

A. Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the Clerk of the Court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk shall promptly obtain a certificate and file it with this Court.

B. Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

C. Whenever it appears that any person disbarred or suspended or censured or disbarre on consent by this Court is admitted to practic law in any other jurisdiction or before an other court, the Clerk of this Court shall within ten days of that disbarment, suspension censure, or disbarment on consent, transmit t the disciplinary authority in such other juris diction, or for such other court, a certified[1] ex emplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence address of the defendant or respondent-attorney.

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[1] So in original. Probably should be followed by "or".

D. The Clerk of this Court shall, likewise, notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

E. The Clerk of this Court shall utilize a portion of the Fee for Admission required by RUSCC 81(b)(4) to defray the payment of fees and costs under Rule X of this Appendix and any other costs incurred by the administration of this Appendix.

Rule XII. Jurisdiction

Nothing contained in this Appendix shall be construed to deny to this Court such powers as are necessary for this Court to maintain control over proceedings conducted before it, such as proceedings for contempt, issuance of public reprimands, or imposition of fines of not more than $1,000.00.

APPENDIX G

PROCEDURES BEFORE TRIAL

I. GENERAL

1. The judge may modify these procedures, in whole or in part, as appropriate in the circumstances of the case, or the parties may suggest by motion such modification of these procedures.

II. EARLY MEETING OF COUNSEL

2. Within 21 days after the date defendant's answer is served or 21 days after a reply to a counterclaim is served, plaintiff's counsel shall communicate with defense counsel, and the parties shall confer:

a. To initiate preparation of the Joint Preliminary Status Report pursuant to ¶¶3–4 *infra*, and

b. Unless exempted by ¶5 *infra*, to:

(1) identify each party's factual and legal contentions;

(2) discuss each party's discovery needs and discovery schedule, including providing access to documents that are to be the subject of discovery. Agreement to informal discovery is encouraged;

(3) discuss settlement of the action.

Participating counsel shall be counsel of record and such other attorneys as necessary so that participating counsel for each party are knowledgeable about the case and the identity of witnesses and location of documents.

III. JOINT PRELIMINARY STATUS REPORT

3. No later than 21 days after the early meeting of counsel, the parties shall file with the Clerk of the Court a Joint Preliminary Status Report, signed by both parties, setting forth the following:

a. Does the court have jurisdiction over the action?

b. Should the case be consolidated with any other case? and the reasons therefor;

c. Should trial of liability and damages be bifurcated? and the reasons therefor;

d. Should further proceedings in this case be deferred pending consideration of another case before this court? and the reasons therefor;

e. Will a remand or suspension be sought? and the reasons therefor and the proposed duration;

f. Will additional parties be joint? and, if so, a statement describing such parties, their relationship to the case, and the efforts to effect joinder and the schedule proposed to effect joinder;

g. Does either party intend to file a motion pursuant to Rule 12(b), 12(c), or 56? and, if so, a schedule for the intended filing;

h. What are the relevant issues? Can they be narrowed by stipulation or otherwise? and, if so, a schedule for the intended filing;

i. Can the case be settled? and, if so, the time considered necessary to complete such activity;

j. Do the parties anticipate proceeding to trial? and, if so, a proposed schedule for the activities in ¶¶4, 9, 11–15 *infra;*

k. Is there any other information of which the court should be aware at this time?

4. If discovery is required before filing a dispositive motion or stipulating facts or for trial, the Joint Preliminary Status Report should set forth a proposed discovery plan, including a proposed deadline, that provides for sequential or simultaneous discovery. In some cases sequential discovery is more appropriate; however, the parties are enjoined that if a program of sequential discovery is proposed, they are to engage in contemporaneous discovery to the extent possible.

Separate views may be set forth on any point on which the parties cannot agree.

5. The Joint Preliminary Status Report shall be deferred indefinitely if on or before the date the Joint Preliminary Status Report is due a dispositive motion addressing all issues is filed.

6. After the Joint Preliminary Status Report or status conference held after the report is filed, the judge shall enter the scheduling order called for by RUSCC 16(b). Scheduling of the pretrial conference, ¶9 *infra*, and submissions jointly due in ¶¶11–15 *infra* may be scheduled at a later time.

IV. DISCOVERY

7. **Form of Interrogatories, Requests for Admission, Responses.** A party shall number interrogatories and requests for admission sequentially without repeating the numbers it has used in any prior set of interrogatories or requests for admission. Each interrogatory and request for admission shall be started at the top of a new page. Answers or objections must be typed by the opposing party on the page containing the interrogatory or request for admission. If additional space is required, the answering party may add pages immediately succeeding the page on which the interrogatory or request for admission is written, denominating the pages by the same number but adding a sequential letter designation (*e.g.*, 10a, 10b, etc.). By his signature to

the answers and pursuant to RUSCC 11, counsel for the responding party shall certify that he has made diligent effort to provide answers to all portions of interrogatories or requests for admission not specifically objected to.

8. Discovery Motions. A motion to compel or protect from discovery shall contain a statement by the movant that the parties have consulted in good faith to resolve the matters in dispute.

V. PRETRIAL CONFERENCE

9. Scheduling. The judge by order shall set the case for a pretrial conference for a date no sooner than 45 days after the close of discovery. The judge shall also set the dates by which the memoranda called for in ¶¶11-15 *infra* are due. The attorneys appearing at the pretrial conference shall be the attorneys who will try the case, are thoroughly familiar with it, and are authorized to act for their principals.

10. Meeting of Counsel. No later than 30 days before the pretrial conference, counsel for the parties shall confer:

a. To list and exchange all exhibits to be used at trial (unless previously exchanged, except those to be used for impeachment). Failure to list an exhibit (or to amend the list to add an exhibit at the earliest possible practicable time if the existence or relevance of the exhibit did not become apparent until after exchange of the exhibit list) shall result, absent a showing of a compelling reason for the failure, in an exclusion of the exhibit at trial. Each exhibit shall be identified by an exhibit number and description.

b. To exchange a final list of names and addresses of witnesses (including expert witnesses) to be called at trial, except those to be used for impeachment (unless previously exchanged). Failure of a party to list a witness (or to amend the list to add a witness at the earliest practicable time if the existence or relevance of the witness did not become apparent until after the exchange of the witness list) shall result, absent a showing of a compelling reason for the failure, in the exclusion of that witness' testimony at trial. Any witness whose identity has not been previously disclosed shall be subject to discovery. As to each witness, the party shall indicate the specific topics to be addressed in the expected testimony. (If expert witnesses are to be called, the parties shall exchange a short narrative statement of the qualifications of the expert, if this information has not already been obtained through discovery.) If reports of experts to be called at trial have been prepared, and not yet exchanged, they shall be exchanged, but shall not take the place of the narrative statement.

c. To dislcose to opposing counsel the intention to file a motion pursuant to ¶16 *infra* (leave to file transcript of deposition for introduction at trial);

d. To resolve, if possible, any objections to the admission of oral or documentary evidence;

e. To disclose to opposing counsel all contentions as to applicable facts and law (unless previously disclosed);

f. To engage in good-faith, diligent efforts to stipulate and agree to facts about which the parties know, or have reason to know, there can be no dispute for the purpose of simplifying the issues at trial; and

g. To exhause all possibilities of settlement.

11. Memorandum of Contentions of Fact and Law. No later than seven days before the pretrial conference, each party shall file a Memorandum of Contentions of Fact and Law containing a summary of the party's basic factual contentions together with any applicable legal authority. The memorandum shall contain a full but concise exposition of counsel's theory of the case and a statement in narrative form of what the party expects to prove. The memorandum shall also address all anticipated legal questions, including evidentiary problems, that the parties expect may arise during the course of trial. If a party believes bifurcation of issues for trial is appropriate, the memorandum shall contain a request therefor, together with a statement of reasons. The memorandum shall also set forth the expected length of trial.

12. Witness List. Each party shall file, together with the Memorandum of Contentions of Fact and Law, a separate statement setting forth a list of witnesses to be called at trial, other than those to be used exclusively for impeachment. As to each witness, the party shall indicate the specific topics to be addressed in the expected testimony and the time needed for direct examination.

13. Exhibit List. Each party shall file, together with the Memorandum of Contentions of Fact and Law, a separate statement setting forth a list of exhibits it expects to offer at trial, other than those to be used exclusively for impeachment. In addition, any party intending to introduce more than 50 document exhibits shall provide as to each document, following its description, a short synopsis of the relevant portion of its contents and a brief statement of the document's significance to issues at trial. For multiple-page documents, reference shall be made to specific page numbers.

14. Stipulations. No later than the date for filing the Memorandum of Contentions of Fact and Law, the parties shall file a separate Joint Memorandum Re: Stipulations. The memorandum shall be in two parts:

a. The first part shall contain separately numbered paragraphs covering all matters to which the parties have stipulated during the course of proceedings. The stipulations must be comprehensive and the fact that any matter may have been established during discovery by admission or otherwise is not grounds from omitting it from stipulation. A party may not refuse to stipulate as to the content or purport of a document simply by claiming that the document is the best evidence of its content. Nor is the fact that a party deems a fact irrelevant a sufficient basis for refusing to stipulate to its existence. Relevance may be argued in the Memorandum of Contentions of Fact and Law.

b. The second part of the memorandum shall set forth any matters a party proposes to be stipulated, as to which the parties have failed to reach agreement, and which the proponent of the stipulation believes are not reasonably subject to dispute. Each such proposed stipulation shall be set forth in full, together with the reasons the proponent believes the matter is not subject to dispute. The opposing party must explain beneath why and to what extent it believes the matter to be in dispute.

15. **Issues of Fact and Law.** No later than the date for filing the Memorandum of Contentions of Fact and Law, the parties shall also file a joint statement setting forth the issues of fact and the issues of law to be resolved by the court. Issues should be set forth in sufficient detail to enable the court to resolve the case in its entirety by addressing each of the issues listed. The statement of issues shall control the admissibility of evidence at trial and evidence will be deemed to be irrelevant unless it pertains to one or more of the issues.

16. **Deposition Testimony.** Any party intending to present substantive evidence by way of deposition testimony, other than as provided by Fed. R. Evid. 801(d), shall serve and file, together with the Memorandum of Contentions of Fact and Law, a separate motion for leave to file the transcript of this testimony with the Clerk of the Court. The motion shall show cause why the deposition testimony should be admitted and identify specifically the portions of the transcript the party intends to use at trial. If the motion is granted, only those portions of the transcript may be filed. The opposing party may file any response to this motion with its Memorandum of Contentions of Fact and Law.

17. **Responses.** The parties are expected to cooperate in the preparation of the documents specified in ¶¶11-15 *supra*. Any responses to matters raised by the opposing party should therefore be included in each party's initial submission. However, if anything new or unexpected is discovered, it may be addressed in a brief response which must be filed under cover of motion for leave immediately upon learning of it.

APPENDIX H

MOTIONS

1. **Factual Matters.** Factual representations, other than those pertaining to procedural aspects of the case which are personally known to the signatory attorney, will be disregarded unless supported by:

a. A witness' affidavit (or a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746) attached to the motion or found in the pleadings or elsewhere in the record;

b. The transcript of a deposition or of trial testimony;

c. The testimony of a witness who appears at the hearing on the motion;

d. Any of the other submissions referred to in RUSCC 56(c); or

e. Any other evidence that would be admissible at trial.

2. **Oral argument.** Oral argument ordinarily shall be heard on all contested motions (other than motions to amend, for enlargement, to shorten time limits, to file documents out of time or in excess of page limits, to reschedule oral arguments, to substitute counsel, or to reconsider matters) as to which one of the parties requests to be heard by so stating in its initial brief.

APPENDIX I

In the United States Claims Court

BILL OF COSTS

______________________ No. __________

vs.

THE UNITED STATES

Judgement with costs having been entered in the above-entitled action on the _____ day of __________, 198__, against __________ the clerk is requested to tax the following as costs:

Fees of the clerk	$__________
Fees of the reporter for all or any part of the trial of hearing transcript necessarily obtained for use in the case..........	__________
Fees for witnesses; for statutory fees, see 28 U.S.C. § 1821 (attach itemized listing)..........	__________
Costs for exemplification or duplication of papers necessarily obtained for use in case. (provide number of copies, total pages and cost per page)*..........	__________
Costs incident to taking of depositions (if not of record, then attach statement as to need)..........	__________
Costs pursuant to FRAP 39(e)..	__________
Other costs (itemize on attachment)..........	__________
Total	$__________

*Allowable duplication costs are restricted to briefs on dispositive matters for a total of 5 copies; additional copies allowable where third parties are present.

CERTIFICATION

State/District of ______________, ss.
County of ________________,

I certify under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed and that a copy hereof was this day mailed to ____________ with postage fully prepaid thereon. Executed on __________
(Date)

(28 U.S.C. § 1746)

____
(Signature of Attorney of Record)

____

____
(Address)

RULES OF THE UNITED STATES COURT OF INTERNATIONAL TRADE

(Effective November 1, 1980, as amended to January 1, 1986)

TITLE I—SCOPE OF RULES—ONE FORM OF ACTION

Rule

1. Scope of Rules.

TITLE II—COMMENCEMENT OF ACTION; AMENDMENT OF SUMMONS; SERVICE OF SUMMONS, PLEADINGS, MOTIONS AND ORDERS

4. Service of Summons and Complaint.
   - (a) Summons—Service by the Clerk.
   - (b) Summons and Complaint—Service by Plaintiff.
   - (c) Service.
   - (d) Summons and Complaint—Person To Be Served.
   - (e) Return.
   - (f) Amendment of Proof of Service.
   - (g) Alternative Provisions for Service in a Foreign Country.
   - (h) Summons and Complaint—Time Limit for Service.

TITLE III—PLEADINGS AND MOTIONS

11. Signing of Pleadings, Motions or Other Papers—Sanctions.
16. Postassignment Conferences—Scheduling—Management.
   - (a) Postassignment Conferences—Objectives.
   - (b) Scheduling and Planning.
   - (c) Subjects to be Discussed at Postassignment Conferences.
   - (d) Final Postassignment Conference.
   - (e) Orders.
   - (f) Sanctions.

TITLE V—DEPOSITIONS AND DISCOVERY

26. General Provisions Governing Discovery.
   - (a) Discovery Methods.
   - (b) Discovery Scope and Limits.
   - (c) Protective Orders.
   - (d) Sequence and Timing of Discovery.
   - (e) Supplementation of Responses.
   - (f) Discovery Conference.
   - (g) Signing of Discovery Requests, Responses, and Objections.
   - (h) Costs.
29. Stipulations Regarding Discovery Procedure.
30. Depositions Upon Oral Examination.
   - (a) When Depositions May Be Taken.
   - (b) Notice of Examination.
   - (c) Examination and Cross-Examination—Record of Examination—Oath—Objections.
   - (d) Motion To Terminate or Limit Examination.
   - (e) Submission to Witness—Changes—Signing.
   - (f) Certification and Filing by Officer—Exhibits—Copies—Notice of Filing.
   - (g) Failure to Attend or to Serve Subpoena—Expenses.

Rule

37. Failure To Make or Cooperate in Discovery—Sanctions.
   - (a) Motion for Order Compelling Discovery.
   - (b) Failure To Comply With Order.
   - (c) Expenses on Failure to Admit.
   - (d) Failure of Party To Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.
   - (e) Subpoena of Person in Foreign Country.
   - (f) Failure to Participate in the Framing of a Discovery Plan.

TITLE VI—TRIALS

41. Dismissal of Actions.
   - (a) Voluntary Dismissal—Effect Thereof.
   - (b) Involuntary Dismissal—Effect Thereof.
   - (c) Insufficiency of Evidence.
   - (d) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim.
   - (e) Costs of Previously Dismissed Action.

TITLE VII—JUDGMENT

56.1. Judgment Upon an Agency Record.
   - (a) Motion for Judgment.
   - (b) Cross-Motions.
   - (c) Briefs.
   - (d) Time to Respond.
   - (e) Hearing.
   - (f) Partial Judgment.

TITLE VIII—PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

68. Attorney's Fees and Expenses.
   - (a) Time for Filing.
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TITLE XI—THE COURT AND CLERK

81. Papers Filed—Conformity—Form, Size, Copies.
   - (a) Conformity Required.
   - (b) Means of Production.
   - (c) Caption and Signing.
   - (d) Numbering of Pages.
   - (e) Designation of Originals.
   - (f) Pleadings and Other Papers.
   - (g) Status of Action.
   - (h) Confidential Information.
   - (i) Briefs—Trial and Pretrial Memoranda.
   - (j) Content—Moving Party's Brief.
   - (k) Content—Respondent's Brief.
   - (*l*) Content—Reply Brief.
   - (m) General.
82. Clerk's Office and Orders by the Clerk.
   - (a) Business Hours and Address.
   - (b) Motions, Orders and Judgments.
   - (c) Clerk—Definition.
   - (d) Filing of Papers.

TITLE XII—COURT CALENDARS

Rule

85. Suspension Disposition Calendar.
    - (a) Suspension Disposition Calendar.
    - (b) Time—Notice.
    - (c) Removal.
    - (d) Dismissal for Lack of Prosecution.
87. Forms.
88. Title.
89. Effective Date.
    - (a) Effective Date of Original Rules.
    - (b) Effective Date of Amendments.
    - (c) Effective Date of Amendment.
    - (d) Effective Date of Amendments.

APPENDIX OF FORMS

TITLE I—SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. Scope of Rules

These rules govern the procedure in the United States Court of International Trade. They shall be construed to secure the just, speedy, and inexpensive determination of every action. When a procedural question arises which is not covered by these rules, the court may prescribe the procedure to be followed in any manner not inconsistent with these rules. The court may refer for guidance to the rules of other courts. The rules shall not be construed to extend or limit the jurisdiction of the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

TITLE II—COMMENCEMENT OF ACTION; AMENDMENT OF SUMMONS; SERVICE OF SUMMONS, PLEADINGS, MOTIONS AND ORDERS

Rule 4. Service of Summons and Complaint

[*See main edition for text of* (*a*)]

(b) Summons and Complaint—Service by Plaintiff. In any action required to be commenced by the concurrent filing of a summons and complaint, the plaintiff shall cause service of the summons and complaint to be made in accordance with this rule.

(c) Service.

(1)(A) A summons and complaint shall, except as provided in subparagraphs (B) and (C) of this paragraph, be served by any person who is not a party and is not less than 18 years of age.

(B) A summons and complaint shall, at the request of the party seeking service or such party's attorney, be served by a United States marshal or deputy United States marshal, or by a person specially appointed by the court for that purpose, only—

(i) on behalf of a party authorized to proceed in forma pauperis pursuant to 28 U.S.C. § 1915,

(ii) on behalf of the United States or an officer or agency of the United States, or

(iii) pursuant to an order issued by the court stating that a United States marshal or deputy United States marshal, or a person specially appointed for that purpose, is required to serve the summons and complaint in order that service be properly effected in that particular action.

(C) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (3) of subdivision (d) of this rule—

(i) pursuant to the law of the State in which service is made for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or

(ii) by mailing a copy of the summons and complaint by first-class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment which shall be substantially in the form set forth in Form 14 of the Appendix of Forms and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint shall be made under subparagraph (A) or (B) of this paragraph in the manner prescribed by subdivision (d)(1) or (d)(3).

(D) Unless good cause is shown for not doing so the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons and complaint.

(E) The notice and acknowledgment of receipt of summons and complaint shall be executed under oath or affirmation.

(2) The court shall freely make special appointments to serve summonses and complaints under paragraph (1)(B) of this subdivision of this rule.

(d) Summons and Complaint—Person To Be Served. The summons and complaint shall be served together as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service.

[*See main edition for text of* (*2*) *and* (*3*)]

(4) Upon the United States, by serving the Attorney General of the United States, by delivering or by mailing by registered or certified mail, return receipt requested, a copy of the summons and complaint to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

(5) Upon an officer or agency of the United States, by serving the United States, and by delivering or by mailing by registered or certified mail, return receipt requested, a copy of the summons and complaint to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision (d).

[*See main edition for text of* (6)]

(e) Return. The person serving the process shall make proof of service thereof to the clerk of the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or deputy United States marshal, such person shall make affidavit thereof. If service is made under subdivision (c)(1)(C)(ii) of this rule, return shall be made by the sender's filing with the clerk of the court the acknowledgment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

[*See main edition for text of* (*f*)]

(g) Alternative Provisions for Service in a Foreign Country.

(1) Manner. Whenever a statute of the United States or an order of court thereunder provides for service of a summons and complaint, or of a notice, or of an order in lieu of a summons and complaint, upon a party not an inhabitant of or found within the United States, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service and service is to be effected upon a party in a foreign country, it is sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of this court or by the foreign court.

(2) Return. Proof of service may be made as prescribed by subdivision (e) of this rule, or by the law of the foreign country, or by order of this court. When service is made pursuant to paragraph (1)(D) of this subdivision (g), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to this court.

(h) Summons and Complaint—Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 120 days after the action is commenced and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (g) of this rule.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

PRACTICE COMMENT

The clerk is authorized by Rule 4(a) to make service of the summons only in those actions commenced by a summons, i.e., actions described in 28 U.S.C. § 1581(a) or (b), and only those actions described in 28 U.S.C. § 1581 (c) which contest a determination listed in section 516A(a)(2) of the Tariff Act of 1930. In all other actions, including those actions described in 28 U.S.C. § 1581(c) which contest a determination listed in section 516A(a)(1) of the Tariff Act of 1930, the plaintiff is required by Rule 4(b) to effect concurrent service of the summons and complaint.

The notice and acknowledgment of service as prescribed by Rule 4(c)(1)(C)(ii) shall be substantially in the form set forth in Form 14 of the Appendix of Forms.

Rule 5. Service and Filing of Pleadings and Other Papers

PRACTICE COMMENT

When the clerk concludes that exigencies so require, he may permit a pleading or paper to be filed by facsimile transmission or similar process. Service by such process may be made with the consent of the party to be served. Registered or certified mail, return receipt requested, must be used, as prescribed in Rule 5(f), when an action is commenced by the filing of a summons only, or the concurrent filing of a summons and complaint, and the filing is made by mail.

When a party is represented in an action by more than one attorney of record, the party shall designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party.

When service is to be made upon a party represented by an attorney, service shall be made upon the attorney of record, unless otherwise ordered by the court.

When proof of service is made in the form of a statement, as prescribed in Rule 5(h), and the person served is an attorney, the statement shall identify the name of the party represented by the attorney served.

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday,[2] or when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Extension.

(1) When by these rules or by a notice given thereunder or by order of the court, an act is required or allowed to be done at or within a

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[2] As used in these rules, "legal holiday" includes: New Year's Day, January 1; Martin Luther King's Birthday, third Monday in January; Washington's Birthday, third Monday in February; Memorial Day, last Monday in May; Independence Day, July 4; Labor Day, first Monday in September; Columbus Day, second Monday in October; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; and any other day designated as a holiday by the President or the Congress of the United States.

specified time, the court may upon motion, for good cause shown, order the period extended; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

[*See main edition for text of* (2) *to* (4); (c)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985.)

TITLE III—PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed—Consultation—Oral Argument—Response Time—Show Cause Order—Form of Motions

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Form of Motions and Other Papers.

(1) An application to the court for an order shall be by motion, properly designated, which, unless made during a hearing or trial, shall be in writing and shall state, with particularity, the grounds therefor. Motions which require consultation between counsel before being made as prescribed by subdivision (b) of this rule shall describe the reasonable effort made to reach agreement on the issues involved in the motion through consultation with opposing counsel, without the intervention of the court, and shall also recite the date and time of such consultation, as well as the names of all persons participating. All motions shall set forth the relief or order sought, and shall be accompanied by a proposed order.

(2) The rules applicable to the captions, signing, and other matters of form of pleadings apply to all motions and other papers prescribed by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(g) Dispositive Motions Defined. Dispositive motions include: motions for judgment on the pleadings; motions for summary judgment; motions for judgment upon an agency record; motions to dismiss an action; and any other motion for a final determination of an action.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 11. Signing of Pleadings, Motions or Other Papers—Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address and telephone number shall be stated. Every pleading, motion, and other paper of the United States shall be signed by an attorney authorized to do so on behalf of the Assistant Attorney General, Civil Division, Department of Justice. A pleading, motion, or other paper of an agency of the United States, authorized by statute to represent itself in judicial proceedings, may be signed by an attorney authorized to do so on behalf of the agency. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address and telephone number. Except when otherwise specifically prescribed by rule or statute, pleadings or other papers need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

[*See main edition for text of* (*f*) *to* (*h*)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 16. Postassignment Conferences—Scheduling—Management

(a) Postassignment Conferences—Objectives. In any action, the judge to whom the action is assigned may in his discretion direct the attorneys for the parties and any unrepresented parties to appear for a conference or conferences for such purposes as

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the action will not be protracted because of lack of management;

(3) discouraging wasteful activities;

(4) improving the quality of the proceedings for the final disposition of the action through more thorough preparation; and

(5) facilitating the settlement of the action.

(b) Scheduling and Planning. Except when the judge to whom the action is assigned finds that a scheduling order will not aid in the disposition of the action and enters an order to that effect, together with a statement of reasons and facts upon which the order is based, the judge shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery.

The scheduling order also may include

(4) the date or dates for conferences before submission of the action for final disposition, a final postassignment conference, and trial or submission of a dispositive motion; and

(5) any other matters appropriate in the circumstances of the action.

The scheduling order, or the order that a scheduling order will not aid in the disposition of the action, shall issue as soon as practicable but in no event more than 90 days after the action is assigned. A schedule shall not be modified except by leave of the judge upon a showing of good cause.

(c) Subjects to be Discussed at Postassignment Conferences. The participants at any conference under this rule may consider and take action with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5) the identification of witnesses and documents, the need and schedule for filing and exchanging briefs, and the date or dates for further conferences and for submission of the action for final disposition;

(6) the advisability of referring matters to a master;

(7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

(8) the form and substance of the scheduling or postassignment conference order;

(9) the disposition of pending motions;

(10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(11) access to confidential or privileged information contained in an administrative record, which is the subject of the action; and

(12) such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any postassignment conference shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(d) Final Postassignment Conference. Any final postassignment conference shall be held as close to the time of submission of the action for final disposition as reasonable under the circumstances. The participants at any such conference shall formulate a plan for submission of the action for final disposition. At least one of the attorneys on behalf of each of the parties and any unrepresented parties shall participate in the conference.

(e) Orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final postassignment conference shall be modified only to prevent manifest injustice.

(f) Sanctions. If a party or party's attorney fails to obey a scheduling or postassignment conference order, or if no appearance is made on behalf of a party at a scheduling or postassignment conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or his own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2), (3), and (4). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing him or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

PRACTICE COMMENT

The attorneys for the parties and any unrepresented parties are expected to consult prior to a postassignment conference. The consultations should pertain to such matters as: access to the confidential portions of the administrative record, if any; the definition of the issues; whether discovery is necessary or permissible; and, the establishment of a proposed discovery schedule, if it is agreed that discovery will be conducted.

TITLE IV—PARTIES

Rule 23. Class Actions

[See main edition for text of (a) *to* (c)]

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

[*See main edition for text of* (*e*)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 24. Intervention

PRACTICE COMMENT

To provide information to assist a judge in determing whether there is reason for disqualification upon the grounds of a financial interest, under 28 U.S.C. § 455, a completed "Disclosure Statement" form, available upon request from the office of the clerk, must be filed by certain corporations, trade associations, and others appearing as parties, intervenors, or *amicus curiae*. A copy of the "Disclosure Statement" form is shown in Form 13 of the Appendix of Forms.

Permissive intervention in this court is subject to the statutory provisions of 28 U.S.C. § 2631(j).

TITLE V—DEPOSITIONS AND DISCOVERY

Rule 26. General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court as prescribed by these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

[*See main edition for text of* (*2*)]

(3) Trial Preparation—Materials. Subject to the provisions of paragraph (4) of this subdivision (b), a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (1) of this subdivision (b) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

[*See main edition for text of* (*4*)]

(c) Protective Orders. Upon its own initiative, or upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden, delay or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

[*See main edition for text of* (*d*) *and* (*e*)]

(f) Discovery Conference. At any time after the filling of a complaint the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a post-assignment conference authorized by Rule 16.

(g) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address and telephone number. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(h) Costs. All costs, charges, and expenses incident to taking depositions shall be borne by the party making application for the same unless otherwise provided for by stipulation or by order of the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 29. Stipulations Regarding Discovery Procedure

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may be made only with the approval of the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 30. Depositions Upon Oral Examination

[*See main edition for text of* (*a*)]

(b) Notice of Examination—General Requirements—Special Notice—Nonstenographic Recording—Production of Documents and Things—Deposition of Organization—Deposition by Telephone.

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

[*See main edition for text of* (*4*) *to* (*7*); (*c*)]

(d) Motion To Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, delay, embarrass, or oppress the deponent or party, the court may order the officer conducting the examination to cease from taking the deposition, or may limit the scope and manner of the taking of the deposition as prescribed by Rule 26(c). If the order terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

[*See main edition for text of* (*e*) *and* (*f*)]

(g) Failure to Attend or to Serve Subpoena—Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 31. Deposition Upon Written Questions

(a) Serving Questions—Notice. After service of the complaint, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(4).

Within 30 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within 10 days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross-questions upon all other parties. The court may for cause shown enlarge or shorten the time.

[*See main edition for text of* (b) *and* (c)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 33. Interrogatories to Parties

(a) Availability—Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after filing of the complaint and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writting under oath, unless it is objected to, in which event the reasons for objections shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope—Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a postassignment conference or other later time.

[*See main edition for text of* (*c*)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

[*See main edition for text of* (*a*)]

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after filing of the complaint and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected by either individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 36. Requests for Admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after filing of the complaint, and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders determine that final disposition of the request be made at a postassignment conference or at a designated time prior to trial. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a postassignment scheduling or conference order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 37. Failure To Make or Cooperate in Discovery—Sanctions

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure To Comply With Order. If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of court. If a party or an officer, director, or managing agent of a party or person designated under Rule 30(b)(4) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35 or if a party fails to obey an order entered under Rule 26(f), the court may make such orders in regard to the failure as are just, and among others the following:

[*See main edition for text of* (*1*) *to* (*5*)]

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party To Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(4) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions (b)(1), (b)(2) and (b)(3) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Subpoena of Person in Foreign Country. A subpoena may be issued as provided in 28 U.S.C. § 1783, under the circumstances and conditions therein stated.

(f) Failure to Participate in the Framing of a Discovery Plan. If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

TITLE VI—TRIALS

Rule 38. Jury Trial of Right

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 41. Dismissal of Actions

[*See main edition for text of* (*a*)]

(b) Involuntary Dismissal—Effect Thereof.

[*See main edition for text of* (*1*)]

(2) Whenever it appears that an action is not being prosecuted with due diligence, the court may upon its own initiative after notice, or upon motion of a defendant, order the action dismissed for lack of prosecution.

[*See main edition for text of* (*3*) *and* (*4*); (*c*) *and* (*d*)]

(e) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 43. Taking of Testimony[1]

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Interpreters. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

[*See main edition for text of* (*e*)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 45. Subpoena

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Subpoena for Taking Depositions—Place of Examination.

[*See main edition for text of* (*1*)]

(2) A person to whom a subpoena for the taking of a deposition is directed may be required to attend at any place within 100 miles from the place where that person resides, is employed or transacts business in person, or is served, or at such other convenient place as is fixed by an order of court.

[*See main edition for text of* (*e*) *and* (*f*)]

(As amended June 19, 1985, eff. Oct. 1, 1985.)

Rule 52. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of this court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court.

[*See main edition for text of* (*b*)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985.)

Rule 53. Masters

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Federal Rules of Evidence for a court sitting without a jury.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

TITLE VII—JUDGMENT

Rule 56. Summary Judgment

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

[*See main edition for text of* (*i*)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 56.1. Judgment Upon an Agency Record

(a) Motion for Judgment. After issue is joined in any action in which a party believes that the determination of the court is to be made solely upon the basis of the record made before an agency, that party may move for judgment in its favor upon all or any part of the agency determination.

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[1] As provided in 28 U.S.C. § 2641(a), the Federal Rules of Evidence apply to all actions in this court, except as provided in 28 U.S.C. §§ 2639 and 2641(b), or the rules of the court.

(b) Cross-Motions. When a motion for judgment upon an agency record is filed by a party, an opposing party shall not file a cross-motion for judgment upon an agency record. If the court determines that judgment ought to be entered in favor of an opposing party, it may enter judgment in favor of that party, notwithstanding the absence of a cross-motion.

(c) Briefs.

(1) In addition to the other requirements prescribed by these rules, the briefs submitted on the motion, either contesting or supporting the agency determination, shall include a statement setting forth in separate numbered paragraphs:

(A) The administrative determination sought to be reviewed with appropriate reference to the Federal Register; and

(B) The issues of law presented together with the reasons for contesting or supporting the administrative determination, specifying how the determination may be arbitrary, capricious, an abuse of discretion, not otherwise in accordance with law, unsupported by substantial evidence; or, how the determination may be unwarranted by the facts to the extent that the agency may or may not have considered facts which, as a matter of law, should or should not have been properly considered.

(2) The brief shall include the authorities relied upon and the conclusions of law deemed warranted by the authorities. All references to the administrative record shall be made by citing the portions of the record to the factual or legal issues raised. Citations shall be by page number of the transcript, if any, and by specific identification of exhibits together with the relevant page number.

(d) Time to Respond. A response to a motion for judgment upon an agency record shall be served within 30 days after service of the motion. The moving party shall have 10 days after service of the response to the motion to serve a reply. No other papers or briefs shall be allowed, except by leave of court.

(e) Hearing. Upon motion of a party, or upon its own initiative, the court may direct oral argument on a motion for judgment upon an agency record at a time and place designated as prescribed in Rule 77(c).

(f) Partial Judgment. After considering a motion filed under this rule, the court may grant judgment in whole or in part in favor of any party.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

PRACTICE COMMENT

An action in which the determination of the court is to be made solely upon the basis of a record made before an agency shall be submitted for determination pursuant to this rule unless the court otherwise directs.

As required by Rule 81(*l*), a reply brief in an action submitted for determination pursuant to this rule shall be confined to rebutting matters contained in the brief of the responding party.

Rule 58. Entry of Judgments, Decrees or Final Orders

Subject to the provisions of Rule 54(b), a judgment, decree or final order shall be entered upon every final decision from which an appeal lies, except an order of dismissal either pursuant to Rule 41(b)(1), or in an unassigned action pursuant to Rule 41(b)(2). Every such judgment, decree or final order shall be set forth on a separate document, signed by the court, and promptly entered by the clerk. A judgment, decree or final order is effective only when so set forth and entered as prescribed by Rule 79(a). Proposed forms of judgments, decrees or final orders shall not be submitted except upon direction of the court, or as required by these rules.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 59. New Trials—Rehearings—Amendment of Judgments

[*See main edition for text of* (a) *and* (b)]

(c) Time for Serving Affidavits. When a motion for a new trial or rehearing is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by order of the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 30 days after the entry of the judgment or order the court on its own initiative may order a new trial or rehearing for any reason for which it might have granted a new trial or rehearing on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial or rehearing, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

[*See main edition for text of* (e)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 60. Relief From Judgment or Order

[*See main edition for text of* (a)]

(b) Mistakes, Inadvertence, Excusable Neglect—Newly Discovered Evidence—Fraud, Etc. On motion of a party or upon its own initiative and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. A motion of a party shall be served and filed not later than 30 days after the judgment, order, or proceeding was entered or taken. The court, upon its own initiative, may also grant relief from a judgment or order as prescribed by this rule not later than 30 days after the date of entry of the judgment or order.

This rule does not limit the power of the court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in 28 U.S.C. § 1655, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 62. Stay of Proceedings To Enforce a Judgment

[*See main edition for text of* (*a*)]

(b) Stay on Motion for New Trial or Rehearing, or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of a judgment or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or rehearing or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

[*See main edition for text of* (*c*) *to* (*g*)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

TITLE VIII—PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 67. Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of 28 U.S.C. §§ 2041 and 2042; the Act of June 26, 1934, c. 756, § 23, as amended (48 Stat. 1236, 58 Stat. 845), 31 U.S.C. § 725v; or any like statute. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

REFERENCES IN TEXT

The Act of June 26, 1934, c. 756, § 23, as amended (48 Stat. 1236, 58 Stat. 845), 31 U.S.C. § 725v, referred to in text, was repealed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1074, the first section of which enacted Title 31, Money and Finance. Insofar as not superseded by 28 U.S.C. §§ 2041 and 2042, the Act of June 26, 1934, § 23, as amended (31 U.S.C. 725v) was reenacted as 28 U.S.C. §§ 572a and 2043 by Pub. L. 97-258, § 2(g)(3)(B), (4)(E).

Rule 68. Attorney's Fees and Expenses

(a) Time for Filing. The court may award attorney's fees and expenses where authorized by law. Applications must be filed within 30 days after the date of entry by the court of a final judgment.

(b) Content of Application. Each application for attorney's fees and expenses as provided for in subdivision (a) shall contain a citation to the authority which authorizes an award, and shall indicate the manner in which the prerequisites for an award have been fulfilled. In addition, each application shall contain a statement, under oath, which specifies:

(1) the nature of each service rendered;

(2) the amount of time expended in rendering each type of service; and

(3) the customary charge for each type of service rendered.

(c) Response and Reply. The responding party shall have 30 days from the date of service of the application to file a response. No other papers or briefs shall be allowed, except as the court, upon its own initiative, shall direct.

(Added Oct. 3, 1984, eff. Jan. 1, 1985.)

PRACTICE COMMENT

An application for attorney's fees and expenses shall be substantially in the form set forth in Form 15 of the Appendix of Forms.

TITLE X—ATTORNEYS

Rule 74. Admission to Practice [1]

(a) Qualifications. An attorney of good moral character who has been admitted to practice before the Supreme Court of the United States, the highest court of any state, the District of Columbia, a territory or possession, any United States court of appeals, or any United States district court, and is in good standing therein, may be admitted to practice before this court.

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

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[1] An attorney admitted to practice before the United States Customs Court shall be deemed to be admitted to practice before the United States Court of International Trade.

TITLE XI—THE COURT AND CLERK

Rule 79. Books and Records Kept by the Clerk and Entries Therein

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Notice of Orders or Judgments.

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Lack of notice of the entry by the clerk does not affect the time to appeal or relieve, or authorize the court to relieve, a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure or by the rules of the United States Court of Appeals for the Federal Circuit.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 81. Papers Filed—Conformity—Form, Size, Copies

(a) Conformity Required. All papers filed with the court shall be produced, duplicated, and filed in conformity with these rules as to means of production, methods of duplication, form and size, and number of copies.

[*See main edition for text of* (*b*) *to* (*g*)]

(h) Confidential Information.

(1) If a party deems it necessary to refer in a pleading, motion, brief or other paper to confidential or privileged information, two sets of the pleadings, motions, briefs or other papers shall be filed.

(a) Confidential Set. One set of the pleadings, motions, briefs or other papers shall be labeled "Confidential" on the cover page and be filed with the clerk of the court. In addition, each page containing confidential material shall bear a legend so indicating.

(b) Nonconfidential Set. The second set of pleadings, motions, briefs or other papers shall be labeled "Nonconfidential" on the cover page and be filed with the clerk of the court. In addition, each page of the "nonconfidential" set from which confidential or privileged information has been deleted shall bear a legend so stating.

(2) Each party to the action shall be served with one copy of the "nonconfidential" pleading, motion, brief or other paper, and, when permitted by an applicable protective order, one copy of the "confidential" pleading, motion, brief or other paper, in accordance with Rule 5.

(3) Non-Availability to the Public. The "confidential" set of pleadings, motions, briefs or other papers filed with the court shall be available only to authorized court personnel and shall not be made available to the public.

(i) Briefs—Trial and Pretrial Memoranda. Briefs, trial and pretrial memoranda shall be filed in duplicate and shall be 8½ by 11 inches in size. Pages shall be numbered on the bottom portion thereof and bound or attached on the left margin. Typed matter shall be double spaced, except quoted material which may be indented and single spaced, and except titles, schedules, tables, graphs, columns of figures, and other interspersed material which are more readable in a form other than double spaced.

(j) Content—Moving Party's Brief: The brief of the moving party shall contain under proper headings and arranged in the following order:

(1) a table of contents;

(2) a table of statutes, regulations, and cases cited, giving the volume and page in the official editions where they may be found, and arranging the cases in alphabetical order;

(3) in an action involving a specific importation, a brief description of the merchandise, country of origin and of exportation, date of exportation, date of entry, and port of entry;

(4)(A) in actions involving classification, the verbatim paragraph or paragraphs or item or items of the tariff statute under which the merchandise was assessed, and the verbatim paragraph or paragraphs or item or items under which it is claimed that the merchandise is properly dutiable, together with any other verbatim pertinent statutory provisions or regulations; (B) in actions involving valuation, the statutory basis of appraisement and the unit of value at which the merchandise was appraised, and the claimed statutory basis of value and unit of value, together with the verbatim pertinent statutory provisions;

(5) the questions presented for decision, including all subsidiary questions involved;

(6) a concise statement of facts relevant to the issues with a specific citation to the page or pages in the record or exhibits supporting each such material fact;

(7) a summary of argument, which shall be succinct, but accurate and clear, condensation of the contentions made in the body of the brief;

(8) an argument, exhibiting clearly the contentions of the party with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, exhibits, and pages of the record relied upon;

(9) a short conclusion stating the relief sought.

(k) Content—Respondent's Brief. The brief of the respondent shall conform to the requirements prescribed in subdivision (j) of this rule, except that no statement of the facts need be made beyond what may be deemed necessary to correct any inaccuracies or omissions in the moving party's brief, and except that items (3), (4) and (5) need not be included unless the respondent is dissatisfied with their presentation by the moving party.

(*l*) Content—Reply Brief. A reply brief shall be confined to rebutting matters contained in the brief of the respondent.

(m) General. Briefs must be compact, concise, logically arranged, and free from burdensome, irrelevant, immaterial and scandalous matter. Briefs not complying with this rule may be disregarded by the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

PRACTICE COMMENT

All decisions of the United States Court of International Trade are published in: slip opinion form; the

Customs Bulletin; and the official reports of the United States Court of International Trade. Certain decisions will also be published in the Federal Supplement or the Federal Rules Decisions.

The rules of citation for papers filed in the court are as follows:

1. *Slip Opinions*

When citing a slip opinion, one should cite the slip opinion number, together with the volume number of the official reports, if available, and full date of publication. This form is used until the opinion appears in full in the *United States Court of International Trade Reports* (CIT).

Examples

Carlisle Tire and Rubber Co. v. United States, 5 CIT ___, Slip Op. 83-43 (May 18, 1983);

OR, if the volume number is not available,

___ CIT ___, Slip Op. 83-43 (May 18, 1983).

2. *Published Opinions*

After an opinion appears in the official CIT reports, *Federal Supplement* (F.Supp.), or *Federal Rules Decisions* (F.R.D.), the slip opinion is no longer used, and the citation is to the official reports, and unofficial reports, if available, together with the year of publication. One should not cite the *Customs Bulletin and Decisions* in any event.

Example

American Shack Co. v. United States, 1 CIT 1 (1980).

If the opinion is also published in F.Supp. or F.R.D., citation of these reporters should follow the citation of the official reports.

Examples

Zenith Radio Corp. v. United States, 1 CIT 53, 505 F.Supp. 216 (1980) [or 99 F.R.D. 100 (1980)];

NOT,

1 CIT 53, Slip Op. 80-10, 505 F.Supp. 216 (1980).

3. *Customs Court Opinions*

The form of citation for opinions of the United States Customs Court remains the same.

Examples

Labay Int'l, Inc. v. United States, 83 Cust. Ct. 152, C.D. 4834 (1979);

OR, if there is a F.Supp. or F.R.D. cite,

Alberta Gas Chems., Inc. v. United States, 84 Cust. Ct. 217, C.R.D. 80-1, 483 F.Supp. 303 (1980).

4. *Abstracts*

Abstracts of decisions not supported by an opinion should be numbered, published, and cited. These abstracts include decisions and judgments on agreed statements of facts, on motions for summary judgments, and on motions for judgments on the pleadings in only classification and valuation cases.

Examples

Uniroyal, Inc. v. United States, 84 Cust. Ct. 275, Abs. P80/59 (1980);

Nichimen Co. v. United States, 1 CIT 234, Abs. R81/20 (1981).

5. *Decisions of the Board of General Appraisers*

Citation of the decisions of the Board of General Appraisers should be as follows:

Example

In re Pickhardt & Kuttroff, T.D. 20,723, 1 Treas. Dec. 373 (1897).

6. *Court of Customs Appeals Opinions*

Citation of the opinions of the Court of Customs Appeals (Ct. Cust. App.) should be as follows:

Example

Kahlen v. United States, 2 Ct. Cust. App. 206 (1911).

7. *Court of Customs and Patent Appeals*

Citation of opinions of the Court of Customs and Patent Appeals (CCPA) should be as follows:

Examples

Coro, Inc. v. United States, 41 CCPA 215, C.A.D. 554 (1954);

OR, if there is an F.2d cite,

United States v. Mabay Chem. Corp., 65 CCPA 53, C.A.D. 1206, 576 F.2d 368 (1978).

8. *Court of Appeals for the Federal Circuit*

Due to the discontinuation of the CCPA Reports, all Federal Circuit opinions should be by F.2d cite or, if not available, by case number unless the Federal Circuit decides to publish its opinions in a successor to the CCPA reporter.

Examples

Nippon Kogaku (USA), Inc. v. United States, 673 F.2d 380 (Fed. Cir. 1983),

OR, if the F.2d cite is not available,

Jarvis Clark Co. v. United States, No. 83-1106 (Fed. Cir. May 2, 1984);

NOT,

Jarvis Clark Co. v. United States, Appeal No. 83-1106, Slip Op. (C.A.F.C. May 2, 1984).

9. *Statutes*

Citation of statutes of the United States should include both the popular name of the act and the title and section of the United States Code.

a) Citation of a statute as it appears in a sentence in text.

Example

Plaintiff moves for certification pursuant to section 222(3) of the Trade Act of 1974, 19 U.S.C. § 2272(3) (1982).

b) Citation standing alone.

Example

Trade Act of 1974, § 222(3), 19 U.S.C. § 2272(3) (1982).

10. *Rules*

Citation of the rules of this court and its predecessor court, the Customs Court, should be as follows:

a) Rules of the United States Court of International Trade

Example

USCIT R. 56

b) Rules of the United States Customs Court

Example

Cust. Ct. R. 4.6

11. *Miscellaneous*

Ellipsis (. . .)

Pursuant to rule 5.3 of *A Uniform System of Citation*, when a word or words are omitted from quoted material it should be indicated by an ellipsis (. . .), and not asterisks (* * *).

For further rules of citation, reference may be made to *A Uniform System of Citations* (The Harvard Law Review Association). For punctuation, capitalization, abbreviations, and other matters of style, reference may be made to the *U. S. Government Printing Office Style Manual*. Assistance in citing recent decisions of this court may be obtained from the court librarian (212-264-2816).

Rule 82. Clerk's Office and Orders by the Clerk

(a) Business Hours and Address. The office of the clerk shall be open between 9:00 a.m. and 4:00 p.m. on all days except Saturdays, Sundays, and legal holidays,[1] at:

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[1] As used in these rules, "legal holidays" include: New Year's Day, January 1; Martin Luther King's Birthday, third Monday in January; Washington's Birthday, third Monday in February; Memorial Day, last Monday in May; Independence Day, July 4; Labor Day, first Monday in September; Columbus Day, second Monday in October; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; and any other day designated as a holiday by the President or the Congress of the United States.

Office of the Clerk of the Court
United States Court of International Trade
One Federal Plaza
New York, New York 10007
(212) 264-2800

(b) Motions, Orders and Judgments. The clerk may dispose of the following types of motions and sign the following types of orders and judgments without submission to the court, but his action may be suspended, altered or rescinded by the court for good cause shown:

(1) Motions on consent in unassigned cases extending the time within which to plead, move or respond.

(2) Motions on consent in unassigned cases for the discontinuance or dismissal of the action.

(3) Orders of dismissal upon notice as prescribed by Rule 41(a)(1) and 41(b)(2).

[*See main edition for text of* (4) *and* (5); (c)]

(d) Filing of Papers. The clerk shall not accept for filing any pleading, motion, brief or other paper, or shall return without further processing a paper which has been filed, which does not comply with the procedural requirements of the rules or practice of the court. A party aggrieved by such action may move to compel the clerk to accept the paper for filing.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985.)

PRACTICE COMMENT

Included among, but not limited to, the kinds of papers the clerk may not accept for filing pursuant to subdivision (d) of this rule, for failing to conform with the procedural requirements of the rules or practice of the court, are the following: replies to non-dispositive motions without leave of court; discovery documents presented contrary to Rule 5(d); papers not signed as required by Rule 11; papers which do not correctly identify the status of actions as required by Rule 81(g); papers presented by an attorney who is not the attorney of record; and, papers presented after periods prescribed by the rules or orders of the court.

TITLE XII—COURT CALENDARS

Rule 83. Reserve Calendar

[*See main edition for text of* (a)]

(b) Removal. An action may be removed from the Reserve Calendar upon (1) assignment, (2) filing of a complaint, (3) granting of a motion for consolidation pursuant to Rule 42, (4) granting of a motion for suspension under a test case pursuant to Rule 84, or (5) filing of a stipulation for judgment on agreed statement of facts pursuant to Rule 58.1.

[*See main edition for text of* (c) *and* (d)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 85. Suspension Disposition Calendar

[*See main edition for text of* (a) *and* (b)]

(c) Removal. An action may be removed from the Suspension Disposition Calendar upon: (1) filing of a complaint, (2) filing of a demand for an answer when a complaint previously was filed, (3) granting of a motion for consolidation pursuant to Rule 42, (4) granting of a motion for suspension under another test case pursuant to Rule 84, (5) filing of a stipulation for judgment on agreed statement of facts pursuant to Rule 58.1, (6) granting of a dispositive motion, (7) filing of a request for trial, or (8) granting of a motion for removal.

[*See main edition for text of* (d)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 86. Joined Issue Calendar

(a) Joined Issue Calendar. A Joined Issue Calendar is established on which an unassigned action shall be placed when issue is joined. An action may remain on the Joined Issue Calendar for a 6-month period. The applicable 6-month period shall run from the last day of the month in which the answer was filed until the last day of the 6th month thereafter.

(b) Dismissal. At the expiration of the applicable 6-month period an unassigned action on the Joined Issue Calendar shall be dismissed for lack of prosecution, and the clerk shall enter an order of dismissal without further direction from the court unless a motion is pending.

[*See main edition for text of* (c)]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 87. Forms

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

(Added Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 88. Title

These rules may be known and cited as the Rules of the United States Court of International Trade.

(Added Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 89. Effective Date

(a) Effective Date of Original Rules. These rules shall take effect on November 1, 1980, the effective date of the Customs Courts Act of 1980. They govern all proceedings in actions commenced thereafter and then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work an injustice, in which event the former procedure applies. However, when a party is required or has been requested prior to the effective date of these rules to perform an act, pursuant to the Rules of the United States Customs Court in effect prior to the effective date of these rules, the act may still be performed in accordance with the rules in effect prior to the effective date of these rules.

(b) Effective Date of Amendments. The amendments adopted by the court on November 4, 1981, shall take effect on January 1, 1982. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(c) Effective Date of Amendment. The amendment adopted by the court on December 29, 1982, shall take effect on January 1, 1983. It governs all proceedings in actions brought after it takes effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court its application in a particular action pending when the amendment takes effect would not be feasible or would work injustice, in which event the former procedure applies.

(d) Effective Date of Amendments.

(1) The amendments adopted by the court on October 3, 1984, shall take effect on January 1, 1985. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except as provided for in paragraph (2) of this subdivision.

(2)(A) Rule 16 shall apply to all actions assigned on or after the effective date of these amendments and may apply to any action assigned before the effective date at the discretion of the judge to whom the action is assigned.

(B) As to pending actions, the amendments apply, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former procedure applies.

(e) Effective Date of Amendments. The amendments adopted by the court on June 19, 1985, shall take effect on October 1, 1985. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Added Oct. 3, 1984, eff. Jan. 1, 1985, and amended June 19, 1985, eff. Oct. 1, 1985.)

APPENDIX OF FORMS

Forms		Rule
5	Information Statement	3(b)
14	Notice and Acknowledgment of Receipt of Summons and Complaint	4(c)(1)(C)(ii)
15	Application for Fees and Other Expenses Pursuant to the Equal Access to Justice Act. 28 U.S.C. § 2412(d), Title II of Public Law 96-481, 94 STAT. 2325 and USCIT R. 68	68

FORM 5

UNITED STATES COURT OF INTERNATIONAL TRADE
INFORMATION STATEMENT

(PLACE AN "X" IN APPLICABLE ☐)

PLAINTIFF

ATTORNEY *(Name, Address, Telephone No.)*

PRECEDENCE

If the action is to be given precedence under 28 USC 2647, indicate the applicable paragraph of that section:

☐ (1) ☐ (3)
☐ (2) ☐ (4)

JURISDICTION

28 USC 1581(a) — Tariff Act of 1930, Section 515 — **19 USC 1515**

☐ Appraisal ☐ Classification ☐ Charges or Exactions ☐ Exclusion ☐ Redelivery
☐ Liquidation ☐ Drawback ☐ Refusal to Reliquidate ☐ Rate of Duty

28 USC 1581(b) — Tariff Act of 1930, Section 516 — **19 USC 1516**

☐ Appraisal ☐ Classification ☐ Rate of Duty

28 USC 1581(c) — Tariff Act of 1930, Section 516A(a)(1) or Section 516A(a)(2) — **19 USC 1516a**

(Cite the specific subparagraph and clause of Section 516(a)(1) or 516(a)(2), and provide a brief description of the administrative determination you are contesting, including the relevant Federal Register citation(s) and the product(s) involved in the determination.)

Subparagraph and Clause ______________ Agency ______________

Federal Register Cite(s) ______________ Product(s) ______________

28 USC 1581(d) — Trade Act of 1974 — **19 USC 2273, 2341, 2371**

☐ Secretary of Labor ☐ Secretary of Commerce

28 USC 1581(e) — Trade Agreements Act of 1979, Section 305(b)(1) — **19 USC 2515**

(Provide a brief statement of the final determination to be reviewed.)

28 USC 1581(f) — Tariff Act of 1930, Section 777(c)(2) — **19 USC 1677f**

Agency involved: ☐ I.T.C. ☐ Administering Authority

28 USC 1581(g) — Tariff Act of 1930, Section 641 — **19 USC 1641**

☐ (1) Section 641(a) ☐ (2) Section 641(b)

28 USC 1581(h) — Ruling relating to:

☐ Classification ☐ Valuation ☐ Rate of Duty ☐ Marking
☐ Restricted Merchandise ☐ Entry Requirements
☐ Drawbacks ☐ Vessel Repairs ☐ Other

28 USC 1581(i) *(Cite any applicable statute and provide a brief statement describing jurisdictional basis.)*

28 USC 1582 — Actions Commenced by the United States

☐ (1) Recover civil penalty under Tariff Act of 1930:
  ☐ Section 592 ☐ Section 704(i)(2) ☐ Section 734(i)(2)
☐ (2) Recover upon a bond
☐ (3) Recover customs duties

RELATED CASE

To your knowledge, does this action involve a common question of law or fact with another action previously decided or now pending?

	PLAINTIFF	COURT NUMBER	JUDGE
☐ Decided			
☐ Pending			

(As Amended, eff. January 1, 1985)

FORM 14

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Court No.

NOTICE AND ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

To: (insert the name and address of the person to be served.)

The enclosed summons and complaint are served pursuant to Rule 4(c)(1)(C)(ii) of the Rules of the United States Court of International Trade.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on (insert date).

Signature

Date of Signature

Form 14

Page 2

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and complaint in the above-captioned matter at (insert address).

Signature

Relationship to Entity/Authority
to Receive Service of Process

Date of Signature

(As added, eff. Jan. 1, 1985; as amended June 19, 1985, eff. Oct. 1, 1985.)

FORM 15

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Before: Court No.

APPLICATION
FOR FEES AND OTHER EXPENSES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT
28 U.S.C. § 2412(d), Title II of Public Law 96-481,
94 STAT. 2325 and USCIT R. 68.

1. Name of Applicant: ____________________

2. Government Agency involved in claim: ____________________

3. Showing of Prevailing Party Status (28 U.S.C. § 2412(d)(1)(B)).

   Is court order attached? _____YES _____NO

4. Showing of Eligibility (28 U.S.C. § 2412(d)(2)(B)).

   Is net worth information attached? _____YES _____NO

5. Enter allegation that Government position was not substantially justified (28 U.S.C. § 2412(d)(1)(B)).

FORM 15

Page 2

6. For each amount claimed, please attach itemization information indicating service provided, date, hours, and rate (28 U.S.C. § 2412(d)(2)(A)).

	Amount Claimed
A. Attorney Fees	$__________
B. Study	__________
C. Analysis.	__________
D. Engineering Report.	__________
E. Test.	__________
F. Project	__________
G. Expert Witness Fees	__________
H. Other Fees and Expenses--Specify	
1. __________________ . . .	__________
2. __________________ . . .	__________
3. __________________ . . .	__________
I. Total Fees and Expenses	$__________

____
Attorney for Applicant

____
Name of Law Firm

____
Street Address

____
City, State and Zip Code

____
Telephone Number

Date: ____________________

(As added, eff. Jan. 1, 1985.)

TITLE 29—LABOR

Chap. Sec.
21. Helen Keller National Center for Deaf-Blind Youths and Adults............ 1901

CHAPTER 4B—FEDERAL EMPLOYMENT SERVICE

§ 49b. Function of Service

[*See main edition for text of* (*a*)]

(b) It shall be the duty of the Secretary of Labor to assure that unemployment insurance and employment service offices in each State, as appropriate, upon request of a public agency administering or supervising the administration of a State plan approved under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], of a public agency charged with any duty or responsibility under any program or activity authorized or required under part D of title IV of such Act [42 U.S.C. 651 et seq.], or of a State agency charged with the administration of the food stamp program in a State under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), shall (and, notwithstanding any other provision of law, is authorized to) furnish to such agency making the request, from any data contained in the files of any such office, information with respect to any individual specified in the request as to (1) whether such individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received by such individual, (2) the current (or most recent) home address of such individual, and (3) whether such individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XV, § 1535(b)(2), 99 Stat. 1584.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, referred to in subsec. (b), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198 inserted reference to a State agency charged with the administration of the food stamp program in a State under the Food Stamp Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 49a of this title; title 7 section 2022; title 39 section 3202; title 42 section 603a.

CHAPTER 4C—APPRENTICE LABOR

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 20 sections 2382, 2471; title 38 sections 1652, 1701.

CHAPTER 6—JURISDICTION OF COURTS IN MATTERS AFFECTING EMPLOYER AND EMPLOYEE

§ 110. Review by court of appeals of issuance or denial of temporary injunctions; record

Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside expeditiously.

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(30), 98 Stat. 3359.)

AMENDMENTS

1984—Pub. L. 98-620 substituted "expeditiously" for "with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 7—LABOR-MANAGEMENT RELATIONS

SUBCHAPTER II—NATIONAL LABOR RELATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 142, 186, 402, 524a of this title; title 15 section 1014; title 18 section 1951; title 39 section 1209; title 42 sections 300t-12, 2000e; title 43 section 1333; title 49 section 11109; title 50 sections 784, 792a.

§ 160. Prevention of unfair labor practices

[*See main edition for text of* (*a*) *to* (*h*)]

(i) Repealed. Pub. L. 98-620, title IV, § 402(31), Nov. 8, 1984, 98 Stat. 3360

[*See main edition for text of* (*j*) *to* (*m*)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(31), 98 Stat. 3360.)

AMENDMENTS

1984—Subsec. (i). Pub. L. 98-620 struck out subsec. (i) which provided for expeditious hearings on petitions.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER IV—LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§ 186. Restrictions on financial transactions

[*See main edition for text of* (*a*)]

(b) Request, demand, etc., for money or other thing of value

[*See main edition for text of* (*1*)]

(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle (as defined in section 10102 of title 49) employed in the transportation of property in commerce, or the employer of any such operator, any money or other thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or in connection with the unloading, of the cargo of such vehicle: *Provided*, That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

[*See main edition for text of* (*c*)]

(d) Penalties for violations

(1) Any person who participates in a transaction involving a payment, loan, or delivery of money or other thing of value to a labor organization in payment of membership dues or to a joint labor-management trust fund as defined by clause (B) of the proviso to clause (5) of subsection (c) of this section or to a plant, area, or industry-wide labor-management committee that is received and used by such labor organization, trust fund, or committee, which transaction does not satisfy all the applicable requirements of subsections (c)(4) through (c)(9) of this section, and willfully and with intent to benefit himself or to benefit other persons he knows are not permitted to receive a payment, loan, money, or other thing of value under subsections (c)(4) through (c)(9) violates this subsection, shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed $1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than $10,000, or imprisoned for not more than one year, or both.

(2) Except for violations involving transactions covered by subsection (d)(1) of this section, any person who willfully violates this section shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed $1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than $10,000, or imprisoned for not more than one year, or both.

[*See main edition for text of* (*e*) *to* (*g*)]

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 801, 98 Stat. 2131.)

CODIFICATION

In subsec. (b)(2), "section 10102 of title 49" was substituted for "part II of the Interstate Commerce Act [49 U.S.C. 301 et seq.]" on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-473 added par. (1), designated existing provisions as par. (2), and in par. (2) as so designated, added reference to par. (1) and added provisions relating to commission of a felony.

CHAPTER 8—FAIR LABOR STANDARDS

§ 201. Short title

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-150, § 1(a), Nov. 13, 1985, 99 Stat. 787, provided that: "This Act [amending sections 203, 207, and 211 of this title and enacting provisions set out as notes under sections 203, 207, 215, and 216 of this title] may be cited as the 'Fair Labor Standards Amendments of 1985'."

§ 203. Definitions

As used in this chapter—

[*See main edition for text of* (*a*) *to* (*d*)]

(e)(1) Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employes him; and

(ii) who—

[*See main edition for text of* (*I*) *and* (*II*)]

(III) is appointed by such an officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

[*See main edition for text of* (3)]

(4)(A) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

[*See main edition for text of* (*f*) *to* (*x*)]

(As amended Nov. 13, 1985, Pub. L. 99-150, §§ 4(a), 5, 99 Stat. 790.)

AMENDMENTS

1985—Subsec. (e)(1). Pub. L. 99-150, § 4(a)(1), substituted "paragraphs (2), (3), and (4)" for "paragraphs (2) and (3)".

Subsec. (e)(2)(C)(ii). Pub. L. 99-150, § 5, struck out "or" at end of subcl. (III), struck out "who" in subcl. (IV) before "is an", substituted ", or" for the period at end of subcl. (IV), and added subcl. (V).

Subsec. (e)(4). Pub. L. 99-150, § 4(a)(2), added par. (4).

EFFECTIVE DATE OF 1985 AMENDMENT; PROMULGATION OF REGULATIONS

Section 6 of Pub. L. 99-150 provided that: "The amendments made by this Act [amending sections 203, 207, and 211 of this title and enacting provisions set out as notes under sections 201, 203, 207, 215, and 216 of this title] shall take effect April 15, 1986. The Secretary of Labor shall before such date promulgate such regulations as may be required to implement such amendments."

VOLUNTEERS; PROMULGATION OF REGULATIONS

Section 4(b) of Pub. L. 99-150 provided that: "Not later than March 15, 1986, the Secretary of Labor shall issue regulations to carry out paragraph (4) of section 3(e) (as amended by subsection (a) of this section) [29 U.S.C. 203(e)(4)]."

PRACTICE OF PUBLIC AGENCY IN TREATING CERTAIN INDIVIDUALS AS VOLUNTEERS PRIOR TO APRIL 15, 1986; LIABILITY

Section 4(c) of Pub. L. 99-150 provided that: "If, before April 15, 1986, the practice of a public agency was to treat certain individuals as volunteers, such individuals shall until April 15, 1986, be considered, for purposes of the Fair Labor Standards Act of 1938 [this chapter], as volunteers and not as employees. No public agency which is a State, a political subdivision of a State, or an interstate governmental agency shall be liable for a violation of section 6 [29 U.S.C. 206] occurring before April 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis."

§ 206. Minimum wage

PRACTICE OF PUBLIC AGENCY IN TREATING CERTAIN INDIVIDUALS AS VOLUNTEERS PRIOR TO APRIL 15, 1986; LIABILITY

Certain public agencies not to be liable for violations of this section occurring before Apr. 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis, see section 4(c) of Pub. L. 99-150, set out as a note under section 203 of this title.

EFFECT OF AMENDMENTS BY PUBLIC LAW 99-150 ON PUBLIC AGENCY LIABILITY RESPECTING ANY EMPLOYEE COVERED UNDER SPECIAL ENFORCEMENT POLICY

Amendment by Pub. L. 99-150 not to affect liability of certain public agencies under section 216 of this title for violation of this section occurring before Apr. 15, 1986, see section 7 of Pub. L. 99-150, set out as a note under section 216 of this title.

§ 207. Maximum hours

[*See main edition for text of* (*a*) *to* (*n*)]

(*o*) Compensatory time

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only—

(A) pursuant to—

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee,

whichever is higher [3]

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time,

shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) For purposes of this subsection—

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(p) Special detail work for fire protection and law enforcement employees; occasional or sporadic employment; substitution

(1) If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

(B) facilitates the employment of such employees by a separate and independent employer, or

(C) otherwise affects the condition of employment of such employees by a separate and independent employer.

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(As amended Nov. 13, 1985, Pub. L. 99-150, §§ 2(a), 3(a)-(c)(1), 99 Stat. 787, 789.)

AMENDMENTS

1985—Subsec. (*o*). Pub. L. 99-150, § 2(a), added subsec. (*o*).

Subsec. (p). Pub. L. 99-150, § 3(a)-(c)(1), added subsec. (p).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-150 effective Apr. 15, 1986, see section 6 of Pub. L. 99-150, set out as a note under section 203 of this title.

COMPENSATORY TIME; COLLECTIVE BARGAINING AGREEMENTS IN EFFECT ON APRIL 15, 1986

Section 2(b) of Pub. L. 99-150 provided that: "A collective bargaining agreement which is in effect on April 15, 1986, and which permits compensatory time off in lieu of overtime compensation shall remain in effect until its expiration date unless otherwise modified, except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(*o*) of the Fair Labor Standards Act of 1938 (as added by subsection (a)) [29 U.S.C. 207(*o*)]."

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[3] So in original. Probably should be followed by a period.

Deferment of Monetary Overtime Compensation

Section 2(c)(2) of Pub. L. 99-150 provided that: 'A State, political subdivision of a State, or interstate governmental agency may defer until August 1, 1986, the payment of monetary overtime compensation under section 7 of the Fair Labor Standards Act of 1938 [29 U.S.C. 207] for hours worked after April 14, 1986."

Effect of Amendments by Public Law 99-150 on Public Agency Liability Respecting any Employee Covered Under Special Enforcement Policy

Amendment by Pub. L. 99-150 not to affect liability of certain public agencies under section 216 of this title for violation of this section occurring before Apr. 15, 1986, see section 7 of Pub. L. 99-150, set out as a note under section 216 of this title.

Section Referred to in Other Sections

This section is referred to in sections 203, 211, 213 to 216, 216b, 218 of this title; title 5 sections 6123, 6128; title 41 sections 35, 355.

§ 211. Collection of data

[See main edition for text of (a) and (b)]

(c) Records

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 207(p)(3) of this title may not be required under this subsection to keep a record of the hours of the substitute work.

[See main edition for text of (d)]

(As amended Nov. 13, 1985, Pub. L. 99-150, § 3(c)(2), 99 Stat. 789.)

Amendments

1985—Subsec. (c). Pub. L. 99-150 added "The employer of an employee who performs substitute work described in section 207(p)(3) of this title may not be required under this subsection to keep a record of the hours of the substitute work."

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-150 effective Apr. 15, 1986, see section 6 of Pub. L. 99-150, set out as a note under section 203 of this title.

Effect of Amendments by Public Law 99-150 on Public Agency Liability Respecting any Employee Covered Under Special Enforcement Policy

Amendment by Pub. L. 99-150 not to affect liability of certain public agencies under section 216 of this title for violation of this section occurring before Apr. 15, 1986, see section 7 of Pub. L. 99-150, set out as a note under section 216 of this title.

§ 215. Prohibited acts; prima facie evidence

Liability of Public Agency for Discrimination Against Employee for Assertion of Coverage

Pub. L. 99-150, § 8, Nov. 13, 1985, 99 Stat. 791, provided that: "A public agency which is a State, political subdivision of a State, or an interstate governmental agency and which discriminates or has discriminated against an employee with respect to the employee's wages or other terms or conditions of employment because on or after February 19, 1985, the employee asserted coverage under section 7 of the Fair Labor Standards Act of 1938 [29 U.S.C. 207] shall be held to have violated section 15(a)(3) of such Act [29 U.S.C. 215(a)(3)]. The protection against discrimination afforded by the preceding sentence shall be available after August 1, 1986, only for an employee who takes an action described in section 15(a)(3) of such Act."

§ 216. Penalties

Liability of State, Political Subdivision, or Interstate Governmental Agency for Violations Before April 15, 1986, Respecting any Employee Not Covered Under Special Enforcement Policy

Pub. L. 99-150, § 2(c)(1), Nov. 13, 1985, 99 Stat. 788, provided that: "No State, political subdivision of a State, or interstate governmental agency shall be liable under section 16 of the Fair Labor Standards Act of 1938 [29 U.S.C. 216] for a violation of section 6 [29 U.S.C. 206] (in the case of a territory or possession of the United States), 7 [29 U.S.C. 207], or 11(c) [29 U.S.C. 211(c)] (as it relates to section 7) of such Act occurring before April 15, 1986, with respect to any employee of the State, political subdivision, or agency who would not have been covered by such Act [this chapter] under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in sections 775.2 and 775.4 of title 29 of the Code of Federal Regulations."

Effect of Amendments by Public Law 99-150 on Public Agency Liability Respecting any Employee Covered Under Special Enforcement Policy

Pub. L. 99-150, § 7, Nov. 13, 1985, 99 Stat. 791, provided that: "The amendments made by this Act [see Short Title of 1985 Amendment note set out under section 201 of this title] shall not affect whether a public agency which is a State, political subdivision of a State, or an interstate governmental agency is liable under section 16 of the Fair Labor Standards Act of 1938 [29 U.S.C. 216] for a violation of section 6, 7, or 11 of such Act [29 U.S.C. 206, 207, 211] occurring before April 15, 1986, with respect to any employee of such public agency who would have been covered by such Act [this chapter] under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in section 775.3 of title 29 of the Code of Federal Regulations."

CHAPTER 11—LABOR-MANAGEMENT REPORTING AND DISCLOSURE PROCEDURE

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

Sec.
524a. Elimination of racketeering activities threat; State legislation governing collective bargaining representative.

SUBCHAPTER VI—SAFEGUARDS FOR LABOR ORGANIZATIONS

§ 504. Prohibition against certain persons holding office

(a) Membership in Communist Party; persons convicted of robbery, bribery, etc.

No person who is or has been a member of the Communist Party or who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of subchapter III or IV of this chapter[1] any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as a consultant or adviser to any labor organization,

(2) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization,

(3) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organization, or in a position having specific collective bargaining authority or direct responsibility in the area of labor-management relations in any corporation or association engaged in an industry or activity affecting commerce, or

(4) in a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization, or

(5) in any capacity, other than in his capacity as a member of such labor organization, that involves decisionmaking authority concerning, or decisionmaking authority over, or custody of, or control of the moneys, funds, assets, or property of any labor organization,

during or for the period of thirteen years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in clauses (1) through (5) would not be contrary to the purposes of this chapter. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection.

(b) Penalty for violations

Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(c) Definitions

For the purpose of this section—

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(2) A period of parole shall not be considered as part of a period of imprisonment.

(d) Salary of person barred from labor organization office during appeal of conviction

Whenever any person—

(1) by operation of this section, has been barred from office or other position in a labor organization as a result of a conviction, and

(2) has filed an appeal of that conviction,

any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual employer or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of such person's conviction on appeal, the amounts in escrow shall be returned to the individual employer or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute[2] from assuming any position from which such person was previously barred.

(As amended Pub. L. 98-473, title II, § 803, Oct. 12, 1984, 98 Stat. 2133.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 98-473, title II, §§ 229, 235, Oct. 12, 1984, 98 Stat. 2031, as amended, amended subsection (a) of this section effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 [Nov. 1, 1987, see Effective Date note set out under

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[1] So in original. Probably should be followed by a comma.

[1] So in original. Probably should be "section".

section 3551 of Title 18, Crimes and Criminal Procedure], by deleting "the Board of Parole of the United States Department of Justice" and substituting "if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, on motion of the United States Department of Justice, the district court of the United States for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements issued pursuant to section 994(a) of title 28,"; by deleting "Board" and "Board's" and substituting "court" and "court's", respectively; and by deleting "an administrative" and substituting "a", which amendments are incapable of execution in view of the previous amendment by section 803 of Pub. L. 98-473. See 1984 Amendment note below.

Amendments

1984—Subsec. (a). Pub. L. 98-473, § 803(a), added provisions relating to abuse or misuse of employment in a labor organization or employee benefit plan, substituted "conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element" for "conspiracy to commit any such crimes", added par. (1), redesignated former par. (1) as (2) and in par. (2) as so redesignated substituted "employee, or representative in any capacity of any labor organization" for "or other employee (other than as an employee performing exclusively clerical or custodial duties) of any labor organization, or", redesignated former par. (2) as (3) and in par. (3) as so redesignated added "or advisor" after "consultant", struck out "(other than as an employee performing exclusively clerical or custodial duties)" after "employee", and added "or in a position having specific collective bargaining authority or direct responsibility in the area of labor-management relations in any corporation or association engaged in an industry or activity affecting commerce, or", added pars. (4) and (5), struck out "or for five years after the termination of his membership in the Communist Party," substituted "the period of thirteen years" for "five years", added "whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or", substituted in cl. (B) "United States Parole Commission" for "Board of Parole of the United States Department of Justice", and in the provisions following cl. (B) substituted "Commission" and "Commission's" for "Board" and "Board's", respectively, added provision of notice to the Secretary of Labor, and substituted "No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection" for "No labor organization or officer thereof shall knowingly permit any person to assume or hold any office or paid position in violation of this subsection".

Subsec. (c). Pub. L. 98-473, § 803(c), designated existing provisions as par. (1), in par. (1) as so designated substituted provisions defining conviction as from date of judgment of trial court, regardless of appeal, for former provisions defining it as from date of judgment of trial court or date of final sustaining of judgment on appeal, whichever is later, regardless of whether such conviction occurred before or after Sept. 14, 1959, and added par. (2).

Subsec. (d). Pub. L. 98-473, § 803(d), added subsec. (d).

Effective Date of 1984 Amendment

Section 804 of Pub. L. 98-473 provided that:

"(a) The amendments made by section 802 [amending section 1111 of this title] and section 803 [amending section 504 of this title] of this title shall take effect with respect to any judgment of conviction entered by the trial court after the date of enactment of this title [Oct. 12, 1984], except that that portion of such amendments relating to the commencement of the period of disability shall apply to any judgment of conviction entered prior to the date of enactment of this title [Oct. 12, 1984] if a right of appeal or an appeal from such judgment is pending on the date of enactment of this title [Oct. 12, 1984].

"(b) Subject to subsection (a) the amendments made by sections 803 and 804 [probably should be sections 802 and 803, which amended sections 1111 and 504, respectively, of this title] shall not affect any disability under section 411 of the Employee Retirement Income Security Act of 1974 [section 1111 of this title] or under section 504 of the Labor-Management Reporting and Disclosure Act of 1959 [section 504 of this title] in effect on the date of enactment of this title [Oct. 12, 1984]."

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§ 524a. Elimination of racketeering activities threat; State legislation governing collective bargaining representative

Notwithstanding this or any other Act regulating labor-management relations, each State shall have the authority to enact and enforce, as part of a comprehensive statutory system to eliminate the threat of pervasive racketeering activity in an industry that is, or over time has been, affected by such activity, a provision of law that applies equally to employers, employees, and collective bargaining representatives, which provision of law governs service in any position in a local labor organization which acts or seeks to act in that State as a collective bargaining representative pursuant to the National Labor Relations Act [29 U.S.C. 151 et seq.], in the industry that is subject to that program.

(Pub. L. 98-473, title II, § 2201, Oct. 12, 1984, 98 Stat. 2192.)

References in Text

This Act, referred to in text, probably means title II of Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 1976, known as the Comprehensive Crime Control Act of 1984. For complete classification of this Act to the Code, see Short Title of 1984 Amendments note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

The National Labor Relations Act, referred to in text, is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 167 of this title and Tables.

Codification

Section was not enacted as part of the Labor-Management Reporting and Disclosure Act of 1959, which comprises this chapter.

CHAPTER 14—AGE DISCRIMINATION IN EMPLOYMENT

§ 623. Prohibition of age discrimination

[See main edition for text of (a) *to* (e)*]*

(f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause

It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

[*See main edition for text of* (*2*) *and* (*3*)]

(g)[1] Entitlement to coverage under group health plan

(1) For purposes of this section, any employer must provide that any employee aged 65 through 69, and any employee's spouse aged 65 through 69, shall be entitled to coverage under any group health plan offered to such employees under the same conditions as any employee, and the spouse of such employee, under age 65.

(2) For purposes of paragraph (1), the term "group health plan" has the meaning given to such term in section 162(i)(2) of title 26.

(g)[1] Practices of foreign corporations controlled by American employers; foreign employers not controlled by American employers; factors determining control

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the—

(A) interrelation of operations,

(B) common management,

(C) centralized control of labor relations, and

(D) common ownership or financial control,

of the employer and the corporation.

(As amended Pub. L. 98–369, div. B, title III, § 2301(b), July 18, 1984, 98 Stat. 1063; Pub. L. 98–459, title VIII, § 802(b), Oct. 9, 1984, 98 Stat. 1792.)

AMENDMENTS

1984—Subsec. (f)(1). Pub. L. 98–459, § 802(b)(1), added ", or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located".

Subsec. (g). Pub. L. 98–459, § 802(b)(2), added subsec. (g) providing that the practices of a foreign corporation are presumed to be those of a controlling employer unless the employer is a foreign person not controlled by an American employer.

Subsec. (g)(1). Pub. L. 98–369 inserted ", and any employee's spouse aged 65 through 69," after "aged 65 through 69" and ", and the spouse of such employee," after "as any employee", in subsec. (g) relating to entitlement to coverage under group health plan.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 2301(c)(2) of Pub. L. 98–369 provided that: "The amendment made by subsection (b) [amending section 623 of this title] shall become effective on January 1, 1985."

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of Title 42, The Public Health and Welfare.

§ 630. Definitions

For the purposes of this chapter—

[*See main edition for text of* (*a*) *to* (*e*)]

(f) The term "employee" means an individual employed by any employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision. The term "employee" includes any individual who is a citizen of the United States employed by an employer in a workplace in a foreign country.

[*See main edition for text of* (*g*) *to* (*i*)]

(As amended Pub. L. 98–459, title VIII, § 802(a), Oct. 9, 1984, 98 Stat. 1792.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98–459 added provision defining "employee" as including any individual who is a citizen of the United States employed by an employer in a workplace in a foreign country.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of Title 42, The Public Health and Welfare.

§ 631. Age limits

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Bona fide executives or high policymakers

(1) Nothing in this chapter shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age but not 70 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination

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[1] So in original. Two subsecs. (g) have been enacted.

of such plans, of the employer of such employee, which equals, in the aggregate, at least $44,000.

[*See main edition for text of* (2)]

(As amended Pub. L. 98-459, title VIII, § 802(c)(1), Oct. 9, 1984, 98 Stat. 1792.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-459 substituted "$44,000" for "$27,000".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 802(c)(2) of Pub. L. 98-459 provided that: "The amendment made by paragraph (1) of this subsection [amending section 631 of this title] shall not apply with respect to any individual who retires, or is compelled to retire, before the date of the enactment of this Act [Oct. 9, 1984]."

CHAPTER 15—OCCUPATIONAL SAFETY AND HEALTH

§ 660. Judicial review

(a) Filing of petition by persons adversely affected or aggrieved; orders subject to review; jurisdiction; venue; procedure; conclusiveness of record and findings of Commission; appropriate relief; finality of judgment

Any person adversely affected or aggrieved by an order of the Commission issued under subsection (c) of section 659 of this title may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-620, title IV, § 402(32), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-620 struck out provision requiring expeditious hearing of petitions filed under this subsection.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 16—VOCATIONAL REHABILITATION AND OTHER REHABILITATION SERVICES

SUBCHAPTER I—VOCATIONAL REHABILITATION SERVICES

PART B—BASIC VOCATIONAL REHABILITATION SERVICES

Sec.
732. Client assistance program.
  (a) Establishment of grant program.
  (b) Existence of State program as requisite to receiving payments.
  (c) Designation of agency to conduct program.
  (d) Class action by designated agency prohibited.
  (e) Allotment and reallotment of funds.
  (f) Application by State for grant funds.
  (g) Regulations; minimum requirements.
  (h) Comprehensive evaluation of program; report to Congress.
  (i) Authorization of appropriations.

SUBCHAPTER III—SPECIAL FEDERAL RESPONSIBILITIES

PART B—SPECIAL PROJECTS AND SUPPLEMENTARY SERVICES

777c. Repealed.

SUBCHAPTER IV—NATIONAL COUNCIL ON THE HANDICAPPED

780a. Independent status of National Council on the Handicapped.
  (1) Council as independent agency within Federal Government.
  (2) Transfer of functions to Council Chairman.
  (3) Changes in statutory and other references.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 762a, 780a of this title; title 5 section 8104; title 20 sections 107a, 107d-4, 1013, 1014, 1431, 2323, 2372, 3441; title 21 section 1173; title 22 section 2102; title 26 section 51; title 38 sections 1517, 2014; title 42 sections 1320b-6, 3026, 6000, 6008, 6024, 6705.

GENERAL PROVISIONS

§ 701. Congressional declaration of purpose

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-221, § 1, Feb. 22, 1984, 98 Stat. 17, provided: "That this Act [enacting sections 780a and 1901 to 1906 of this title, amending sections 706, 712 to 714, 720 to 722, 730, 732, 741, 761 to 762a, 771, 772, 774, 775, 777, 777a, 777f, 780, 781, 783, 791, 792, 794c, 795a, 795c, 795f, 795g, 795i, 796e, and 796i of this title and sections 6001, 6012, 6033, 6061, and 6081 of Title 42, The Public Health and Welfare, repealing section 777c of this title, enacting provisions set out as a note under section 1901 of this title and amending provisions set out as a note under section 713 of this title] may be cited as the 'Rehabilitation Amendments of 1984'."

§ 706. Definitions

For the purposes of this chapter:

[*See main edition for text of* (*1*) *to* (*11*)]

(12) The term "Secretary", except when the context otherwise requires, means the Secretary of Education.

[*See main edition for text of* (*13*) *to* (*15*)]

(As amended Pub. L. 98-221, title I, § 101, Feb. 22, 1984, 98 Stat. 17.)

AMENDMENTS

1984—Par. (12). Pub. L. 98-221 substituted "Secretary of Education" for "Secretary of Health, Education, and Welfare".

§ 712. Reports to President and Congress

Not later than one hundred and twenty days after the close of each fiscal year, the Commissioner shall prepare and submit to the President for transmittal to the Congress a full and complete report on the activities carried out under this chapter. The Commissioner shall annually collect information on each client whose case is closed out in the preceding fiscal year and include the information in the report required by this section. The information shall set forth a complete count of such cases in a manner permitting the greatest possible cross-classification of data. The data elements shall include, but not be limited to, age, sex, race, ethnicity, education, type of disability, severity of disability, key rehabilitation process dates, earnings at time of entry into program and at closure, work status, occupation, cost of case services, types of services provided, types of facilities or agencies which furnished services and whether each such facility or agency is public or private, and reasons for closure. The Commissioner shall take whatever action is necessary to assure that the identity of each client for which information is supplied under this subsection is confidential. Such annual reports shall also include statistical data reflecting services and activities provided individuals during the preceding fiscal year.

(As amended Pub. L. 98-221, title I, § 102, Feb. 22, 1984, 98 Stat. 17.)

AMENDMENTS

1984—Pub. L. 98-221 added "The Commissioner shall annually collect information on each client whose case is closed out in the preceding fiscal year and include the information in the report required by this section. The information shall set forth a complete count of such cases in a manner permitting the greatest possible cross-classification of data. The data elements shall include, but not be limited to, age, sex, race, ethnicity, education, type of disability, severity of disability, key rehabilitation process dates, earnings at time of entry into program and at closure, work status, occupation, cost of case services, types of services provided, types of facilities or agencies which furnished services and whether each such facility or agency is public or private, and reasons for closure. The Commissioner shall take whatever action is necessary to assure that the identity of each client for which information is supplied under this subsection is confidential." and inserted "also" after "Such annual reports shall".

§ 713. Program and project evaluation

(a) Statement of purpose; standards; persons eligible to conduct evaluations

The Secretary shall evaluate the impact of all programs authorized by this chapter, their general effectiveness in achieving stated goals, and their effectiveness in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such programs. The Secretary shall establish and use standards for the evaluations required by this subsection. The standards shall, to the extent feasible, for all appropriate programs include standards relating to the increases in employment and earnings taking into account economic factors in the area to be served by the program and the characteristics of the handicapped individuals to be served. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated.

[*See main edition for text of* (*b*) *to* (*f*)]

(As amended Pub. L. 98-221, title I, § 103, Feb. 22, 1984, 98 Stat. 17.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221 added provisions requiring the Secretary to establish and use standards for the evaluations required by this subsection, with such standards, to the extent feasible, for all appropriate programs to include standards relating to the increases in employment and earnings taking into account economic factors in the area to be served by the program and the characteristics of the handicapped individuals to be served.

STUDY ON SPECIAL PROBLEMS AND NEEDS OF HANDICAPPED INDIVIDUALS RESIDING IN RURAL AREAS; REPORT TO PRESIDENT AND CONGRESS

Section 402 of Pub. L. 95-602, as amended by Pub. L. 98-221, title I, § 104(c)(2), Feb. 22, 1984, 98 Stat. 19, provided that the Secretary, after consultation with the Commissioner of the Rehabilitation Services Administration, Assistant Secretary of Education for the Office of Special Education and Rehabilitation Services, the Director of the National Institute on Handicapped Research, and other appropriate officials, organizations, and individuals, conduct a study of the special problems and needs of handicapped individuals who reside in rural areas in the United States, and upon the completion of such study, but not later than eighteen months after the date of Nov. 6, 1978, submit the results of such study, together with such recommendations as deemed appropriate to the President, and to the appropriate committees of the Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 795g, 796e of this title.

§ 714. Information clearinghouse

[See main edition for text of (a)]

(b) Information and data retrieval system

The Commissioner may assist the Secretary to develop within the Department of Education a coordinated system of information and data retrieval, which will have the capacity and responsibility to provide information regarding the information and data referred to in subsection (a) of this section to the Congress, public and private agencies and organizations, handicapped individuals and their families, professionals in fields serving such individuals, and the general public.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 98-221, title I, § 104(a)(1), Feb. 22, 1984, 98 Stat. 18.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-221 substituted "Department of Education" for "Department of Health, Education, and Welfare".

SUBCHAPTER I—VOCATIONAL REHABILITATION SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 706, 796, 796a of this title; title 42 sections 422, 425, 1382d, 1383.

PART A—GENERAL PROVISIONS

§ 720. Federal grants

[See main edition for text of (a)]

(b) Authorization of appropriations

(1)(A) For the purpose of making grants to States under part B of this subchapter (other than grants under section 732 of this title) to assist them in meeting the costs of vocational rehabilitation services provided in accordance with State plans under section 721 of this title, there is authorized to be appropriated $1,037,800,000 for the fiscal year 1984, and the amount determined under subsection (c) of this section for each of the fiscal years 1985, 1986, and 1987.

(B) In addition, there are authorized to be appropriated for such purpose such additional sums as may be necessary for each of the fiscal years 1985 and 1986. Any amount appropriated pursuant to this subparagraph shall be allocated in accordance with section 730(a)(4) of this title.

(C) In no event may the amount appropriated for the purpose of making grants to States under part B of this subchapter (other than section 732 of this title) be more than $1,117,500,000 for the fiscal year 1985 and $1,203,200,000 for the fiscal year 1986.

(2) For the purpose of allotments under section 740(a)(1) of this title, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1984, 1985, and 1986. There are further authorized to be appropriated for such purpose for each such year such additional sums as the Congress may determine to be necessary.

(3) For the purpose of making grants to Indian tribes under part D of this subchapter, there are authorized to be appropriated for each of the fiscal years 1984, 1985, and 1986, in addition to any other amounts authorized to be appropriated under this section, such sums as may be necessary for such fiscal year, but not more than an amount equal to 1 percent of the amount appropriated for that fiscal year under paragraph (1) of this subsection.

[See main edition for text of (c)]

(d) Extension of program authorization or duration; appropriation

(1) Unless the Congress in the regular session which ends prior to the beginning of the terminal fiscal year—

(A) of the authorization of appropriations for the program authorized by the State grant program under part B of this subchapter; or

(B) of the duration of the program authorized by the State grant program under part B of this subchapter;

either—

(i) has passed or has formally rejected legislation which would have the effect of extending the authorization or duration (as the case may be) of that program; or

(ii) by action of either the House of Representatives or the Senate, approves a resolution stating that the provisions of this section shall no longer apply to such program;

such authorization or duration is automatically extended for one additional fiscal year for the program authorized by this subchapter. The amount appropriated for the additional year shall be the amount which the Congress could, under the terms of the law for which the appropriation is made, have appropriated based upon the amount authorized for fiscal year 1986 and the amount authorized under subsection (c) of this section.

(2)(A) For the purposes of subdivision (i) of paragraph (1), the Congress shall not have been deemed to have passed legislation unless such legislation becomes law.

(B) In any case where the Commissioner is required under an applicable statute to carry out certain acts or make certain determinations which are necessary for the continuation of the program authorized by this subchapter, if such acts or determinations are required during the terminal year of such program, such acts and determinations shall be required during any fiscal year in which that part of paragraph (1) of this subsection which follows subdivision (ii) of paragraph (1) is in operation.

(As amended Pub. L. 98-221, title I, § 111(a)-(d), Feb. 22, 1984, 98 Stat. 19.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-221, § 111(a), added exception for grants under section 732 of this title, substituted provisions authorizing appropriations of $1,037,800,000 for fiscal year 1984 and of amounts determined under subsec. (c) of this section for each of the fiscal years 1985, 1986, and 1987, authorizing necessary additional amounts for each of the fiscal years 1985 and 1986, and setting upper limits on the amounts appropriated to make grants under part B of this subchapter other than section 732 of this title for fiscal years 1985 and 1986 for provisions which had formerly authorized appropriations for fiscal years 1974 through 1982 and had set upper limits on the amount appropriated for fiscal years 1980, 1981, and 1982.

Subsec. (b)(2). Pub. L. 98-221, § 111(b), substituted provisions authorizing appropriations of such sums as may be necessary for each of the fiscal years 1984, 1985, and 1986 for provisions which had formerly authorized appropriations for fiscal years 1979, 1980, 1981, and 1982.

Subsec. (b)(3). Pub. L. 98-221, § 111(c), substituted "each of the fiscal years 1984, 1985, and 1986" for "the fiscal year ending September 30, 1979, and for each of the three fiscal years thereafter".

Subsec. (d). Pub. L. 98-221, § 111(d), added subsec. (d).

§ 721. State plans

(a) Three year plan; annual revisions; general and specific requirements

In order to be eligible to participate in programs under this subchapter, a State shall submit to the Commissioner a State plan for vocational rehabilitation services for a three-year period and, upon request of the Commissioner, shall make such annual revisions in the plan as may be necessary. Each such plan shall—

[*See main edition for text of* (*1*) *to* (*10*)]

(11) Intergovernmental cooperation

provide for entering into cooperative arrangements with, and the utilization of the services and facilities of, the State agencies administering the State's public assistance programs, other programs for handicapped individuals, veterans programs, manpower programs, and public employment offices, and the Social Security Administration of the Department of Health and Human Services, the Veterans' Administration, and other Federal, State, and local public agencies providing services related to the rehabilitation of handicapped individuals (specifically including arrangements for the coordination of services to individuals eligible for services under this chapter, the Education of the Handicapped Act [20 U.S.C. 1400 et seq.], and the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.]);

[*See main edition for text of* (*12*) *to* (*22*); (*b*) *to* (*d*)]

(As amended Pub. L. 98-221, title I, § 104(a)(2), Feb. 22, 1984, 98 Stat. 18; Pub. L. 98-524, § 4(f), Oct. 19, 1984, 98 Stat. 2489.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (a)(11), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

AMENDMENTS

1984—Subsec. (a)(11). Pub. L. 98-524 substituted "the Carl D. Perkins Vocational Education Act" for "the Vocational Education Act".

Pub. L. 98-221 substituted "Department of Health and Human Services" for "Department of Health, Education, and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 705, 706, 709, 720, 722, 730, 731, 741, 751, 762, 771, 772, 776, 777b, 777e, 795, 796d of this title; title 20 section 107a.

§ 722. Individualized written rehabilitation program

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Determination and achievement of vocational goal; decision respecting potential and capability of achievement; annual review of decision

The Commissioner shall also insure that (1) in making any determination of ineligibility referred to in subsection (a) of this section, or in developing and carrying out the individualized written rehabilitation program required by section 721 of this title in the case of each handicapped individual, emphasis is placed upon the determination and achievement of a vocational goal for such individual, (2) a decision that such an individual is not capable of achieving such a goal and thus not eligible for vocational rehabilitation services provided with assistance under this part, is made only in full consultation with such individual (or, in appropriate cases, his parents or guardians), and only upon the certification, as an amendment to such written program, or as a part of the specification of reasons for an ineligibility determination, as appropriate, that the preliminary diagnosis or evaluation of rehabilitation potential, as appropriate, has demonstrated that such individual is not then capable of achieving such a goal, and (3) any such decision, as an amendment to such written program, shall be reviewed at least annually in accordance with the procedure and criteria established in this section.

(d) Review by Director of determinations by rehabilitation counselor or coordinator; review of final decision of Director by Commissioner

[See main edition for text of (1)]

(2) Any handicapped individual (or, in appropriate cases, his parent or guardian) who is not satisfied with the final decision made under paragraph (1) by the Director of the designated State unit may request the Secretary to review such decision. Upon such request the Secretary shall conduct such a review and shall make recommendations to the Director as to the appropriate disposition of the matter. The Secretary may not delegate his responsibilities under this paragraph to any officer of the Department of Education who is employed at a position below that of an Assistant Secretary.

(As amended Pub. L. 98-221, title I, §§ 104(a)(3), 112, Feb. 22, 1984, 98 Stat. 18, 20.)

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-221, § 112, struck out "beyond any reasonable doubt" after "rehabilitation potential, as appropriate, has demonstrated".

Subsec. (d)(2). Pub. L. 98-221, § 104(a)(3), substituted "Department of Education" for "Department of Health, Education, and Welfare".

PART B—BASIC VOCATIONAL REHABILITATION SERVICES

§ 730. State allotments

(a) Computation; additional amount; minimum amount; adjustments; additional allotment

[See main edition for text of (1)]

(2) *[See main edition for text of (A)]*

(B) For each fiscal year beginning on or after October 1, 1978, each State shall be entitled to an allotment, from any amount authorized to be appropriated for such fiscal year under section 720(b)(1)(A) of this title for allotment under this section in excess of the amount appropriated under section 720(b)(1)(A) of this title for the fiscal year ending September 30, 1978, in an amount equal to the sum of—

[See main edition for text of (i) and (ii)]

(3) The sum of the payment to any State (other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) under this subsection for any fiscal year which is less than one-third of 1 percent of the amount appropriated under section 720(b)(1)(A) of this title, or $3,000,000, whichever is greater, shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotment to each of the remaining such States under this subsection, but with such adjustments as may be necessary to prevent the sum of the allotments made under this subsection to any such remaining State from being thereby reduced to less than that amount.

(4) For each fiscal year beginning on or after October 1, 1984, for which any amount is appropriated pursuant to section 720(b)(1)(B) of this title, each State shall receive an allocation (from such appropriated amount) in addition to the allotment to which such State is entitled under paragraphs (2) and (3) of this subsection. Such additional allocation shall be an amount which bears the same ratio to the amount so appropriated as that State's allotment under paragraphs (2) and (3) of this subsection bears to the sum of such allotments of all the States.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 98-221, title I, § 111(e), Feb. 22, 1984, 98 Stat. 20.)

AMENDMENTS

1984—Subsec. (a)(2)(B), (3). Pub. L. 98-221, § 111(e)(1), substituted "section 720(b)(1)(A)" for "section 720(b)(1)" wherever appearing.

Subsec. (a)(4). Pub. L. 98-221, § 111(e)(2), added par. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 720, 731, 750 of this title.

§ 732. Client assistance program

(a) Establishment of grant program

From funds appropriated under subsection (i) of this section, the Secretary shall, in accordance with this section, make grants to States to establish and carry out client assistance programs to provide assistance in informing and advising all clients and client applicants of all available benefits under this chapter, and, upon request of such clients or client applicants, to assist such clients or applicants in their relationships with projects, programs, and facilities providing services to them under this chapter, including assistance in pursuing legal, administrative, or other appropriate remedies to ensure the protection of the rights of such individuals under this chapter.

(b) Existence of State program as requisite to receiving payments

No State may receive payments from its allotment under this chapter in any fiscal year unless the State has in effect not later than October 1, 1984, a client assistance program, which—

(1) has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of handicapped individuals who are receiving treatments, services, or rehabilitation under this chapter within the State; and

(2) meets the requirements of designation under subsection (c) of this section.

(c) Designation of agency to conduct program

(1) The Governor shall designate a public or private agency to conduct the client assistance program under this section. Except as provided in the last sentence of this paragraph, the Governor shall designate an agency which is independent of any agency which provides treatment, services, or rehabilitation to individuals under this chapter. If there is an agency in the State which has, or had, prior to February 22, 1984, served as a client assistance agency under

this section and which received Federal financial assistance under this chapter, the Governor may designate an agency which provides treatment, services, or rehabilitation to handicapped individuals under this chapter.

(2) In carrying out the provisions of this section, the Governor shall consult with the director of the State vocational rehabilitation agency, the head of the developmental disability protection and advocacy agency, and with representatives of professional and consumer organizations serving handicapped individuals in the State.

(3) The agency designated under this subsection shall be accountable for the proper use of funds made available to the agency.

(d) Class action by designated agency prohibited

The agency designated under subsection (c) of this section may not bring any class action in carrying out its responsibilities under this section.

(e) Allotment and reallotment of funds

(1)(A) The Secretary shall allot the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no State shall receive less than $50,000.

(B) The Secretary shall allot $30,000 each to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(C) For the purpose of this paragraph, the term "State" does not include American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallotment by the Secretary from time to time on such dates he may fix to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reduction shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any such amount so reallotted to a State for a fiscal year shall be deemed to be a part of its allotment for such fiscal year.

(3)(A) The Secretary shall pay to the Governor from the allotment of the State the amount specified in the application approved under subsection (f) of this section.

(B) For the purpose of this paragraph and subsection (c) of this section, the term "Governor" means the chief executive of the State.

(f) Application by State for grant funds

No grant may be made under this section unless the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems necessary to meet the requirements of this section.

(g) Regulations; minimum requirements

The Secretary shall prescribe regulations applicable to the client assistance program which shall include the following requirements:

(1) No employees of such programs shall, while so employed, serve as staff or consultants of, or receive benefits of any kind directly or indirectly from, any rehabilitation project, program, or facility receiving assistance under this chapter in the State.

(2) Each program shall be afforded reasonable access to policymaking and administrative personnel in the State and local rehabilitation programs, projects, or facilities.

(3) Each program shall contain provisions designed to assure that to the maximum extent possible mediation procedures are used prior to resorting to administrative or legal remedies.

(4) The agency designated under subsection (c) of this section shall submit an annual report to the Secretary on the operation of the program during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by such program. A copy of each such report shall be submitted to the appropriate committees of the Congress by the Secretary, together with a summary of such reports and his evaluation of the program, including appropriate recommendations.

(h) Comprehensive evaluation of program; report to Congress

(1) The Commissioner shall conduct a comprehensive evaluation of the client assistance program authorized by this section, and submit a report to Congress, not later than February 1, 1986.

(2) In conducting the study required by this subsection, the Commissioner shall address and report the following information for each State that received a client assistance program grant. The study shall include—

(A) the numbers of handicapped individuals assisted through the client assistance program;

(B) the handicapping conditions of the individuals assisted, and the proportion each type of individuals represents of the total population assisted;

(C) the types of services provided, cross-referenced to types of handicapped individuals assisted through each service;

(D) the type of organization or agency which administers the client assistance program;

(E) the physical proximity of the client assistance program to the State vocational rehabilitation agency; and

(F) the type of organizational structure used by the client assistance program to deliver services.

(3) In conducting the study the Commissioner shall make the following comparisons:

(A) differences in service delivery patterns in client assistance programs in urban and rural areas;

(B) differences in service delivery patterns among client assistance programs administered in various organizational settings; and

(C) differences in service delivery patterns among client assistance programs established after this reauthorization and those that were established prior to this reauthorization.

(4) The report shall include such recommendations, including recommendations for legislative proposals, as the Commissioner deems necessary.

(i) Authorization of appropriations

There are authorized to be appropriated $6,000,000 for the fiscal year 1984, $6,300,000 for the fiscal year 1985, and $6,700,000 for the fiscal year 1986.

(As amended Pub. L. 98-221, title I, § 113(a), Feb. 22, 1984, 98 Stat. 20.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221 substituted provisions making permanent a client assistance program funded from appropriations authorized by subsec. (i) of this section for provisions which had established the client assistance program as a pilot program for fiscal years 1979, 1980, 1981, and 1982 to be funded from appropriations authorized by section 777 of this title for special projects and demonstrations.

Subsec. (b). Pub. L. 98-221 substituted provisions that no State may receive payments from its allotment under this chapter unless the State has in effect not later than Oct. 1, 1984, a client assistance program meeting certain enumerated conditions for former provisions which had authorized the promulgation of regulations. The former provisions of former subsec. (b) are covered in subsecs. (c) and (g).

Subsecs. (c) to (i). Pub. L. 98-221 added subsecs. (c) to (i).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 720, 722 of this title.

PART C—INNOVATION AND EXPANSION GRANTS

§ 741. Payments to States

(a) Cost of planning, preparing for, and initiating special programs; construction of facilities; prior approval of Commissioner or State agency for certain expenditures

From each State's allotment under this part for any fiscal year, the Commissioner shall pay to such State or, at the option of the State agency designated pursuant to section 721(a)(1) of this title, to a public or nonprofit organization or agency, a portion of the cost of planning, preparing for, and initiating special programs under the State plan approved pursuant to section 721 of this title to expand vocational rehabilitation services, including—

(1) programs to initiate or expand such services to individuals with the most severe handicaps;

(2) special programs under such State plan to initiate or expand services to classes of handicapped individuals who have unusual or difficult problems in connection with their rehabilitation; and

(3) programs to maximize the use of technological innovations in meeting the employment training needs of handicapped youth and adults.

Payments may also be made under this section for the costs of the construction of facilities to be used in providing services under such State plan if provision for such construction is included in such State plan. The Commissioner may require that any portion of a State's allotment under this section, but not more than 50 per centum of such allotment, may be expended in connection with only such projects as have first been approved by the Commissioner. Any grant of funds under this section which will be used for direct services to handicapped individuals or for establishing or maintaining facilities which will render direct services to such individuals must have the prior approval of the appropriate State agency designated pursuant to section 721 of this title.

(b) Duration; period of availability; limitation; non-Federal share

Payments under this section with respect to any project may be made for a period of not to exceed three years beginning with the commencement of the project as approved, and sums appropriated for grants under this section shall remain available for such grants through the fiscal year ending September 30, 1986. Payments with respect to any project may not exceed 90 per centum of the cost of such project. The non-Federal share of the cost of a project may be in cash or in kind and may include funds spent for project purposes by a cooperating public or nonprofit agency provided that it is not included as a cost in any other federally financed program.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-221, title I, § 114, Feb. 22, 1984, 98 Stat. 23.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221, § 114(a), substituted "unusual or difficult problems" for "unusual and difficult problems", substituted provisions relating to programs to maximize the use of technological innovations in meeting the employment training needs of handicapped youth and adults for provisions which had directed that State vocational rehabilitation services be expanded particularly with regard to handicapped individuals who are poor, and struck out provisions directing that the responsibility for treatment, education, and rehabilitation be shared by the State agency designated in section 721 of this title with other agencies.

Subsec. (b). Pub. L. 98-221, § 114(b), substituted "1986" for "1982".

SUBCHAPTER II—RESEARCH AND TRAINING

§ 761. Authorization of appropriations

(a) There are authorized to be appropriated—

(1) for the purpose of providing for the expenses of the National Institute of Handicapped Research under section 761a of this title, other than expenses to carry out section 762 of this title, such sums as may be necessary for fiscal year 1984, and for each of the two succeeding fiscal years; and

(2) for the purpose of carrying out section 762 of this title, $36,000,000 for the fiscal year

1984, $40,000,000 for the fiscal year 1985, and $44,000,000 for the fiscal year 1986.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-221, title I, § 121, Feb. 22, 1984, 98 Stat. 23.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-221, § 121(a), substituted "fiscal year 1984, and for each of the two succeeding fiscal years" for "the fiscal year ending September 30, 1979, and for each of the three succeeding fiscal years".

Subsec. (a)(2). Pub. L. 98-221, § 121(b), substituted "for the purpose of carrying out section 762 of this title, $36,000,000 for the fiscal year 1984, $40,000,000 for the fiscal year 1985, and $44,000,000 for the fiscal year 1986" for "for the purpose of carrying out section 762 of this title, $50,000,000 for the fiscal year ending September 30, 1979, $75,000,000 for the fiscal year ending September 30, 1980, $90,000,000 for the fiscal year ending September 30, 1981, and $100,000,000 for the fiscal year ending September 30, 1982".

§ 761a. National Institute of Handicapped Research

(a) Establishment; Director as principal officer

In order to promote and coordinate research with respect to handicapped individuals and to more effectively carry out the programs under section 762 of this title, there is established within the Department of Education a National Institute of Handicapped Research (hereinafter in this subchapter referred to as the "Institute"), which shall be headed by a Director (hereinafter in this subchapter referred to as the "Director"). In the performance of his functions, the Director shall be directly responsible to the Secretary or to the same Under Secretary or Assistant Secretary of the Department of Education to whom the Commissioner is responsible under section 702(a) of this title.

[*See main edition for text of* (*b*)]

(c) Appointment of Director; Deputy Director; employment of technical and professional personnel; consultants

(1) The Director of the Institute shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be an individual with substantial experience in rehabilitation and in research administration. The Director shall be compensated at the rate payable for level V of the Executive Schedule under section 5316 of title 5. In carrying out any of his functions under this section, the Director shall be guided by general policies of the National Council on the Handicapped established in subchapter IV of this chapter. The Director shall not delegate any of his functions to any officer who is not directly responsible to him.

[*See main edition for text of* (2) *to* (4); (*d*) *to* (*f*)]

(g) Report to Congress; long-range plan for rehabilitation research; review

The Director shall develop and submit to appropriate committees of the Congress within eighteen months after November 6, 1978, a long-range plan for rehabilitation research which shall—

[*See main edition for text of* (*1*) *to* (*3*)]

The plan required by this subsection shall be developed by the Director in consultation with the Commissioner, the National Council on the Handicapped established under subchapter IV of this chapter, the Secretary of Education, officials responsible for the administration of the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6000 et seq.], the Interagency Committee established by section 761b of this title, and any other persons or entities the Director considers appropriate. Such plan shall be reviewed at least once every three years and may be revised at any time by the Director to the extent he considers necessary.

[*See main edition for text of* (*h*)]

(i) Comprehensive and coordinated research program; interagency cooperation

[*See main edition for text of* (*1*)]

(2) Any person responsible for administering any program of the National Institutes of Health, the Veterans' Administration, the National Science Foundation, the National Aeronautics and Space Administration, the Office of Special Education and Rehabilitative Services, or of any other Federal entity, shall, through the Interagency Committee established by section 761b of this title, consult and cooperate with the Director in carrying out such program if the program is related to the purposes of this section.

(j) Pediatric rehabilitation research; Pacific Basin Research and Training Center

(1) The Director shall make a grant to an institution of higher education for the establishment of a program of pediatric rehabilitation research at an institution of higher education.

(2) The Director shall establish, either directly or by way of grant or contract, a Research and Training Center in the Pacific Basin.

(As amended Pub. L. 98-221, title I, §§ 104(a)(4), (b)(1), 122, Feb. 22, 1984, 98 Stat. 18, 23.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (g), is title I of Pub. L. 88-164, as added by Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662, and amended, which is classified generally to chapter 75 (§ 6000 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of Title 42 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221, § 122(a), substituted "Education" for "Health, Education, and Welfare" in two places.

Subsec. (c)(1). Pub. L. 98-221, § 122(b), added "The Director shall be an individual with substantial experience in rehabilitation and in research administration."

Subsec. (g). Pub. L. 98-221, § 104(b)(1), substituted "Secretary of Education" for "Commissioner of Education".

Subsec. (i)(2). Pub. L. 98-221, § 104(a)(4), substituted "Office of Special Education and Rehabilitative Services" for "Bureau of Education for the Handicapped".

Subsec. (j). Pub. L. 98-221, § 122(c), added subsec. (j).

§ 761b. Interagency Committee

(a) Establishment; membership; meetings

(1) In order to promote coordination and cooperation among Federal departments and agencies conducting rehabilitation research programs, there is established within the Federal Government an Interagency Committee on Handicapped Research (hereinafter in this section referred to as the "Committee"), chaired by the Director and comprised of such members as the President may designate, including the following (or their designees): the Director, the Secretary of Education, the Administrator of Veterans' Affairs, the Director of the National Institutes of Health, the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation, and the Director of the National Science Foundation.

[*See main edition for text of* (2); (b) *and* (c)]

(As amended Pub. L. 98-221, title I, § 104(b)(2), Feb. 22, 1984, 98 Stat. 18.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-221 directed the substitution of "Secretary of Education" for "Commissioner of Education", which could not be executed in view of the previous amendment by Pub. L. 96-88. See 1979 Amendment note below.

§ 762. Research

[*See main edition for text of* (a)]

(b) Federal grants for specialized research activities

In addition to carrying out projects under subsection (a) of this section, the Director may make grants to pay part or all of the cost of the following specialized research activities:

(1) Rehabilitation Research and Training Centers; establishment; purpose; areas of research

Establishment and support of Rehabilitation Research and Training Centers to be operated in collaboration with institutions of higher education for the purpose of (A) providing training (including graduate training) to assist individuals to more effectively provide rehabilitation services, (B) providing coordinated and advanced programs of research in rehabilitation, and (C) providing training (including graduate training) for rehabilitation research and other rehabilitation personnel. The research to be carried out at each Center shall be determined on the basis of the particular needs of handicapped individuals in the geographic area served by the Center, and may include basic or applied medical rehabilitation research, research regarding the psychological and social aspects of rehabilitation, and research related to vocational rehabilitation. The Centers shall be encouraged to develop practical applications for the findings of their research. Grants may include funds for services rendered by such a center to handicapped individuals in connection with such research and training activities. Rehabilitation Research and Training Centers shall include both comprehensive centers dealing with multiple disabilities and centers focused on particular disabilities. Grants to Centers need not be automatically terminated at the end of a project period and may be renewed on the basis of a thorough evaluation and peer review including site visits. Training of students preparing to be rehabilitation personnel through centers shall be an important priority. Grants may include faculty support for teaching of rehabilitation related courses of study for credit and other courses offered by the institutions of higher education affiliated with the Center.

[*See main edition for text of* (2)]

(3) Spinal cord injury research

Conduct of a program for spinal cord injury research, to include support of spinal cord injuries projects and demonstrations established pursuant to sections 777 and 777a of this title, which will (A) insure dissemination of research findings among all such centers, (B) provide encouragement and support for initiatives and new approaches by individual and institutional investigators, and (C) establish and maintain close working relationships with other governmental and voluntary institutions and organizations engaged in similar efforts, in order to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among spinal cord injury investigators.

[*See main edition for text of* (4) *to* (6)]

(7) Joint projects

Conduct of a program of joint projects with the National Institutes of Health, the Health Services Administration, the Administration on Aging, the National Science Foundation, the Veterans' Administration, the Department of Health and Human Services, the National Aeronautics and Space Administration, other Federal agencies, and private industry in areas of joint interest involving rehabilitation.

[*See main edition for text of* (8) *to* (12)]

(13) New concepts; innovative ideas; evaluation devices; special initiatives

Conduct of a rehabilitation research program under which financial assistance is provided in order to (A) test new concepts and innovative ideas, (B) demonstrate research results of high potential benefits, (C) purchase prototype aids and devices for evaluation, (D) develop unique rehabilitation training curricula, and (E) be responsive to special initiatives of the Director. No single grant under this paragraph may exceed $50,000 in any fiscal year and all payments made under this paragraph in any fiscal year may not exceed 5 per centum of the amount available under this section to the National Institute of Handicapped Research in any fiscal year. Regulations and administrative procedures with respect to financial assistance under this paragraph shall, to the maximum extent possible, be expedited.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-221, title I, §§ 104(a)(5), 123, Feb. 22, 1984, 98 Stat. 18, 24.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-221, § 123(a), added "Rehabilitation Research and Training Centers shall include both comprehensive centers dealing with multiple disabilities and centers focused on particular disabilities. Grants to Centers need not be automatically terminated at the end of a project period and may be renewed on the basis of a thorough evaluation and peer review including site visits. Training of students preparing to be rehabilitation personnel through centers shall be an important priority. Grants may include faculty support for teaching of rehabilitation related courses of study for credit and other courses offered by the institutions of higher education affiliated with the Center.".

Subsec. (b)(3). Pub. L. 98-221, § 123(b), substituted "pursuant to sections 777 and 777a of this title" for "pursuant to section 773(b) of this title".

Subsec. (b)(7). Pub. L. 98-221, § 104(a)(5), substituted "Department of Health and Human Services" for "Office of Education".

Subsec. (b)(13). Pub. L. 98-221, § 123(c), added par. (13).

§ 762a. Research and demonstration projects

(a) Multiple and interrelated service needs of handicapped individuals; report to Congress

The Secretary of Education is authorized to make grants to, and to enter into contract with, public and nonprofit agencies and organizations for the purpose of research and demonstration projects specifically designed to address the multiple and interrelated service needs of handicapped individuals, the elderly, and children, youths, adults, and families. A report evaluating each project funded under this section shall be submitted to appropriate committees of the Congress within four months after the date each such project is completed.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-221, title I, § 104(c)(1), Feb. 22, 1984, 98 Stat. 18.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221 substituted "Secretary of Education" for "Secretary of Health, Education, and Welfare".

SUBCHAPTER III—SPECIAL FEDERAL RESPONSIBILITIES

PART A—CONSTRUCTION AND TRAINING PROGRAMS

§ 771. Grants for construction of rehabilitation facilities, staffing, and planning assistance

(a) Authorization of appropriations; period of availability of moneys

For the purpose of making grants and contracts under this section for construction of rehabilitation facilities, staffing, and planning assistance, there is authorized to be appropriated such sums as may be necessary for each fiscal year ending before October 1, 1986. Amounts so appropriated shall remain available for expenditure with respect to construction projects funded or staffing grants made under this section prior to October 1, 1987.

[*See main edition for text of* (b) *to* (d)]

(As amended Pub. L. 98-221, title I, § 131, Feb. 22, 1984, 98 Stat. 24.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221 substituted "October 1, 1986" for "October 1, 1982" and "October 1, 1987" for "October 1, 1983".

§ 772. Vocational training services for handicapped individuals

(a) Authorization of appropriations

For the purpose of making grants and entering into contracts under this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year ending before October 1, 1986.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-221, title I, § 132, Feb. 22, 1984, 98 Stat. 24.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221 substituted "October 1, 1986" for "October 1, 1982".

§ 774. Training

(a) Federal grants and contracts for personnel projects relating to training, traineeships, and related activities

The Commissioner may make grants to and contracts with States and public or nonprofit agencies and organizations, including institutions of higher education, to pay part of the cost of projects for training, traineeships, and related activities designed to assist in increasing the numbers of qualified personnel trained in providing vocational, medical, social, and psychological rehabilitation services to handicapped individuals, including (1) personnel specially trained in providing employment assistance to handicapped individuals through job development and job placement services, (2) personnel specifically trained to deliver services to individuals who may benefit from receiving comprehensive services for independent living, personnel specifically trained to deliver services in client assistance program,,[1] and (3) personnel trained in performing other functions necessary to the development of such services. In carrying out the provisions of this subsection, the Commissioner shall, in addition to furnishing training in the services provided under this chapter to rehabilitation counselors, furnish training to such counselors in the applicability of the provisions of section 794 of this title.

(b) Targeting of available funds to areas of personnel shortage; study period limitation

In making such grants or contracts, funds made available for any year shall be targeted to areas of personnel shortage which may include projects in rehabilitation medicine, rehabilitation nursing, rehabilitation counseling, rehabilitation social work, rehabilitation psychiatry, rehabilitation psychology, physical therapy, occupational therapy, speech pathology and audiology, workshop and facility administration, prosthetics and orthodontics, specialized personnel in providing services to blind and deaf individuals, specialized personnel in providing job development and job placement services for handicapped individuals, recreation for ill and handicapped individuals, and other fields contributing to the rehabilitation of handicapped individuals, including homebound and institutionalized individuals and handicapped individuals with limited English-speaking ability. No grant shall be made under this section for furnishing to an individual any one course of study extending for a period in excess of four years.

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[1] So in original.

(c) Evaluation of programs; determination of training needs for qualified personnel; development of long-term manpower plan; report on allocation of training funds

The Commissioner shall evaluate the impact of the training programs conducted under this section, shall determine training needs for qualified personnel necessary to provide services to handicapped individuals, and shall develop a long-term rehabilitation manpower plan designed to target resources on areas of personnel shortage. The Commissioner shall prepare and submit to the Congress, simultaneously with the budget submission for the succeeding fiscal year for the Rehabilitation Services Administration, a report setting forth and justifying in detail how the training funds for the fiscal year prior to such submission are allocated by professional discipline and other program areas. The report shall also contain findings on personnel shortages, how funds proposed for the succeeding fiscal year will be allocated under the President's budget proposal, and how the findings of personnel shortages justify the allocations.

[*See main edition for text of* (*d*)]

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $22,000,000 for the fiscal year 1984, $27,000,000 for the fiscal year 1985, and $31,000,000 for the fiscal year 1986. There are further authorized to be appropriated for each such fiscal year such additional sums as the Congress may determine to be necessary to carry out this section.

(As amended Pub. L. 98-221, title I, § 133, Feb. 22, 1984, 98 Stat. 24.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221, § 133(a), (b)(1), inserted "qualified" before "personnel trained in providing vocational", inserted "(1)" after "services to handicapped individuals, including", added a comma and cl. (2) after "and job placement services", inserted "(3)" before "personnel trained in performing", and added provision requiring that the Commissioner furnish training to rehabilitation counselors in the applicability of the provisions of section 794 of this title.

Subsec. (b). Pub. L. 98-221, § 133(c), substituted "shall be targeted to areas of personnel shortage which may" for "will be utilized to provide a balanced program of assistance to meet the medical, vocational, and other personnel training needs of both public and private rehabilitation programs and institutions, to".

Subsec. (c). Pub. L. 98-221, § 133(b)(2), (d), substituted "needs for qualified personnel" for "needs for personnel" and added provision requiring the Commissioner to prepare and submit to the Congress, simultaneously with the budget submission for the succeeding fiscal year for the Rehabilitation Services Administration, a report setting forth and justifying in detail how the training funds for the fiscal year prior to such submission are allocated by professional discipline and other program areas, with the report also to contain findings on personnel shortages, how funds proposed for the succeeding fiscal year will be allocated under the President's budget proposal, and how the findings of personnel shortages justify the allocations.

Subsec. (e). Pub. L. 98-221, § 133(e), substituted "(e)" for "(d)" as the designation for the subsection authorizing appropriations, thereby correcting a typographical error in Pub. L. 95-602 which had added two subsecs. (d), and in subsec. (e) as so redesignated, substituted "There are authorized to be appropriated to carry out this section, $22,000,000 for the fiscal year 1984, $27,000,000 for the fiscal year 1985, and $31,000,000 for the fiscal year 1986" for "There are authorized to be appropriated to carry out this section $34,000,000 for the fiscal year ending September 30, 1979, $40,000,000 for the fiscal year ending September 30, 1980, $45,000,000 for the fiscal year ending September 30, 1981, and $50,000,000 for the fiscal year ending September 30, 1982".

§ 775. Comprehensive rehabilitation centers

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for for [2] each of the fiscal years 1984, 1985, and 1986.

(As amended Pub. L. 98-221, title I, § 134, Feb. 22, 1984, 98 Stat. 25.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-221 substituted "for each of the fiscal years 1984, 1985, and 1986" for "the fiscal year ending September 30, 1979, and for the three succeeding fiscal years".

§ 776. General grant and contract requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 721, 762, 771, 773, 775, 777a, 777b, 777f of this title.

PART B—SPECIAL PROJECTS AND SUPPLEMENTARY SERVICES

§ 777. Authorization of appropriations

(a) For the purpose of carrying out this part (other than section 777f of this title), there are authorized to be appropriated $12,900,000 for fiscal year 1984, $13,600,000 for fiscal year 1985, and $14,300,000 for fiscal year 1986.. [2]

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-221, title I, § 135, title II, § 208(b), Feb. 22, 1984, 98 Stat. 25, 34.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221, § 135, substituted "777f" for "777c" and "$12,900,000 for fiscal year 1984, $13,600,000 for fiscal year 1985, and $14,300,000 for fiscal year 1986" for "such sums as may be necessary for each fiscal year ending prior to October 1, 1982", which amendment was executed by making such substitution for the phrase "such sums as may be necessary for each fiscal year ending before October 1, 1982." as the probable intent of Congress.

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[2] So in original.

Pub. L. 98-221, § 208(b), purported to strike out "(other than section 777c of this title)," but such amendment could not be executed to text in view of the previous amendment by section 135 of Pub. L. 98-221. See 1984 Amendment note above.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 762 of this title.

§ 777a. Special demonstration programs

(a) Grants to States and to public and nonprofit agencies and organizations

Subject to the provisions of section 776 of this title, the Commissioner may make grants to States and to public or nonprofit agencies and organizations to pay part or all of the costs of special projects and demonstrations (including related research and evaluation) for—

(1) establishing programs and, where appropriate, constructing facilities for providing vocational rehabilitation services, which hold promise of expanding or otherwise improving rehabilitation services to handicapped individuals (especially those with the most severe handicaps), including blind or deaf individuals, irrespective of age or vocational potential, who can benefit from comprehensive services;

[*See main edition for text of* (2) *and* (3)]

The Director of the National Institute of Handicapped Research may make grants to States and to public or nonprofit agencies and organizations to pay part or all of the costs of special projects and demonstrations for spinal cord injuries.

(b) Individuals with spinal cord injuries

Any project or demonstration assisted by a grant under this section which provides services to individuals with spinal cord injuries shall—

[*See main edition for text of* (1) *to* (4)]

The Director of the National Institute of Handicapped Research shall coordinate each grant made under this subsection with the Commissioner.

(c) Job training for handicapped youths; preparation for entry into labor force

(1) The Commissioner may make grants to public and nonprofit agencies and organizations to pay part or all of the costs of special projects and demonstrations including research and evaluation for handicapped youths to provide job training and prepare them for entry into the labor force. Such projects shall be designed to demonstrate cooperative efforts between local educational agencies, business and industry, vocational rehabilitation programs, and organizations representing labor and organizations responsible for promoting or assisting in local economic development.

(2) Services under this subsection may include—

(A) jobs search assistance;

(B) on-the-job training;

(C) job development including worksite modification and use of advanced learning technology for skills training;

(D) dissemination of information on program activities to business and industry; and

(E) followup services for individuals placed in employment.

(3) The Commissioner shall assure that projects shall be coordinated with other projects assisted under section 1425 of title 20.

(As amended Pub. L. 98-221, title I, § 136, Feb. 22, 1984, 98 Stat. 26.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221, § 136(a), struck out "individuals with spinal cord injuries and" after "including" in par. (1) and added after par. (3) a provision authorizing the Director of the National Institute of Handicapped Research to make grants to States and to public or nonprofit agencies and organizations to pay part or all of the costs of special projects and demonstrations for spinal cord injuries.

Subsec. (b). Pub. L. 98-221, § 136(b), added provision directing the Director of the National Institute of Handicapped Research to coordinate with the Commissioner each grant made under this subsection.

Subsec. (c). Pub. L. 98-221, § 136(c), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 762 of this title; title 20 section 1425.

§ 777e. Repealed. Pub. L. 98-221, title II, § 203(a), Feb. 22, 1984, 98 Stat. 33

Section, Pub. L. 93-112, title III, § 313, as added Pub. L. 95-602, title I, § 116(2), Nov. 6, 1978, 92 Stat. 2974, related to the Helen Keller National Center for Deaf-Blind Youths and Adults. See chapter 21 (§ 1901 et seq.) of this title.

§ 777f. Recreational programs

(a) The Commissioner, subject to the provisions of section 776 of this title, shall make grants to State and public nonprofit agencies and organizations for paying part or all of the cost of initiation of recreation programs to provide handicapped individuals with recreational activities to aid in the mobility and socialization of such individuals. The activities authorized to be assisted under this section may include, but are not limited to, scouting and camping, 4-H activities, sports, music, dancing, handicrafts, art, and homemaking. No grant may be made under the provisions of this section unless the agreement with respect to such grant contains provisions to assure that, to the extent possible, existing resources will be used to carry out the activities for which the grant is to be made, and that with respect to children the activities for which the grant is to be made will be conducted after school.

(b) There are authorized to be appropriated to carry out this section $2,000,000 for the fiscal year 1984, $2,100,000 for the fiscal year 1985, and $2,200,000 for the fiscal year 1986.

(As amended Pub. L. 98-221, title I, § 137, Feb. 22, 1984, 98 Stat. 26.)

AMENDMENTS

1984—Pub. L. 98-221 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 777 of this title.

SUBCHAPTER IV—NATIONAL COUNCIL ON THE HANDICAPPED

§ 780. Establishment of National Council on the Handicapped

(a) Membership

There is established within the Federal Government a National Council on the Handicapped (hereinafter in this subchapter referred to as the "National Council"), which shall be composed of fifteen members appointed by the President, by and with the advice and consent of the Senate. The members of the National Council shall be appointed so as to be representative of handicapped individuals, national organizations concerned with the handicapped, providers and administrators of services to the handicapped, individuals engaged in conducting medical or scientific research relating to handicapped individuals, business concerns, and labor organizations. At least five members of the National Council shall be handicapped individuals, or parents or guardians of handicapped individuals.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-221, title I, § 141(a), Feb. 22, 1984, 98 Stat. 26.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221 substituted "within the Federal Government" for "with the Department of Health, Education, and Welfare".

§ 780a. Independent status of National Council on the Handicapped

(1) Council as independent agency within Federal Government

Effective on February 22, 1984, the National Council on the Handicapped shall be an independent agency within the Federal Government and shall not be an agency within the Department of Education or any other department or agency of the United States.

(2) Transfer of functions to Council Chairman

There are transferred to the Chairman of the National Council on the Handicapped all functions relating to the Council which were vested in the Secretary of Education on the day before February 22, 1984. The Chairman of the National Council on the Handicapped shall continue to exercise all the functions under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] or any other law or authority which the Chairman was performing before February 22, 1984.

(3) Changes in statutory and other references

References in any statute, reorganization plan, Executive order, regulation, or other official document or proceeding to the Department of Education or the Secretary of Education with respect to functions or activities relating to the National Council on the Handicapped shall be deemed to refer to the National Council on the Handicapped or the Chairman of the National Council on the Handicapped, respectively.

(Pub. L. 98-221, title I, § 141(b), Feb. 22, 1984, 98 Stat. 26.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in par. (2), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to this chapter (§ 701 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Rehabilitation Amendments of 1984, and not as part of Rehabilitation Act of 1973 which comprises this chapter.

§ 781. Duties of National Council

(a) The National Council shall—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) advise the President, the Congress, the Commissioner, the appropriate Assistant Secretary of the Department of Education, and the Director of the National Institute of Handicapped Research on the development of the programs to be carried out under this chapter;

[*See main edition for text of* (*4*)]

(5) make recommendations to the President, the Congress, the Secretary, and the Director of the National Institute of Handicapped Research respecting ways to improve research concerning handicapped individuals, the administration of services for handicapped individuals, and the methods of collecting and disseminating the findings of such research, and make recommendations for facilitating the implementation of programs based upon such findings;

(6) submit not later than March 31 of each year (beginning in 1980) an annual report to the Congress, and the President, containing (A) a statement of the current status of research concerning the handicapped in the United States, (B) a review of the activities of the Rehabilitation Services Administration and the National Institute of Handicapped Research, and (C) such recommendations respecting the items described in clauses (A) and (B) as the National Council considers appropriate; and

(7) provide to the Congress on a continuing basis advice, recommendations, and any additional information which the Council or the Congress deems appropriate.

(b) The National Council shall—

(1) review all statutes pertaining to Federal programs which assist handicapped individuals;

(2) make a priority listing of such programs based on the number of handicapped individuals such programs assist and the Federal costs of such programs;

(3) assess the extent to which such programs provide incentives or disincentives to the establishment of community-based services for handicapped individuals, promote the full integration of such individuals in the community, in schools, and in the workplace, and contribute to the independence and dignity of such individuals;

(4) recommend to the President and the Congress legislative proposals for increasing incentives and eliminating disincentives in Federal programs based on the assessment made pursuant to clause (3); and

(5) prepare and submit a final report to the President and to the Congress not later than February 1, 1986, on the review, assessment, and recommendations required by this subsection.

(As amended Pub. L. 98-221, title I, § 142, Feb. 22, 1984, 98 Stat. 27.)

References in Text

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (a)(4), is title I of Pub. L. 88-164, as added by Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662, and amended, which is classified generally to chapter 75 (§ 6000 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of Title 42 and Tables.

Amendments

1984—Pub. L. 98-221 designated existing provisions as subsec. (a); in subsec. (a) as so designated, amended par. (3) generally, thereby inserting "the President, the Congress," after "advise" and substituting "Department of Education" for "Department of Health, Education, and Welfare", amended par. (5) by inserting "the President, the Congress," before "the Secretary", by sriking out "the Commissioner," after "the Secretary,", and by striking out "and" at the end, amended par. (6) by striking out "the Secretary," after "report to" and by substituting "; and" for the period at the end, and added par. (7); and added subsec. (b).

§ 783. National Council staff

(a) Executive Director; technical and professional employees

(1) The National Council may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, an Executive Director to assist the National Council to carry out its duties. The Executive Director shall be appointed from among individuals who are experienced in the planning or operation of programs for handicapped individuals.

(2) The Executive Director is authorized to hire not to exceed seven technical and professional employees to assist the National Council to carry out its duties.

(b) Temporary or intermittent services; voluntary and uncompensated services; gifts, etc.; contracts and agreements; official representation and reception; transfer of funds

(1) The National Council may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5 (but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay payable for grade GS-18 of the General Schedule under section 5332 of title 5.

(2) The National Council may—

(A) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(B) accept, in the name of the Council, employ and dispose of in furtherance of this chapter, any money, or property, real or personal, or mixed, tangible or nontangible, received by gift, devise, bequest, or otherwise; and

(C) enter into contracts and cooperative agreements with Federal and State agencies, private firms, institutions, and individuals for the conduct of research and surveys, preparation of reports and other activities necessary to the discharge of the Council's duties and responsibilities.

(3) Not more than 10 per centum of the total amounts available to the National Council in each fiscal year may be used for official representation and reception.

(4) From the amount available to the Office of Special Education and Rehabilitative Services, Department of Education, $500,000 in fiscal year 1984 shall be transferred and made available to the National Council.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-221, title I, § 143, Feb. 22, 1984, 98 Stat. 28.)

References in Text

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Amendments

1984—Subsec. (a). Pub. L. 98-221, § 143(a)-(c), designated existing provisions as par. (1), in par. (1) as so designated, substituted "an Executive Director" for "up to seven technical and professional employees" and added provision requiring that the Executive Director be appointed from among individuals experienced in the planning or operation of programs for handicapped individuals, and added par. (2).

Subsec. (b). Pub. L. 98-221, § 143(d), designated existing provisions as par. (1) and added pars. (2) to (4).

SUBCHAPTER V—MISCELLANEOUS PROVISIONS

§ 791. Employment of handicapped individuals

(a) Interagency Committee on Handicapped Employees; establishment; membership; co-chairmen; availability of other Committee resources; purpose and functions

There is established within the Federal Government an Interagency Committee on Handicapped Employees (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher): the Chairman [1] of the Office of Personnel Management, the Administrator of Veterans' Affairs, and the Secretaries of Labor and Education and Health and Human Services. The Secretary of Education and the Chairman [1] of the Office of Personnel Management shall serve as co-chairmen of the Committee. The resources of the President's Committees on Employment of the Handicapped and on Mental Retardation shall be made fully available to the Committee. It shall be the purpose and function of the Committee (1) to provide a focus for Federal and other employment of handicapped individuals, and to review, on a periodic basis, in cooperation with the Office of Personnel Management, the adequacy of hiring, placement, and advancement practices with respect to handicapped individuals, by each department, agency, and instrumentality in the executive branch of Government, and to insure that the special needs of such individuals are being met; and (2) to consult with the Office of Personnel Management to assist the Office to carry out its responsibilities under subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the Office of Personnel Management such recommendations for legislative and administrative changes as it deems necessary or desirable. The Office of Personnel Management shall timely transmit to the appropriate committees of Congress any such recommendations.

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[1] So in original. Probably should be "Director".

(b) Federal agencies; affirmative action program plans

Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after September 26, 1973, submit to the Office of Personnel Management and to the Committee an affirmative action program plan for the hiring, placement, and advancement of handicapped individuals in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of handicapped employees are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Office, if the Office determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for handicapped individuals.

(c) State agencies; rehabilitated individuals, employment

The Office of Personnel Management, after consultation with the Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for handicapped individuals, including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies and procedures.

(d) Report to Congressional committees

The Office of Personnel Management, after consultation with the Committee, shall, on June 30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of handicapped individuals by each department, agency, and instrumentality and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the Office of Personnel Management under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the activities of the Office of Personnel Management under subsections (b) and (c) of this section.

[*See main edition for text of* (*e*)]

(f) Federal agency cooperation; special consideration for positions on President's Committee on Employment of the Handicapped

(1) The Secretary of Labor and the Secretary of Education are authorized and directed to cooperate with the President's Committee on Employment of the Handicapped in carrying out its functions.

[*See main edition for text of* (*2*)]

(As amended Pub. L. 98-221, title I, § 104(b)(3), Feb. 22, 1984, 98 Stat. 18.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221, § 104(b)(3)(A)-(D), substituted "the Chairman of the Office of Personnel Management" and "Education and Health and Human Services" for "the Chairman of the Civil Service Commission" and "Health, Education, and Welfare", respectively, in first sentence, "Secretary of Education and the Chairman of the Office of Personnel Management" for "Secretary of Health, Education, and Welfare and the Chairman of the Civil Service Commission" in second sentence, "Office of Personnel Management" for "Civil Service Commission" in four places, and "Office" for "Commission".

Subsec. (b). Pub. L. 98-221, § 104(b)(3)(C), (D), substituted "Office of Personnel Management" for "Civil Service Commission" and substituted "Office" for "Commission" in two places.

Subsec. (c). Pub. L. 98-221, § 104(b)(3)(C), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (d). Pub. L. 98-221, § 104(b)(3)(C), (E), substituted "Office of Personnel Management" for "Civil Service Commission" in two places and "the activities of the Office of Personnel Management" for "Civil Service Commission's activities".

Subsec. (f)(1). Pub. L. 98-221, § 104(b)(3)(F), substituted "Secretary of Education" for "Secretary of Health, Education, and Welfare".

EX. ORD. NO. 11830. ENLARGING MEMBERSHIP OF INTERAGENCY COMMITTEE ON HANDICAPPED EMPLOYEES

Ex. Ord. No. 11830, Jan. 9, 1975, 40 F.R. 2411, as amended by Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053; Ex. Ord. No. 12450, Dec. 9, 1983, 48 F.R. 55409, provided:

By virtue of the authority vested in me by section 501(a) of the Rehabilitation Act of 1973 (Public Law 93-112; 87 Stat. 390) [subsec. (a) of this section], it is hereby ordered as follows:

SECTION 1. In accord with Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and Section 4 of Reorganization Plan No. 1 of 1978 (43 FR 19808) [set out in the Appendix to Title 5, Government Organization and Employees], the Interagency Committee on Handicapped Employees is enlarged and composed of the following, or their designees whose positions are Executive level IV or higher:

(1) Secretary of Defense.

(2) Secretary of Labor.

(3) Secretary of Education, Co-Chairman.

(4) Director of the Office of Personnel Management.

(5) Administrator of Veterans Affairs.

(6) Administrator of General Services.

(7) Chairman of the Federal Communications Commission.

(8) Chairman of the Equal Employment Opportunity Commission, Co-Chairman.

(9) Secretary of Health and Human Services.

(10) Such other members as the President may designate.

Sec. 2. [Deleted.]

§ 792. Architectural and Transportation Barriers Compliance Board

[*See main edition for text of* (*a*) *to* (*h*)]

(i) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out the duties and functions of the Board under this section such sums as may be necessary for each fiscal year ending before October 1, 1986.,[3] but in no event shall the amount appropriated for any one fiscal year exceed $3,000,000.

(As amended Pub. L. 98-221, title I, § 151, Feb. 22, 1984, 98 Stat. 28.)

Amendments

1984—Subsec. (i). Pub. L. 98-221 substituted "October 1, 1986." for "October 1, 1982".

Section Referred to in Other Sections

This section is referred to in sections 776, 794b of this title; title 42 section 4157; title 49 App. section 1304.

§ 794. Nondiscrimination under Federal grants and programs; promulgation of rules and regulations

Construction of Prohibition Against Discrimination Under Federal Grants

Rights or protections of this section not affected by any provision of Pub. L. 98-457, see section 127 of Pub. L. 98-457, set out as a note under section 5101 of Title 42, The Public Health and Welfare.

Section Referred to in Other Sections

This section is referred to in sections 706, 774, 775, 794a, 1577 of this title; title 5 section 3102; title 20 sections 1132a, 1232e; title 25 section 2005; title 31 section 6716; title 42 sections 300w-7, 300x-7, 300y-9, 708, 5057, 5309, 6727, 8625, 9849, 9906, 10406; title 49 App. section 1612.

§ 794a. Remedies and attorney fees

Section Referred to in Other Sections

This section is referred to in title 22 section 3905; title 42 section 10406.

§ 794c. Interagency Coordinating Council; membership; duties; annual report to President and Congress

There shall be established an Interagency Coordinating Council (hereinafter referred to in this section as the "Council") composed of the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Attorney General, the Chairman[4] of the Office of Personnel Management, the Chairman of the Equal Employment Opportunity Commission, and the Chairman of the Architectural and Transportation Barriers Compliance Board. The Council shall have the responsibility for developing and implementing agreements, policies, and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistencies among the operations, functions, and jurisdictions of the various departments, agencies, and branches of the Federal Government responsible for the implementation and enforcement of the provisions of this subchapter, and the regulations prescribed thereunder. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section. Nothing in this section shall impair any responsibilities assigned by any Executive Order to any Federal department, agency, or instrumentality to act as a lead Federal agency with respect to any provisions of this subchapter.

(As amended Pub. L. 98-221, title I, § 104(b)(4), Feb. 22, 1984, 98 Stat. 18.)

Amendments

1984—Pub. L. 98-221 substituted "Chairman of the Office of Personnel Management" for "Chairman of the United States Civil Service Commission" and purported to substitute "Secretary of Education, the Secretary of Health and Human Services," for "Secretary of Health, Education, and Welfare" which amendment could not be executed in view of the previous amendment by Pub. L. 96-88. See 1979 Amendment note below.

SUBCHAPTER VI—EMPLOYMENT OPPORTUNITIES FOR HANDICAPPED INDIVIDUALS

Part A—Community Service Employment Pilot Programs for Handicapped Individuals

§ 795a. Administration

[*See main edition for text of* (*a*)]

(b) Coordination with other programs

The Secretary shall coordinate the pilot program established under this part with programs authorized under the Emergency Jobs and Unemployment Assistance Act of 1974, the Job Training Partnership Act [29 U.S.C. 1501 et seq.], the Community Services Act of 1974 [42 U.S.C. 2711 et seq.], and the Emergency Employment Act of 1971 [42 U.S.C. 4871 et seq.]. Appropriations under this part may not be used to carry out any program under the Acts referred to in the preceding sentence.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended Pub. L. 98-221, title I, § 165, Feb. 22, 1984, 98 Stat. 30.)

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[3] So in original.

[4] So in original. Probably should be "Director".

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-221 substituted "Job Training Partnership Act" for "Comprehensive Employment and Training Act of 1973".

§ 795c. Interagency cooperation

[See main edition for text of (a)]

(b) The Secretary shall consult and cooperate with the Director of the Community Services Administration, the Secretary of Health and Human Services, and the heads of other Federal agencies carrying out related programs, in order to achieve maximum coordination between such programs and the program established under this part. Each Federal agency shall cooperate with the Secretary in disseminating information relating to the availability of assistance under this part and in identifying individuals eligible for employment in projects assisted under this part.

(As amended Pub. L. 98-221, title I, § 104(b)(5), Feb. 22, 1984, 98 Stat. 18.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-221 substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

§ 795f. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this part such sums as may be necessary for each of the fiscal years 1984, 1985, and 1986.

(As amended Pub. L. 98-221, title I, § 161, Feb. 22, 1984, 98 Stat. 29.)

AMENDMENTS

1984—Pub. L. 98-221 substituted "There are authorized to be appropriated to carry out the provisions of this part such sums as may be necessary for each of the fiscal years 1984, 1985, and 1986" for "There are authorized to be appropriated to carry out the purposes of this part $35,000,000 for the fiscal year ending September 30, 1979, $50,000,000 for the fiscal year ending September 30, 1980, $75,000,000 for the fiscal year ending September 30, 1981, and $100,000,000 for the fiscal year ending September 30, 1982".

PART B—PROJECTS WITH INDUSTRY AND BUSINESS OPPORTUNITIES FOR HANDICAPPED INDIVIDUALS

§ 795g. Projects with industry

(a) Agreements; joint financing; evaluation plan

(1) The Commissioner, in consultation with the Secretaries of Labor and Commerce and with designated State units, may enter into agreements with individual employers, designated State units and other entities to establish jointly financed projects which—

[See main edition for text of (A) to (C), (2)]

(3) Any agreement developed under this subsection shall include a description of an evaluation plan which at the end of each year of a funding cycle reflects at a minimum the following—

(A) the numbers and types of handicapped individuals assisted;

(B) the types of assistance provided;

(C) the sources of funding;

(D) the percentage of resources committed to each type of assistance provided;

(E) the extent to which the employment status and earning power of handicapped individuals changed following assistance;

(F) the extent of capacity building activities, including collaboration with other organizations, agencies, and institutions; and

(G) a comparison, when appropriate, of activities in prior years with activities in the most recent year.

[See main edition for text of (b) and (c)]

(d) Standards for evaluation; comprehensive evaluation; recommendations; approval of standards by National Council on the Handicapped

(1) The Commissioner shall, not later than February 1, 1985, develop and publish standards for evaluation consistent with the provisions in subsection (a)(3) of this section to assist each recipient under the Projects With Industry Program receiving assistance under this subchapter to review and evaluate the operation of its project.

(2) The Commissioner shall, pursuant to section 713 of this title, conduct a comprehensive evaluation of the Projects With Industry Program and submit a report on February 1, 1986, to Congress on the evaluation, including recommendations for the improvement and continuation of each recipient and for the support of new Projects With Industry recipients. In conducting the comprehensive evaluation, the Commissioner shall apply standards for evaluation criteria which are consistent with those required in subsection (a)(3) of this section.

(3) In developing standards for evaluation to be used by the Projects With Industry recipients, and in developing the standards for evaluation to be used in the comprehensive evaluation, the Commissioner shall obtain and consider recommendations for such standards from State Vocational Rehabilitation Agencies, current Projects With Industry recipients, professional organizations representing industry, organizations representing handicapped individuals, individuals assisted by Projects With Industry recipients, and labor organizations.

(4) No standards may be established under this subsection unless the standards are approved by the National Council on the Handicapped. The Council shall approve the standards within ninety days after receiving the standards. If the Secretary of Education has not received notification of approval or disapproval from the Council within ninety days, the standards shall be deemed approved. A Council decision on such standards shall occur at a regularly scheduled meeting of the Council, and shall be the result of a simple majority of those present at the meeting.

(e) Continuation of assistance through September 30, 1986

The parties to each agreement receiving assistance under this section in the fiscal year in which the Rehabilitation Amendments of 1984 is enacted shall continue to receive assistance through September 30, 1986, unless the Commissioner determines that there is a substantial failure to comply with the agreement.

(f) Equitable distribution of payments among States

The Commissioner shall to the extent practicable assure an equitable distribution of payments made under this section among the States.

(As amended Pub. L. 98-221, title I, §§ 162, 163, Feb. 22, 1984, 98 Stat. 29, 30.)

References in Text

The fiscal year in which the Rehabilitation Amendments of 1984 is enacted, referred to in subsec. (e), is the fiscal year ending September 30, 1984.

Amendments

1984—Subsec. (a). Pub. L. 98-221, § 162(a), (b), inserted ", designated State units" after "employers" in provisions preceding subpar. (A) in par. (1) and added par. (3).

Subsecs. (d) to (f). Pub. L. 98-221, §§ 162(c), 163, added subsecs. (d) to (f).

Section Referred to in Other Sections

This section is referred to in section 795i of this title.

§ 795h. Business opportunities for handicapped; promulgation of regulations

Section Referred to in Other Sections

This section is referred to in section 795i of this title.

§ 795i. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions for section 795g of this title, $13,000,000 for fiscal year 1984, $14,400,000 for fiscal year 1985, and $15,200,000 for fiscal year 1986; and for section 795h of this title, such sums as may be necessary for each of the fiscal years 1984, 1985, and 1986.

(As amended Pub. L. 98-221, title I, § 164, Feb. 22, 1984, 98 Stat. 30.)

Amendments

1984—Pub. L. 98-221 substituted "for section 795g of this title, $13,000,000 for fiscal year 1984, $14,400,000 for fiscal year 1985, and $15,200,000 for fiscal year 1986; and for section 795h of this title, such sums as may be necessary for each of the fiscal years 1984, 1985, and 1986" for "of this part for each fiscal year beginning before October 1, 1982".

SUBCHAPTER VII — COMPREHENSIVE SERVICES FOR INDEPENDENT LIVING

Part A—Comprehensive Services

§ 796d. State plans; approval or disapproval by Commissioner

References in Text

Section 6011 of title 42, referred to in subsec. (a)(4), was omitted in the general revision of Chapter 75 (§ 6000 et seq.) of Title 42, The Public Health and Welfare, by Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662. See section 6023 of Title 42.

Part B—Centers for Independent Living

§ 796e. Establishment and operation of independent living centers

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Application by public or nonprofit agency or organization; contents

An application by a public or nonprofit agency or organization for such grant shall—

[*See main edition for text of* (*1*)]

(2) contain assurances that the independent living center to be assisted by such grant shall offer handicapped individuals a combination of independent living services, including as appropriate—

[*See main edition for text of* (*A*) *to* (*M*)]

(N) such other services as may be necessary and not inconsistent with the provisions of this subchapter;

(3) contain a description of an evaluation plan which at the end of each year of a funding cycle shall reflect at a minimum the following—

(A) the numbers and types of handicapped individuals assisted;

(B) the extent to which individuals with varying handicapping conditions were served;

(C) the types of services provided;

(D) the sources of funding;

(E) the percentage of resources committed to each type of service provided;

(F) how services provided contributed to the maintenance of or the increased independence of handicapped individuals assisted;

(G) the extent to which handicapped individuals participate in management and decisionmaking in the center;

(H) the extent of capacity building activities including collaboration with other agencies and organizations;

(I) the extent of catalytic activities to promote community awareness, involvement, and assistance;

(J) the extent of outreach efforts and the impact of such efforts; and

(K) a comparison, when appropriate, of prior year(s) activities with most recent year activities.[1]

(4) contain such other information, and be submitted in such form and in accordance with such procedures, as the Commissioner may require.

[*See main edition for text of* (*d*)]

(e) Standards for evaluation; comprehensive evaluation; recommendations; approval of standards by National Council on the Handicapped

(1) The Commissioner shall, not later than February 1, 1985, develop and publish standards for evaluation consistent with the provisions in subsection (c)(3) of this section to assist each independent living center receiving funding under this subchapter to review and evaluate the operation of its center.

(2) The Commissioner shall, under the authority specified in section 713 of this title, con-

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[1] So in original. The period probably should be "; and".

duct a comprehensive evaluation of the Centers for Independent Living Grant Program, and submit a report no later than February 1, 1986, to Congress on the evaluation, including recommendations for the improvement and continuation of each grantee and for the support of new independent living centers. In conducting the comprehensive evaluation, the Commissioner shall apply standards for evaluation which are consistent with the standards required in paragraph (1).

(3) In developing standards for evaluation to be used by the grantees, and in developing the standards for evaluation to be used in the comprehensive evaluation, the Commissioner shall obtain and consider recommendations for such standards from national organizations representing handicapped individuals and independent living programs; and from independent living centers, professionals serving handicapped individuals, and individuals, associations, and organizations engaged in research in independent living.

(4) No standards may be established under this subsection unless the standards are approved by the National Council on the Handicapped. The Council shall approve the standards within ninety days after receiving the standards. If the Secretary of Education has not received notification of approval or disapproval from the Council within the ninety days, the standards shall be deemed approved. A Council decision on such standards shall occur at a regularly scheduled meeting of the Council, and shall be the result of a simple majority of those present at the meeting.

(f) Continuation of assistance through September 30, 1986

Grantees receiving assistance under this section in the fiscal year in which the Rehabilitation Amendments of 1984 are enacted shall continue to receive assistance through September 30, 1986, unless the Commissioner determines that there is a substantial failure to comply with the provisions of the approved application.

(As amended Pub. L. 98-221, title I, § 171, Feb. 22, 1984, 98 Stat. 30.)

REFERENCES IN TEXT

The fiscal year in which the Rehabilitation Amendments of 1984 are enacted, referred to in subsec. (f), is the fiscal year ending September 30, 1984.

AMENDMENTS

1984—Subsec. (c)(3), (4). Pub. L. 98-221, § 171(A), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (e), (f). Pub. L. 98-221, § 171(b), added subsecs. (e) and (f).

PART E—AUTHORIZATIONS

§ 796i. Authorization of appropriations

(a) Appropriations for part A

There are authorized to be appropriated to carry out part A of this subchapter such sums as may be necessary for each of the fiscal years 1984, 1985, and 1986.

(b) Amounts appropriated for part B

There are authorized to be appropriated to carry out part B of this subchapter $21,000,000 for the fiscal year 1984, $22,000,000 for the fiscal year 1985, and $23,000,000 for the fiscal year 1986.

(c) Appropriations for part C

There are authorized to be appropriated to carry out part C of this subchapter such sums as may be necessary for each of the fiscal years 1984, 1985, and 1986.

(d) Appropriations for part D; applicability of penal provision

(1) There are authorized to be appropriated to carry out part D of this subchapter such sums as may be necessary for each of the fiscal years 1984, 1985, and 1986.

(2) The provisions of section 1913 of title 18 shall be applicable to all moneys authorized under the provisions of this subsection.

(Pub. L. 93-112, title VII, § 741, formerly § 731, as added Pub. L. 95-602, title III, § 301, Nov. 6, 1978, 92 Stat. 3001, renumbered and amended Pub. L. 98-221, title I, § 172(a)(1), (b), Feb. 22, 1984, 98 Stat. 32.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-221, § 172(b)(1), substituted "There are authorized to be appropriated to carry out part A of this subchapter such sums as may be necessary for each of the fiscal years 1984, 1985, and 1986" for "For the purpose of carrying out the provisions of parts A, B, and C of this subchapter, there are authorized to be appropriated $80,000,000 for the fiscal year ending September 30, 1979, $150,000,000 for the fiscal year ending September 30, 1980, $200,000,000 for the fiscal year ending September 30, 1981, and such sums as may be necessary for the fiscal year ending September 30, 1982".

Subsec. (b). Pub. L. 98-221, § 172(b)(2), substituted "There are authorized to be appropriated to carry out part B of this subchapter $21,000,000 for the fiscal year 1984, $22,000,000 for the fiscal year 1985, and $23,000,000 for the fiscal year 1986" for "From the amounts authorized to be appropriated under this section, an amount shall be made available for the purpose of carrying out the provisions of Part C of this subchapter in an amount not in excess of 10 percent of the amount made available for carrying out the provisions of subpart 1 of Part A of this subchapter".

Subsec. (c). Pub. L. 98-221, § 172(b)(3), (4), struck out par. (1) designation, substituted "There are authorized to be appropriated to carry out part C of this subchapter such sums as may be necessary for each of the fiscal years 1984, 1985, and 1986" for "For the purpose of carrying out Part D of this subchapter, there are authorized to be appropriated such sums as may be necessary for the fiscal year ending September 30, 1979, and for each of the three succeeding fiscal years, but in no event shall such sums exceed $6,000,000 for the fiscal year ending September 30, 1979, $7,500,000 for the fiscal year ending September 30, 1980, and $9,000,000 for the fiscal year ending September 30, 1981" and redesignated par. (2) as subsec. (d)(2).

Subsec. (d). Pub. L. 98-221, § 172(b)(4), added par. (1) and redesignated subsec. (c)(2) as par. (2).

CHAPTER 18—EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1201, 1202, 1203, 1343 of this title; title 18 sections 664, 1027, 1954; title 19 sections 2345, 2373; title 26 section 6103.

Subtitle A—General Provisions

§ 1001. Congressional findings and declaration of policy

Effective Date of 1984 Amendments; Transitional Rules

Pub. L. 98-397, title III, §§ 302, 303, Aug. 23, 1984, 98 Stat. 1451, 1452, provided that:

"SEC. 302. GENERAL EFFECTIVE DATES.

"(a) In General.—Except as otherwise provided in this section or section 303, the amendments made by this Act [see Short Title of 1984 Amendments note below] shall apply to plan years beginning after December 31, 1984.

"(b) Special Rule for Collective Bargaining Agreements.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act [Aug. 23, 1984], except as provided in subsection (d) or section 303, the amendments made by this Act shall not apply to plan years beginning before the earlier of—

"(1) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Aug. 23, 1984]), or

"(2) January 1, 1987.

For purposes of paragraph (1), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by title I or II [of Pub. L. 98-397] shall not be treated as a termination of such collective bargaining agreement.

"(c) Notice Requirement.—The amendments made by section 207 [amending sections 402 and 6652 of Title 26, Internal Revenue Code] shall apply to distributions after December 31, 1984.

"(d) Special Rules for Treatment of Plan Amendments.—

"(1) In general.—Except as provided in paragraph (2), the amendments made by section 301 [amending section 1054 of this title and sections 401 and 411 of Title 26] shall apply to plan amendments made after July 30, 1984.

"(2) Special rule for collective bargaining agreements.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements entered into before January 1, 1985, which are—

"(A) between employee representatives and 1 or more employers, and

"(B) successor agreements to 1 or more collective bargaining agreements which terminate after July 30, 1984, and before January 1, 1985,

the amendments made by section 301 shall not apply to plan amendments adopted before April 1, 1985, pursuant to such successor agreements (without regard to any modification or reopening after December 31, 1984).

"SEC. 303. TRANSITIONAL RULES.

"(a) Amendments Relating to Vesting Rules; Breaks in Service; Maternity or Paternity Leave.—

"(1) Minimum age for vesting.—The amendments made by sections 102(b) and 202(b) [amending section 1053 of this title and section 411 of Title 26, Internal Revenue Code] shall apply in the case of participants who have at least 1 hour of service under the plan on or after the first day of the first plan year to which the amendments made by this Act [see Short Title of 1984 Amendments note below] apply.

"(2) Break in service rules.—If, as of the day before the first day of the first plan year to which the amendments made by this Act apply, section 202(a) or (b) or 203(b) of the Employee Retirement Income Security Act of 1974 [section 1052(a) or (b) or section 1053(b) of this title] or section 410(a) or 411(a) of the Internal Revenue Code of 1954 [section 410(a) or section 411(a) of Title 26] (as in effect on the day before the date of the enactment of this Act [Aug. 23, 1984]) would not require any service to be taken into account, nothing in the amendments made by subsections (c) and (d) of section 102 of this Act [amending sections 1052 and 1053 of this title] and subsections (c) and (d) of section 202 of this Act [amending sections 410 and 411 of Title 26] shall be construed as requiring such service to be taken into account under such section 202(a) or (b), 203(b), 410(a), or 411(a), as the case may be.

"(3) Maternity or paternity leave.—The amendments made by sections 102(e) and 202(e) [amending sections 1052 to 1054 of this title and sections 410 and 411 of Title 26] shall apply in the case of absences from work which begin on or after the first day of the first plan year to which the amendments made by this Act apply.

"(b) Special Rule for Amendments Relating to Maternity or Paternity Absences.—If a plan is administered in a manner which would meet the amendments made by sections 102(e) and 202(e) [amending sections 1052 to 1054 of this title and sections 410 and 411 of Title 26] (relating to certain maternity or paternity absences not treated as breaks in service), such plan need not be amended to meet such requirements until the earlier of—

"(1) the date on which such plan is first otherwise amended after the date of the enactment of this Act [Aug. 23, 1984], or

"(2) the beginning of the first plan year beginning after December 31, 1986.

"(c) Requirement of Joint and Survivor Annuity and Preretirement Survivor Annuity.—

"(1) Requirement that participant have at least 1 hour of service or paid leave on or after date of enactment.—The amendments made by sections 103 and 203 [amending section 1055 of this title and section 401 of Title 26 and enacting section 417 of Title 26] shall apply only in the case of participants who have at least 1 hour of service under the plan on or after the date of the enactment of this Act [Aug. 23, 1984] or have at least 1 hour of paid leave on or after such date of enactment.

"(2) Requirement that preretirement survivor annuity be provided in case of certain participants dying on or after date of enactment.—In the case of any participant—

"(A) who has at least 1 hour of service under the plan on or after the date of the enactment of this Act [Aug. 23, 1984] or has at least 1 hour of paid leave on or after such date of enactment,

"(B) who dies before the annuity starting date, and

"(C) who dies on or after the date of the enactment of this Act [Aug. 23, 1984] and before the first day of the first plan year to which the amendments made by this Act apply,

the amendments made by sections 103 and 203 shall be treated as in effect as of the time of such participant's death.

"(3) Spousal consent required for certain elections after December 31, 1984.—Any election after December 31, 1984, and before the first day of the first plan year to which the amendments made by this Act apply not to take a joint and survivor annuity shall not be effective unless the requirements of section 205(c)(2) of the Employee Retirement Income Security Act of 1974 [section 1055(c)(2) of this title] (as amended by section 103 of this Act) and section 417(a)(2) of the Internal Revenue Code of 1954 [section 417(a)(2) of Title 26] (as added by section 203 of this Act) are met with respect to such election.

"(d) Amendments Relating to Assignments in Divorce, Etc., Proceedings.—The amendments made by sections 104 and 204 [amending sections 1056 and 1144 of this title and sections 72, 401, 402 and 414 of Title 26] shall take effect on January 1, 1985, except that in the case of a domestic relations order entered before such date, the plan administrator—

"(1) shall treat such order as a qualified domestic relations order if such administrator is paying benefits pursuant to such order on such date, and

"(2) may treat any other such order entered before such date as a qualified domestic relations order even if such order does not meet the requirements of such amendments.

"(e) Treatment of Certain Participants Who Separate From Service Before Date of Enactment.—

"(1) Joint and survivor annuity provisions of employee retirement income security act of 1974 apply to certain participants.—If—

"(A) a participant had at least 1 hour of service under the plan on or after September 2, 1974,

"(B) section 205 of the Employee Retirement Income Security Act of 1974 [section 1055 of this title] and section 401(a)(11) of the Internal Revenue Code of 1954 [section 401(a)(11) of Title 26] (as in effect on the day before the date of the enactment of this Act [Aug. 23, 1984]) would not (but for this paragraph) apply to such participant,

"(C) the amendments made by sections 103 and 203 [amending section 1055 of this title and section 401 of Title 26 and enacting section 417 of Title 26] of this Act do not apply to such participant, and

"(D) as of the date of the enactment of this Act [Aug. 23, 1984], the participant's annuity starting date has not occurred and the participant is alive, then such participant may elect to have section 205 of the Employee Retirement Income Security Act of 1974 [section 1055 of this title] and section 401(a)(11) of the Internal Revenue Code of 1954 [section 401(a)(11) of Title 26] (as in effect on the day before the date of the enactment of this Act) apply.

"(2) Treatment of certain participants who perform service on or after January 1, 1976.—If—

"(A) a participant had at least 1 hour of service in the first plan year beginning on or after January 1, 1976,

"(B) the amendments made by sections 103 and 203 [amending section 1055 of this title and section 401 of Title 26 and enacting section 417 of Title 26] would not (but for this paragraph) apply to such participant,

"(C) when such participant separated from service, such participant had at least 10 years of service under the plan and had a nonforfeitable right to all (or any portion) of such participant's accrued benefit derived from employer contributions, and

"(D) as of the date of the enactment of this Act [Aug. 23, 1984], such participant's annuity starting date has not occurred and such participant is alive, then such participant may elect to have the qualified preretirement survivor annuity requirements of the amendments made by sections 103 and 203 apply.

"(3) Period during which election may be made.—An election under paragraph (1) or (2) may be made by any participant during the period—

"(A) beginning on the date of the enactment of this Act [Aug. 23, 1984], and

"(B) ending on the earlier of the participant's annuity starting date or the date of the participant's death.

"(4) Requirement of notice.—

"(A) In general.—

"(i) Time and manner.—Every plan shall give notice of the provisions of this subsection at such time or times and in such manner or manners as the Secretary of the Treasury may prescribe.

"(ii) Penalty.—If any plan fails to meet the requirements of clause (i), such plan shall pay a civil penalty to the Secretary of the Treasury equal to $1 per participant for each day during the period beginning with the first day on which such failure occurs and ending on the day before notice is given by the plan; except that the amount of such penalty imposed on any plan shall not exceed $2,500.

"(B) Responsibilities of secretary of labor.—The Secretary of Labor shall take such steps (by public announcements and otherwise) as may be necessary or appropriate to bring to public attention the provisions of this subsection."

Short Title of 1984 Amendment

Pub. L. 98-397, § 1, Aug. 23, 1984, 98 Stat. 1426, provided that: "This Act [enacting section 417 of Title 26, Internal Revenue Code, amending sections 1025, 1052 to 1056, and 1144 of this title and sections 72, 401, 402, 410, 411, 414, 6057, and 6652 of Title 26, and enacting provisions set out as notes under this section] may be cited as the 'Retirement Equity Act of 1984'."

Study by Comptroller General of the United States of Effect of Pension Rules on Women

Pub. L. 98-397, title III, § 304, Aug. 23, 1984, 98 Stat. 1454, provided that:

"(a) General Rule.—The Comptroller General of the United States shall conduct a detailed study (based on a reliable scientific sample of typical pension plans of various designs and sizes) of the effect on women of participation, vesting, funding, integration, survivorship features, and other relevant plan and Federal pension rules.

"(b) General Accounting Office Access to Records.—For the purpose of conducting the study under subsection (a), the Comptroller General, or any of his duly authorized representatives, shall have access to and the right to examine and copy—

"(1) any pension plan books, documents, papers, records, or other recorded information within the possession or control of the plan administrator or sponsor, or any person providing services to the plan, and

"(2) any payroll, employment, or other related records within the possession or control of any employer contributing to or sponsoring a pension plan, that is pertinent to such study. The Comptroller General shall not disclose the identity of any individual or employer in making any information obtained under this subsection available to the public.

"(c) Definitions.—For purposes of this section, the terms 'pension plan', 'administrator', 'plan sponsor', and 'employer' are defined in section 3 of the Employee Retirement Income Security Act of 1974, as amended [29 U.S.C. 1002].

"(d) Cooperation With Other Federal Agencies.—In conducting the study under subsection (a), the Comptroller General shall consult with the Internal Revenue Service, the Department of Labor, and other interested Federal agencies so as to prevent any duplication of data compilation or analyses.

"(e) Report.—Not later than January 1, 1990, the Comptroller General shall submit a report on the study conducted under this section to the Committee on Ways and Means of the House of Representatives, the Committee on Education and Labor of the House of Representatives, the Committee on Finance of the Senate, the Committee on Labor and Human Resources of the Senate, and the Joint Committee on Taxation."

§ 1002. Definitions

Section Referred to in Other Sections

This section is referred to in sections 1003, 1023, 1053, 1055, 1081, 1082, 1144, 1301, 1321, 1342, 1453 of this title; title 15 section 77b; title 18 section 1954; title 26 sections 414, 3121, 3306; title 31 section 68c; title 42 sections 409, 1306.

Subtitle B—Regulatory Provisions

PART 1—REPORTING AND DISCLOSURE

§ 1025. Reporting of participant's benefit rights

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Individual statement furnished by administrator to participants setting forth information in administrator's Internal Revenue registration statement and notification of forfeitable benefits

Each administrator required to register under section 6057 of title 26 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section, an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of title 26. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-397, title I, § 106, Aug. 23, 1984, 98 Stat. 1436.)

Amendments

1984—Subsec. (c). Pub. L. 98-397 added "Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date."

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of this title.

PART 2—PARTICIPATION AND VESTING

§ 1051. Coverage

References in Text

Section 409 of title 26, referred to in par. (6), which related to retirement bonds, was repealed by Pub. L. 98-369, div. A, title IV, § 491(b), July 18, 1984, 98 Stat. 848, and section 409A of title 26, which related to qualifications for tax credit employee stock ownership plans, was redesignated section 409 of Title 26, Internal Revenue Code.

§ 1052. Minimum participation standards

(a)(1)(A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of 21; or

(ii) the date on which he completes 1 year of service.

(B) [*See main edition for text of* (*i*)]

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) of title 26) by an employer which is exempt from tax under section 501(a) of title 26, which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "26" for "21". This clause shall not apply to any plan to which clause (i) applies.

[*See main edition for text of* (*2*) *to* (*4*)]

(b) [*See main edition for text of* (*1*) *to* (*3*)]

(4)(A) For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(i) 5, or

(ii) the aggregate number of years of service before such period.

(B) If any years of service are not required to be taken into account by reason of a period of breaks in service to which subparagraph (A) applies, such years of service shall not be taken into account in applying subparagraph (A) to a subsequent period of breaks in service.

(C) For purposes of subparagraph (A), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(5)(A) In the case of each individual who is absent from work for any period—

(i) by reason of the pregnancy of the individual,

(ii) by reason of the birth of a child of the individual,

(iii) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(iv) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this subsection whether a 1-year break in service (as defined in section 1053(b)(3)(A) of this title) has occurred, the hours described in subparagraph (B).

(B) The hours described in this subparagraph are—

(i) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(ii) in any case in which the plan is unable to determine the hours described in clause (i), 8 hours of service per day of such absence.

except that the total number of hours treated as hours of service under this subparagraph by reason of any such pregnancy or placement shall not exceed 501 hours.

(C) The hours described in subparagraph (B) shall be treated as hours of service as provided in this paragraph—

(i) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in subparagraph (A); or

(ii) in any other case, in the immediately following year.

(D) For purposes of this paragraph, the term "year" means the period used in computations pursuant to subsection (a)(3)(A) of this section.

(E) A plan may provide that no credit will be given pursuant to this paragraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(i) that the absence from work is for reasons referred to in subparagraph (A), and

(ii) the number of days for which there was such an absence.

(As amended Pub. L. 98-397, title I, § 102(a), (d)(1), (e)(1), Aug. 23, 1984, 98 Stat. 1426, 1427.)

Amendments

1984—Subsec. (a)(1). Pub. L. 98-397, § 102(a), substituted "21" for "25" in subpar. (A)(i) and " '26' for '21' " for " '30' for '25' " in subpar. (B)(ii).

Subsec. (b)(4). Pub. L. 98-397, § 102(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "In the case of an employee who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) of this section if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this paragraph by reason of any prior break in service."

Subsec. (b)(5). Pub. L. 98-397, § 102(e)(1), added par. (5).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of this title.

§ 1053. Minimum vesting standards

[*See main edition for text of* (*a*)]

(b) Computation of period of service

(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2) of this section, all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 18, except that in case of a plan which does not satisfy subparagraph (A) or (B) of subsection (a)(2) of this section, the plan may not disregard any such year of service during which the employee was a participant;

[*See main edition for text of* (*B*) *to* (*G*), (*2*)]

(3) [*See main edition for text of* (*A*) *and* (*B*)]

(C) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined benefit plan which satisfies the requirements of subsection 1054(b)(1)(F) of this title who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D)(i) For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E)(i) In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence,

except that the total number of hours treated as hours of service under this clause by reason of such pregnancy or placement shall not exceed 501 hours.

(iii) The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) For purposes of this subparagraph, the term "year" means the period used in computations pursuant to paragraph (2).

(v) A plan may provide that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

[*See main edition for text of* (*4*); (*c*) *and* (*d*)]

(e) Restrictions on mandatory distributions

(1) If the present value of any accrued benefit exceeds $3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant.

(2) For purposes of paragraph (1), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

(As amended Pub. L. 98-397, title I, §§ 102(b), (c), (d)(2), (e)(2), 105(a), Aug. 23, 1984, 98 Stat. 1426-1428, 1436.)

AMENDMENTS

1984—Subsec. (b)(1)(A). Pub. L. 98-397, § 102(b), substituted "18" for "22".

Subsec. (b)(3)(C). Pub. L. 98-397, § 102(c), substituted "5 consecutive 1-year breaks in service" for "any 1-year break in service" and substituted "such 5-year period" for "such break" in two places.

Subsec. (b)(3)(D). Pub. L. 98-397, § 102(d)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "For purposes of paragraph (1), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service."

Subsec. (b)(3)(E). Pub. L. 98-397, § 102(e)(2), added subpar. (E).

Subsec. (e). Pub. L. 98-397, § 105(a), added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of this title.

§ 1054. Benefit accrual requirements

[*See main edition for text of* (*a*)]

(b) Enumeration of plan requirements

[*See main edition for text of* (*1*) *and* (*2*)]

(3)(A) For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 1052(b) of this title, determined without regard to section 1052(b)(5) of this title) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

[*See main edition for text of* (*B*) *to* (*E*); (*c*)]

(d) Employee service which may be disregarded in determining employee's accrued benefits under plan

Notwithstanding section 1053(b)(1) of this title, for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $3,500) permitted under regulations prescribed by the Secretary of the Treasury, or

[*See main edition for text of* (*2*) *and closing par.*]

(e) Opportunity to repay full amount of distributions which have been reduced through disregarded employee service

For purposes of determining the employee's accrued benefit, the plan shall not disregard service as provided in subsection (d) of this section unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) of this section with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) of this section and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subsection shall apply only in the case of a participant who—

[*See main edition for text of* (*1*) *to* (*3*)]

In the case of a defined contribution plan, the plan provision required under this subsection may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal.

[*See main edition for text of* (*f*)]

(g) Decrease of accrued benefits through amendment of plan

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082(c)(8) of this title.

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

[*See main edition for text of (h)*]

(As amended Pub. L. 98-397, title I, §§ 102(e)(3), (f), 105(b), title III, § 301(a)(2), Aug. 23, 1984, 98 Stat. 1429, 1436, 1451.)

AMENDMENTS

1984—Subsec. (b)(3)(A). Pub. L. 98-397, § 102(e)(3), added ", determined without regard to section 1052(b)(5) of this title" after "section 1052(b) of this title".

Subsec. (d)(1). Pub. L. 98-397, § 105(b), substituted "$3,500" for "$1,750".

Subsec. (e). Pub. L. 98-397, § 102(f), substituted "5 consecutive 1-year breaks in service" for "any 1-year break in service".

Subsec. (g). Pub. L. 98-397, § 301(a)(2), designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of this title.

§ 1055. Requirement of joint and survivor annuity and preretirement survivor annuity

(a) Required contents for applicable plans

Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who retires under the plan, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

(b) Applicable plans

(1) This section shall apply to—

(A) any defined benefit plan,

(B) any individual account plan which is subject to the funding standards of section 1082 of this title, and

(C) any participant under any other individual account plan unless—

(i) such plan provides that the participant's nonforfeitable accrued benefit is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under subsection (c)(2)(A) of this section, to a designated beneficiary),

(ii) such participant does not elect the payment of benefits in the form of a life annuity, and

(iii) with respect to such participant, such plan is not a transferee of a plan which is described in subparagraph (A) or (B) or to which this clause applied with respect to the participant.

(2)(A) In the case of—

(i) a tax credit employee stock ownership plan (as defined in section 409(a) of title 26), or

(ii) an employee stock ownership plan (as defined in section 4975(e)(7) of title 26),

subsection (a) of this section shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) of title 26 apply.

(B) Subparagraph (A) shall not apply with respect to any participant unless the requirements of clause [4] (i), (ii), and (iii) of paragraph (1)(C) are met with respect to such participant.

(c) Plans meeting requirements of section

(1) A plan meets the requirements of this section only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2) and (3).

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A) the spouse of the participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

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[4] So in original. Probably should be "clauses".

(3)(A) Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary of the Treasury may prescribe) a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B) Each plan shall provide to each participant, within the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35 (and consistent with such regulations as the Secretary of the Treasury may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(4)(A) The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if the plan fully subsidizes the costs of such benefit.

(B) For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(5) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such act.

(6) For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 90-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(d) "Qualified joint and survivor annuity" defined

For purposes of this section, the term "qualified joint and survivor annuity" means an annuity—

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(e) "Qualified preretirement survivor annuity" defined

For purposes of this section—

(1) Except as provided in paragraph (2), the term "qualified preretirement survivor annuity" means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1) of this section, the term "qualified preretirement survivor annuity" means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the account balance of the participant as of the date of death.

(f) Marriage requirements for plan

(1) Except as provided in paragraph (2), a plan may provide that a qualified joint and sur-

vivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(g) Distribution of present value of annuity; written consent; determination of present value

(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $3,500. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2) If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $3,500, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

(h) Definitions

For purposes of this section—

(1) the term "vested participant" means any participant who has a nonforfeitable right (within the meaning of section 1002(19) of this title) to any portion of the accrued benefit derived from employer contributions,

(2) the term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability), and

(3) the term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(i) Increased costs from providing annuity

A plan may take into account in any equitable manner (as determined by the Secretary of the Treasury) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(j) Regulations; consultation of Secretary of the Treasury with Secretary of Labor

In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.

(As amended Pub. L. 98-397, title I, § 103(a), Aug. 23, 1984, 98 Stat. 1429.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-397 substituted provisions relating to provisions to be included in applicable plans for former provisions relating to form of payment of annuity benefits.

Subsec. (b). Pub. L. 98-397 substituted provisions relating to applicable plans under this section for former provisions relating to plans providing for payment of benefits before normal retirement age.

Subsec. (c). Pub. L. 98-397 substituted provisions relating to conditions under which plans meet the requirements of this section for former provisions relating to election of qualified joint and survivor annuity form.

Subsec. (d). Pub. L. 98-397 substituted provisions defining "qualified joint and survivor annuity" for former provisions relating to the participant's spouse not being entitled to receive survivor annuity.

Subsec. (e). Pub. L. 98-397 substituted provisions defining "qualified preretirement survivor annuity" for former provisions relating to the election to take annuity.

Subsec. (f). Pub. L. 98-397 substituted provisions to the effect that plans may provide that annuities will not be provided unless the participant and spouse had been married for a certain 1-year period, for former provisions relating to plan provisions which render election or revocation ineffective if participant dies within period of up to 2 years following the date of election or revocation.

Subsec. (g). Pub. L. 98-397 substituted provisions relating to plan provisions for immediate distribution of present value if such value does not exceed $3,500 and for written consent from the participant and spouse for former provisions setting forth definitions. See subsec. (h) of this section.

Subsec. (h). Pub. L. 98-397 substituted provisions setting forth definitions for former provisions relating to increased costs resulting from providing joint and survivor annuity benefits. See subsec. (i) of this section.

Subsec. (i). Pub. L. 98-397 substituted provisions relating to increased costs resulting from providing annuities under applicable plans for former provisions setting forth the effective date of this section.

Subsec. (j). Pub. L. 98-397 added subsec. (j).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1056, 1061 of this title.

§ 1056. Form and payment of benefits

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Assignment or alienation of plan benefits

[*See main edition for text of* (*1*) *and* (*2*)]

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term "qualified domestic relations order" means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(E)(i) In the case of any payment before a participant has separated from service, a domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee—

(I) on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(II) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(III) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of subclause (II), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(ii) For purposes of this subparagraph, the term "earliest retirement age" has the meaning given such term by section 1055(h)(3) of this section, except that in the case of any individual account plan, the earliest retirement age shall be the date which is 10 years before the normal retirement age.

(F) To the extent provided in any qualified domestic relations order—

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 1055 of this title, and

(ii) if married for at least 1 year, the former spouse shall be treated as meeting the requirements of section 1055(f) of this title.

(G)(i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and any other alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures—

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

(H)(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall segregate in a separate account in the plan or in an escrow account the amounts which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within 18 months the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (plus any interest thereon) to the person or persons entitled thereto.

(iii) If within 18 months—

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (plus any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period shall be applied prospectively only.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H),

then the plan's obligation to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan. Nothing in the preceding sentence shall permit a requirement under section 1301 of this title of the payment of more than 1 premium with respect to a participant for any period.

(K) The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(L) In prescribing regulations under this paragraph, the Secretary shall consult with the Secretary of the Treasury.

(As amended Pub. L. 98-397, title I, § 104(a), Aug. 23, 1984, 98 Stat. 1433.)

Amendments

1984—Subsec. (d)(3). Pub. L. 98-397 added par. (3).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98-397, set out as a note under section 1001 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1053, 1061, 1144 of this title.

PART 3—FUNDING

§ 1081. Coverage

References in Text

Section 409 of title 26, referred to in subsec. (a)(7), which related to retirement bonds, was repealed by Pub. L. 98-369, div. A, title IV, § 491(b), July 18, 1984, 98 Stat. 848, and section 409A of title 26, which related to qualifications for tax credit employee stock ownership plans, was redesignated section 409 of Title 26, Internal Revenue Code.

§ 1082. Minimum funding standards

Section Referred to in Other Sections

This section is referred to in sections 1023, 1053, 1054, 1055, 1060, 1083, 1084, 1085, 1343, 1423 of this title.

PART 4—FIDUCIARY RESPONSIBILITY

Part Referred to in Other Sections

This part is referred to in sections 1002, 1055, 1056, 1132, 1201, 1304, 1342 of this title.

§ 1103. Establishment of trust

References in Text

Section 405(a) of title 26, referred to in subsec. (c)(2)(B), was repealed by Pub. L. 98-369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848.

Section 4972 of title 26, referred to in subsec. (c)(3), was repealed by Pub. L. 97-248, title II, § 237(c)(1), Sept. 3, 1982, 96 Stat. 511.

Section Referred to in Other Sections

This section is referred to in sections 1104, 1105, 1114, 1403 of this title; title 26 section 409.

§ 1108. Exemptions from prohibited transactions

References in Text

Section 409 of title 26, referred to in subsec. (d), which related to retirement bonds, was repealed by Pub. L. 98-369, div. A, title IV, § 491(b), July 18, 1984, 98 Stat. 848, and section 409A of title 26, which related to qualifications for tax credit employee stock ownership plans, was redesignated section 409 of Title 26, Internal Revenue Code.

§ 1111. Persons prohibited from holding certain positions

(a) Conviction or imprisonment

No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 802(6) of title 21, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 80a-9(a)(1) of title 15, a violation of any provision of this chapter, a violation of section 186 of this title, a violation of chapter 63 of title 18, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

(2) as a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan, or

(3) in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan,

during or for the period of thirteen years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period, in the case of a person so convicted or imprisoned (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in paragraphs (1) through (3) would not be contrary to the purposes of this subchapter. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice to [4] such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such Parole Commission that such service would be inconsistent with the intention of this section.

(b) Penalty

Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(c) Definitions

For the purpose of this section—

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(2) The term "consultant" means any person who, for compensation, advises, or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole shall not be considered as part of a period of imprisonment.

(d) Salary of person barred from employee benefit plan office during appeal of conviction

Whenever any person—

(1) by operation of this section, has been barred from office or other position in an employee benefit plan as a result of a conviction, and

(2) has filed an appeal of that conviction,

any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute [5] from assuming any position from which such person was previously barred.

(As amended Pub. L. 98-473, title II, § 802, Oct. 12, 1984, 98 Stat. 2131.)

AMENDMENT OF SUBSECTIONS (a) AND (c)(3)

Pub. L. 98-473, title II, §§ 229, 235, Oct. 12, 1984, 98 Stat. 2031, as amended, amended subsection (a) of this section, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 [Nov. 1, 1987, see Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure], by deleting "the Board of Parole of the United States Department of Justice" and substituting "if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, on motion of the United States Department of Justice, the district court of the United States for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements issued pursuant to section 994(a) of title 28,"; by deleting "Board" and "Board's" and substituting "court" and "court's", respectively; and by deleting "an administrative" and substituting "a", which amendments are incapable of execution in view of the previous

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[4] So in original. Probably should be "of".

[5] So in original. Probably should be "section".

amendment by section 802 of Pub. L. 98-473. See 1984 Amendment note below.

Pub. L. 98-473, title II, §§ 230, 235, Oct. 12, 1984, 98 Stat. 2031, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 [Nov. 1, 1986], subsection (c)(3) of this section is amended by adding "or supervised release" after "parole". See Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure.

Amendments

1984—Subsec. (a). Pub. L. 98-473, § 802(a), added provisions relating to abuse or misuse of employment in a labor organization or employee benefit plan, in cl. (1) substituted "employee, or representative in any capacity" for "or employee", in cl. (2) substituted "consultant or adviser to an" for "consultant to any", added cl. (3), substituted "the period of thirteen years" for "five years", "unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period," for "unless prior to the end of such five-year period,", in cl. (B) substituted "the United States Parole Commission" for "the Board of Parole of the United States Department of Justice" and "paragraphs (1) through (3)" for "paragraph (1) or (2)", and in the provisions following cl. (B) substituted "Board" and "Board's" for "Commission" and "Commission's", respectively, added provision of notice to the Secretary of Labor, and substituted "hire, retain, employ, or otherwise place any other person to serve in any capacity" for "permit any other person to serve in any capacity referred to in paragraph (1) or (2)" and "Parole Commission" for "Board of Parole".

Subsec. (b). Pub. L. 98-473, § 802(b), substituted "five years" for "one year".

Subsec. (c)(1). Pub. L. 98-473, § 802(c), substituted ", regardless of whether that judgment remains under appeal" for "or the date of the final sustaining of such judgment on appeal, whichever is the later event".

Subsec. (d). Pub. L. 98-473, § 802(d), added subsec. (d).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective with respect to any judgment of conviction entered by the trial court after Oct. 12, 1984, except as otherwise provided, see section 804 of Pub. L. 98-473, set out as a note under section 504 of this title.

PART 5—ADMINISTRATION AND ENFORCEMENT

§ 1132. Civil enforcement

References in Text

Section 405(a) of title 26, referred to in subsec. (b)(1), was repealed by Pub. L. 98-369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848.

§ 1136. Coordination and responsibility of agencies enforcing this subchapter and related Federal laws

(a) Coordination with other agencies and departments

In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this subchapter and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable or other basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this subchapter. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this subchapter or other Federal law.

(b) Responsibility for detecting and investigating civil and criminal violations of this subchapter and related Federal laws

The Secretary shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of this subchapter and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this subchapter and other related Federal laws.

(As amended Pub. L. 98-473, title II, § 805, Oct. 12, 1984, 98 Stat. 2134.)

Amendments

1984—Pub. L. 98-473 designated existing provisions as subsec. (a), added subsec. (b), and amended section catchline.

§ 1144. Other laws

[*See main edition for text of* (*a*)]

(b) Construction and application

[*See main edition for text of* (*1*) *to* (*6*)]

(7) Subsection (a) of this section shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title).

[*See main edition for text of* (*c*) *and* (*d*)]

(As amended Pub. L. 98-397, title I, § 104(b), Aug. 23, 1984, 98 Stat. 1436.)

Amendments

1984—Subsec. (b)(7). Pub. L. 98-397 added par. (7).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98-397, set out as a note under section 1001 of this title.

SUBCHAPTER III—PLAN TERMINATION INSURANCE

Subtitle A—Pension Benefit Guaranty Corporation

§ 1301. Definitions

Section Referred to in Other Sections

This section is referred to in sections 1002, 1056, 1365, 1366, 1441, 1461 of this title; title 26 section 418.

§ 1303. Operation of corporation

[See main edition for text of (*a*) *to* (*d*)*]*

(e) Civil actions by corporation; jurisdiction; process; costs

[See main edition for text of (*1*) *to* (*3*)*]*

(4) Repealed. Pub. L. 98-620, title IV, § 402(33), Nov. 8, 1984, 98 Stat. 3360.

[See main edition for text of (*5*)*;* (*f*)*]*

(As amended Pub. L. 98-620, title IV, § 402(33), Nov. 8, 1984, 98 Stat. 3360.)

Amendments

1984—Subsec. (e)(4). Pub. L. 98-620 struck out par. (4) which had provided that upon application by the corporation to a court of the United States for expedited handling of any case in which the corporation was a party, it was the duty of that court to assign such case for hearing at the earliest practical date and to cause such case to be in every way expedited.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Subtitle C—Terminations

§ 1341. Termination of single-employer plans

Section Referred to in Other Sections

This section is referred to in sections 1303, 1348 of this title; title 26 section 418.

Subtitle E—Special Provisions for Multiemployer Plans

PART 1—EMPLOYER WITHDRAWALS

§ 1381. Withdrawal liability established; criteria and definitions

Effective Date

Part effective Sept. 26, 1980, see section 1461(e)(2) of this title.

Elimination of Retroactive Application of Amendments Made by Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96-364

Pub. L. 98-369, div. A, title V, § 558(a), (c), (d), July 18, 1984, 98 Stat. 899, provided that:

"(a) In General.—

"(1) Liability.—Any withdrawal liability incurred by an employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.) as a result of the complete or partial withdrawal of such employer from a multiemployer plan before September 26, 1980, shall be void.

"(2) Refunds.—Any amounts paid by an employer to a plan sponsor as a result of such withdrawal liability shall be refunded by the plan sponsor to the employer with interest (in accordance with section 401(a)(2) [26 U.S.C. 401(a)(2)]), less a reasonable amount for administrative expenses incurred by the plan sponsor (other than legal expenses incurred with respect to the plan) in calculating, assessing, and refunding such amounts.

"(c) No Increase in Liability.—The amendments made by this section [amending sections 1391, 1397, 1399, 1415 and 1461 of this title and provisions set out as a note under section 1385 of this title] shall not be construed to increase the liability incurred by any employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), as in effect immediately before the amendments made by subsection (b) [amending sections 1391, 1397, 1399, 1415, and 1461 of this title and provisions set out as a note under section 1385 of this title], as a result of the complete or partial withdrawal of such employer from a multiemployer plan prior to September 26, 1980.

"(d) Special Rule for Certain Binding Agreements.—In the case of an employer who, on September 26, 1980, has a binding agreement to withdraw from a multiemployer plan, subsection (a)(1) shall be applied by substituting 'December 31, 1980' for 'September 26, 1980'."

§ 1385. Partial withdrawals

Applicability to Specified Plan Year, Cessation of Contribution Obligations, and Contribution Base Units of Employer

Section 108(d) of Pub. L. 96-364, as amended by Pub. L. 98-369, div. A, title V, § 558(b)(2), July 18, 1984, 98 Stat. 899, provided that: "For purposes of section 4205 of the Employee Retirement Income Security Act of 1974 [this section]—

"(1) subsection (a)(1) of such section shall not apply to any plan year beginning before September 26, 1982,

"(2) subsection (a)(2) of such section shall not apply with respect to any cessation of contribution obligations occurring before September 26, 1980, and

"(3) in applying subsection (b) of such section, the employer's contribution base units for any plan year ending before September 26, 1980, shall be deemed to be equal to the employer's contribution base units for the last plan year ending before such date."

§ 1391. Methods for computing withdrawal liability

[See main edition for text of (*a*)*]*

(b) Factors determining computation of amount of unfunded vested benefits allocable to employer withdrawn from plan

[See main edition for text of (*1*)*]*

(A) the employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, as determined under paragraph (2),

(B) the employer's proportional share, if any, of the unamortized amount of the plan's unfunded vested benefits at the end of the plan year ending before September 26, 1980, as determined under paragraph (3); and

[See main edition for text of (*C*) *and closing sentence]*

(2)(A) An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, is the sum of the employer's proportional shares of the unamortized amount of the change in unfunded vested benefits for each plan year in which the employer has an obligation to contribute under the plan ending—

[*See main edition for text of* (*i*) *and* (*ii*)]

(B) The change in a plan's unfunded vested benefits for a plan year is the amount by which—

(i) the unfunded vested benefits at the end of the plan year; exceeds

(ii) the sum of—

(I) the unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, and

(II) the sum of the unamortized amounts of the change in unfunded vested benefits for each plan year ending after September 25, 1980, and preceding the plan year for which the change is determined.

[*See main edition for text of* (*C*)]

(D) The unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, is the amount of the unfunded vested benefits as of the end of that plan year reduced by 5 percent of such amount for each succeeding plan year.

[*See main edition for text of* (*E*)]

(3) An employer's proportional share of the unamortized amount of the plan's unfunded vested benefits for the last plan year ending before September 26, 1980, is the product of—

(A) such unamortized amount; multiplied by—

(B) a fraction—

(i) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the most recent 5 plan years ending before September 26, 1980, and

(ii) the denominator of which is the sum of all contributions made for the most recent 5 plan years ending before September 26, 1980, by all employers—

[*See main edition for text of* (*I*) *and* (*II*), (*4*)]

(c) Amendment of multiemployer plan for determination respecting amount of unfunded vested benefits allocable to employer withdrawn from plan; factors determining computation of amount

[*See main edition for text of* (*1*)]

(2)(A) The amount of the unfunded vested benefits allocable to any employer under this paragraph is the sum of the amounts determined under subparagraphs (B) and (C).

(B) The amount determined under this subparagraph is the product of—

(i) the plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; multiplied by

(ii) a fraction—

(I) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the last 5 plan years ending before September 26, 1980, and

(II) the denominator of which is the sum of all contributions made for the last 5 plan years ending before September 26, 1980, by all employers who had an obligation to contribute under the plan for the first plan year ending after September 25, 1980, and who had not withdrawn from the plan before such date.

(C) The amount determined under this subparagraph is the product of—

(i) an amount equal to—

(I) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less

(II) the sum of the value as of such date of all outstanding claims for withdrawal liability which can reasonably be expected to be collected, with respect to employers withdrawing before such plan year, and that portion of the amount determined under subparagraph (B)(i) which is allocable to employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws and who also had an obligation to contribute under the plan for the first plan year ending after September 25, 1980; multiplied by

[*See main edition for text of* (*ii*), (*D*), (*3*) *to* (*5*); (*d*) *to* (*f*)]

(As amended Pub. L. 98-369, div. A, title V, § 558(b)(1)(A), (B), July 18, 1984, 98 Stat. 899.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 558(b)(1)(A), (B), substituted "September 25, 1980" for "April 28, 1980" in pars. (1)(A) and (2)(A), (B)(ii)(II), and "September 26, 1980" for "April 29, 1980" in pars. (1)(B) and (2)(B)(ii)(I), (D), and in par. (3) in provisions preceding subpar. (A) and in subpar. (B)(i), (ii).

Subsec. (c)(2). Pub. L. 98-369, § 558(b)(1)(A), (B), substituted "September 25, 1980" for "April 28, 1980" in subpars. (B)(ii)(II) and (C)(i)(II) and "September 26, 1980" for "April 29, 1980" in subpar. (B)(i), (ii)(I), (II).

§ 1396. Special rules for plans under section 404(c) of title 26

(a) Amount of withdrawal liability; determinative factors

In the case of a plan described in subsection (b) of this section—

(1) if an employer withdraws prior to a termination described in section 1341a(a)(2) of this title, the amount of withdrawal liability to be paid in any year by such employer shall be an amount equal to the greater of—

[*See main edition for text of* (*A*) *and* (*B*)]

except that an employer shall not be required to pay an amount in excess of the withdrawal liability computed with interest; and

[*See main edition for text of* (*2*); (*b*) *and* (*c*); *credits*]

CODIFICATION

Subsec. (a)(1) is set out in this supplement to correct a typographical error appearing in the main edition.

§ 1397. Application of part in case of certain pre-1980 withdrawals; adjustment of covered plan

(a) For the purpose of determining the amount of unfunded vested benefits allocable to an employer for a partial or complete withdrawal from a plan which occurs after September 25, 1980, and for the purpose of determining whether there has been a partial withdrawal after such date, the amount of contributions, and the number of contribution base units, of such employer properly allocable—

(1) to work performed under a collective bargaining agreement for which there was a permanent cessation of the obligation to contribute before September 26, 1980, or

(2) to work performed at a facility at which all covered operations permanently ceased before September 26, 1980, or for which there was a permanent cessation of the obligation to contribute before that date,

shall not be taken into account.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-369, div. A, title V, § 558(b)(1)(A), (B), July 18, 1984, 98 Stat. 899.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 558(b)(1)(A), (B), substituted "September 25, 1980" for "April 28, 1980" in provisions preceding par. (1) and "September 26, 1980" for "April 29, 1980" in pars. (1) and (2).

§ 1399. Notice, collection, etc., of withdrawal liability

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Payment requirements; amount, etc.

(1) [*See main edition for text of* (*A*) *and* (*B*)]

(C) [*See main edition for text of* (*i*) *and* (*ii*)]

(iii) A plan may be amended to provide that for the first plan year ending on or after September 26, 1980, the number "5" shall be substituted for the number "10" each place it appears in clause (i) or clause (ii) (whichever is appropriate). If the plan is so amended, the number "5" shall be increased by one for each succeeding plan year until the number "10" is reached.

[*See main edition for text of* (*D*) *and* (*E*), (*2*) *to* (*8*); (*d*)]

(As amended Pub. L. 98-369, div. A, title V, § 558(b)(1)(B), July 18, 1984, 98 Stat. 899.)

AMENDMENTS

1984—Subsec. (c)(1)(C)(iii). Pub. L. 98-369 substituted "September 26, 1980" for "April 29, 1980".

PART 2—MERGER OR TRANSFER OF PLAN ASSETS OR LIABILITIES

§ 1415. Transfers pursuant to change in bargaining representative

(a) Authority to transfer from old plan to new plan pursuant to employee participation in another multiemployer plan after certified change of representative

In any case in which an employer has completely or partially withdrawn from a multiemployer plan (hereafter in this section referred to as the "old plan") as a result of a certified change of collective bargaining representative occurring after September 25, 1980, if participants of the old plan who are employed by the employer will, as a result of that change, participate in another multiemployer plan (hereafter in this section referred to as the "new plan"), the old plan shall transfer assets and liabilities to the new plan in accordance with this section.

[*See main edition for text of* (*b*) *to* (*g*)]

(As amended Pub. L. 98-369, div. A, title V, § 558(b)(1)(A), July 18, 1984, 98 Stat. 899.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "September 25, 1980" for "April 28, 1980".

EFFECTIVE DATE

Section effective Sept. 26, 1980, see section 1461(e)(4) of this title.

SUBTITLE F—TRANSITION RULES AND EFFECTIVE DATES

§ 1461. Effective date; special rules

[*See main edition for text of* (*a*) *to* (*d*)]

(e) [*See main edition for text of* (*1*)]

(2)(A) Except as provided in this paragraph, part 1 of subtitle E of this subchapter, relating to withdrawal liability, takes effect on September 26, 1980.

[*See main edition for text of* (*B*), (*3*)]

(4) Section 1415 of this title shall take effect on September 26, 1980.

(f)(1) In the event that before September 26, 1980, the corporation has determined that—

[*See main edition for text of* (*A*) *and* (*B*)]

the corporation shall retain the amount of liability paid to it or furnished in the form of a bond and shall pay such liability to the plan in the event the plan terminates in accordance with section 1341a(a)(2) of this title before the earlier of September 26, 1985, or the day after the 5-year period commencing on the date of such withdrawal.

[*See main edition for text of* (*2*); (*g*)]

(As amended Pub. L. 98-369, div. A, title V, § 558(b)(1)(B), (C), July 18, 1984, 98 Stat. 899.)

AMENDMENTS

1984—Subsec. (e)(2)(A), (4). Pub. L. 98-369, § 558(b)(1)(B), substituted "September 26, 1980" for "April 29, 1980".

Subsec. (f)(1). Pub. L. 98-369, § 558(b)(1)(C), substituted "September 26, 1985" for "April 29, 1985".

CHAPTER 19—JOB TRAINING PARTNERSHIP

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 49a, 49f, 49g, 795a of this title; title 7 section 2015; title 18 section 665; title 20 sections 1013, 1014, 1070e-1, 1119a-1, 1425, 2322, 2323, 2325, 2373, 2392, 2404, 2421, 2422, 2431, 3842; title 42 sections 602, 632, 633, 645, 1474, 3013, 3056a, 4953, 6103, 6864, 6873, 9806.

§ 1503. Definitions

For the purposes of this chapter, the following definitions apply:

[See main edition for text of (1) to (13)]

(14) The term "local educational agency" means such an agency as defined in section 521(19) of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2471(19)].

[See main edition for text of (15) to (22)]

(23) The term "State educational agency" means such an agency as defined in section 1201(h) of the Higher Education Act of 1965 [20 U.S.C. 1141(h)].

[See main edition for text of (24) to (27)]

(28) The term "vocational education" has the meaning provided in section 521(31) of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2471(31)].

(As amended Pub. L. 98-524, § 4(a)(1), Oct. 19, 1984, 98 Stat. 2487; Pub. L. 99-159, title VII, § 713(b)(1), Nov. 22, 1985, 99 Stat. 907.)

AMENDMENTS

1985—Par. (14). Pub. L. 99-159 made a clarifying amendment to Pub. L. 98-524, § 4(a)(1)(A). See 1984 Amendment note below.

1984—Par. (14). Pub. L. 98-524, § 4(a)(1)(A), as amended by Pub. L. 99-159, substituted "section 521(19) of the Carl. D. Perkins Vocational Education Act" for "section 195(10) of the Vocational Education Act of 1963".

Par. (23). Pub. L. 98-524, § 4(a)(1)(B), substituted "section 1201(h) of the Higher Education Act of 1965" for "section 195(11) of the Vocational Education Act of 1963".

Par. (28). Pub. L. 98-524, § 4(a)(1)(C), substituted "section 521(31) of the Carl. D. Perkins Vocational Education Act" for "section 195(1) of the Vocational Education Act of 1963".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-159 effective July 1, 1985, see section 714(a) of Pub. L. 99-159, set out as a note under section 2311 of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1513 of this title; title 20 section 2471.

SUBCHAPTER I—JOB TRAINING AND EMPLOYMENT ASSISTANCE SYSTEM

PART A—SERVICE DELIVERY SYSTEM

§ 1512. Private industry councils

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1515, 1574, 1591, 1781 of this title; title 20 section 2321.

§ 1514. Job training plan

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1513, 1515, 1531, 1534 of this title; title 20 section 2323.

PART B—ADDITIONAL STATE RESPONSIBILITIES

§ 1531. Governor's coordination and special services plan

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1515, 1533, 1602, 1658 of this title; title 20 section 2373.

§ 1532. State job training coordinating council

(a) Requirement; appointments; composition; meetings; support personnel; limitations; approval by Governor

[See main edition for text of (1) to (7)

(8) Repealed. Pub. L. 98-524, § 4(a)(2)(A), Oct. 19, 1984, 98 Stat. 2487.

(b) Duties

The State council shall—

[See main edition for text of (1) to (6)]

(7) *[See main edition for text of (A)]*

(B) comment at least once annually on the the [1] measures taken pursuant to section 113(b)(9) of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2323(b)(9)]; and

[See main edition for text of (8); (c)]

(As amended Pub. L. 98-524, § 4(a)(2), Oct. 19, 1984, 98 Stat. 2487.)

AMENDMENTS

1984—Subsec. (a)(8). Pub. L. 98-524, § 4(a)(2)(A), struck out par. (8) which defined the State council.

Subsec. (b)(7)(B). Pub. L. 98-524, § 4(a)(2)(B), substituted "the measures taken pursuant to section 113(b)(9) of the Carl D. Perkins Vocational Education Act" for "reports required pursuant to section 105(d)(3) of the Vocational Education Act of 1963".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 49j, 1602 of this title; title 20 sections 2322, 2324, 2373.

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[1] So in original.

§ 1535. State labor market information programs

[See main edition for text of (a)]

(b) Goals of system; nonduplication; public domain

(1) The analysis required under clause (2) of subsection (a) of this section shall be used to contribute in carrying out the provisions of this chapter, the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.], and the Act of June 6, 1933, known as the Wagner-Peyser Act [29 U.S.C. 49 et seq.].

[See main edition for text of (2) and (3); (c) and (d)]

(As amended Pub. L. 98-524, § 4(a)(3), Oct. 19, 1984, 98 Stat. 2487.)

References in Text

The Carl D. Perkins Vocational Education Act, referred to in subsec. (b)(1), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

Amendments

1984—Subsec. (b)(1). Pub. L. 98-524 substituted "the Carl D. Perkins Vocational Education Act" for "the Vocational Education Act of 1963".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

Part C—Program Requirements for Service Delivery System

§ 1551. General program requirements

Except as otherwise provided, the following conditions are applicable to all programs under this chapter:

[See main edition for text of (a) to (n)]

(*o*) State and local education standards applicable

(1) All education programs for youth supported with funds provided under subchapter II of this chapter shall be consistent with applicable State and local educational standards.

(2) Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under subchapter II of this chapter shall be consistent with the requirements of applicable State and local law and regulation.

[See main edition for text of (p); credits]

Codification

Subsec. (*o*) is set out in this supplement to correct typographical error appearing in the main edition.

Job Training Regulations

Section 7 of Pub. L. 98-524, Oct. 19, 1984, 98 Stat. 2491, provided that: "Notwithstanding section 629.38(e)(2)(iii) of title 20 of the Code of Federal Regulations, relating to allowable training costs under the Job Training Partnership Act [this chapter], payment for training packages purchased competitively pursuant to section 141(d)(3) of such Act [29 U.S.C. 1536(d)(3)] in the case of youth shall include payment for the full unit price if the training results in either placement in unsubsidized employment or the attainment of an outcome specified in section 106(b)(2) of such Act [29 U.S.C. 1516(b)(2)]."

§ 1552. Benefits

Section Referred to in Other Sections

This section is referred to in title 7 section 2014.

§ 1555. Federal control of education prohibited

Cross References

Programs administered by the Secretary of Education, prohibition of Federal control of education, see section 1232a of Title 20, Education.

SUBCHAPTER II—TRAINING SERVICES FOR THE DISADVANTAGED

Part A—Adult and Youth Programs

§ 1604. Use of funds

Section Referred to in Other Sections

This section is referred to in sections 1518, 1605 of this title; title 7 section 2014.

SUBCHAPTER III—EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKERS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1502, 1516, 1531, 1574 of this title; title 20 sections 2331, 2373.

SUBCHAPTER IV—FEDERALLY ADMINISTERED PROGRAMS

Subchapter Referred to in Other Sections

This subchapter is referred to in section 1502 of this title; title 42 section 4368a.

Part B—Job Corps

§ 1695. Screening and selection: special limitations

Amendment of Subsection (b)

Pub. L. 98-473, title II, §§ 231, 235, Oct. 12, 1984, 98 Stat. 2031, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 [Nov. 1, 1987], subsection (b) of this section is amended by deleting "or parole" the first place it appears and substituting ", parole, or supervised release". See Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 1697. Job Corps centers

(a) Operation through existing agencies and organizations; center functions; Civilian Conservation Centers; training centers; limit on nonresidential participants

(1) The Secretary may make agreements with Federal, State, or local agencies, including a State board or agency designated pursuant to section 111(a)(1) of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2321(a)(1)]

which operates or wishes to develop area vocational education school facilities or residential vocational schools (or both) as authorized by such Act [20 U.S.C. 2301 et seq.], or private organizations for the establishment and operation of Job Corps centers. Job Corps centers may, subject to paragraph (2), be residential or nonresidential in character, or both, and shall be designed and operated so as to provide enrollees, in a well-supervised setting, with education, vocational training, work experience (either in direct program activities or through arrangements with employers), counseling, and other services appropriate to their needs. The centers shall include Civilian Conservation Centers, located primarily in rural areas, which shall provide, in addition to other training and assistance, programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest. The centers shall also include training centers located in either urban or rural areas which shall provide activities including training and other services for specific types of skilled or semiskilled employment.

[*See main edition for text of* (2); (*b*)]

(As amended Pub. L. 98-524, § 4(a)(4), Oct. 19, 1984, 98 Stat. 2487.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (a)(1), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-524 substituted "section 111(a)(1) of the Carl D. Perkins Vocational Education Act" for "section 104(a)(1) of the Vocational Education Act of 1963".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

PART C—VETERANS' EMPLOYMENT PROGRAMS

§ 1721. Programs authorized

VETERANS' JOB TRAINING ACT

Pub. L. 98-77, Aug. 15, 1983, 97 Stat. 443, as amended by Pub. L. 98-160, title VII, § 704, Nov. 21, 1983, 97 Stat. 1011; Pub. L. 98-543, title II, § 212, Oct. 24, 1984, 98 Stat. 2744; Pub. L. 99-108, § 4, Sept. 30, 1985, 99 Stat. 481; Pub. L. 99-238, title II, § 201(a)(1), (b)-(e), Jan. 13, 1986, 99 Stat. 1767, 1768, provided that:

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Veterans' Job Training Act'.

"PURPOSE

"SEC. 2. The purpose of this Act is to address the problem of severe and continuing unemployment among veterans by providing, in the form of payments to defray the costs of training, incentives to employers to hire and train certain wartime veterans who have been unemployed for long periods of time for stable and permanent positions that involve significant training.

"DEFINITIONS

"SEC. 3. For the purposes of this Act:

"(1) The term 'Administrator' means the Administrator of Veterans' Affairs.

"(2) The term 'Secretary' means the Secretary of Labor.

"(3) The terms 'veteran', 'Korean conflict', 'compensation', 'service-connected', 'State', 'active military, naval, or air service', and 'Vietnam era', have the meanings given such terms in paragraphs (2), (9), (13), (16), (20), (24), and (29), respectively, of section 101 of title 38, United States Code.

"ESTABLISHMENT OF PROGRAM

"SEC. 4. (a) The Administrator and, to the extent specifically provided by this Act, the Secretary shall carry out a program in accordance with this Act to assist eligible veterans in obtaining employment through training for employment in stable and permanent positions that involve significant training. The program shall be carried out through payments to employers who employ and train eligible veterans in such jobs in order to assist such employers in defraying the costs of necessary training.

"(b) The Secretary shall carry out the Secretary's responsibilities under this Act through the Assistant Secretary of Labor for Veterans' Employment established under section 2002A of title 38, United States Code.

"ELIGIBILITY FOR PROGRAM; DURATION OF ASSISTANCE

"SEC. 5. (a)(1) To be eligible for participation in a job training program under this Act, a veteran must be a Korean conflict or Vietnam-era veteran who—

"(A) is unemployed at the time of applying for participation in a program under this Act; and

"(B) has been unemployed for at least 10 of the 15 weeks immediately preceding the date of such veteran's application for participation in a program under this Act.

"(2) For purposes of paragraph (1), the term 'Korean conflict or Vietnam-era veteran' means a veteran—

"(A) who served in the active military, naval, or air service for a period of more than one hundred and eighty days, any part of which was during the Korean conflict or the Vietnam era; or

"(B) who served in the active military, naval, or air service during the Korean conflict or the Vietnam era and—

"(i) was discharged or released therefrom for a service-connected disability; or

"(ii) is entitled to compensation (or but for the receipt of retirement pay would be entitled to compensation).

"(3) For purposes of paragraph (1), a veteran shall be considered to be unemployed during any period the veteran is without a job and wants and is available for work.

"(b)(1) A veteran who desires to participate in a program of job training under this Act shall submit to the Administrator an application for participation in such a program. Such an application—

"(A) shall include a certification by the veteran that the veteran is unemployed and meets the other criteria for eligibility prescribed by subsection (a); and

"(B) shall be in such form and contain such additional information as the Administrator may prescribe.

"(2)(A) Subject to subparagraph (B), the Administrator shall approve an application by a veteran for participation in a program of job training under this Act unless the Administrator finds that the veteran is not eligible to participate in a program of job training under this Act.

"(B) The Administrator may withhold approval of an application of a veteran under this Act if the Administrator determines that, because of limited funds available for the purpose of making payments to employers under this Act, it is necessary to limit the number of participants in programs under this Act.

"(3)(A) The Administrator shall certify as eligible for participation under this Act a veteran whose application is approved under this subsection and shall furnish the veteran with a certificate of that veteran's eligibility for presentation to an employer offering a program of job training under this Act. Any such certificate shall expire 90 days after it is furnished to the veteran. The date on which a certificate is furnished to a veteran under this paragraph shall be stated on the certificate.

"(B) A certificate furnished under this paragraph may, upon the veteran's application, be renewed in accordance with the terms and conditions of subparagraph (A).

"(c) The maximum period of training for which assistance may be provided on behalf of a veteran under this Act is—

"(1) fifteen months in the case of—

"(A) a veteran with a service-connected disability rated at 30 percent or more; or

"(B) a veteran with a service-connected disability rated at 10 percent or 20 percent who has been determined under section 1506 of title 38, United States Code, to have a serious employment handicap; and

"(2) nine months in the case of any other veteran.

"EMPLOYER JOB TRAINING PROGRAMS

"SEC. 6. (a)(1) Except as provided in paragraph (2), in order to be approved as a program of job training under this Act, a program of job training of an employer approved under section 7 must provide training for a period of not less than six months in an occupation in a growth industry, in an occupation requiring the use of new technological skills, or in an occupation for which demand for labor exceeds supply.

"(2) A program of job training providing training for a period of at least three but less than six months may be approved if the Administrator determines (in accordance with standards which the Administrator shall prescribe) that the purpose of this Act would be met through that program.

"(b) Subject to section 10 and the other provisions of this Act, a veteran who has been approved for participation in a program of job training under this Act and has a current certificate of eligibility for such participation may enter a program of job training that has been approved under section 7 and that is offered to the veteran by the employer.

"APPROVAL OF EMPLOYER PROGRAMS

"SEC. 7. (a)(1) An employer may be paid assistance under section 8(a) on behalf of an eligible veteran employed by such employer and participating in a program of job training offered by that employer only if the program is approved under this section and in accordance with such procedures as the Administrator may by regulation prescribe.

"(2) Except as provided in subsection (b), the Administrator shall approve a proposed program of job training of an employer unless the Administrator determines that the application does not contain a certification and other information meeting the requirements established under this Act or that withholding of approval is warranted under subsection (g).

"(b) The Administrator may not approve a program of job training—

"(1) for employment which consists of seasonal, intermittent, or temporary jobs;

"(2) for employment under which commissions are the primary source of income;

"(3) for employment which involves political or religious activities;

"(4) for employment with any department, agency, instrumentality, or branch of the Federal Government (including the United States Postal Service and the Postal Rate Commission); or

"(5) if the training will not be carried out in a State.

"(c) An employer offering a program of job training that the employer desires to have approved for the purposes of this Act shall submit to the Administrator a written application for such approval. Such application shall be in such form as the Administrator shall prescribe.

"(d) An application under subsection (c) shall include a certification by the employer of the following:

"(1) That the employer is planning that, upon a veteran's completion of the program of job training, the employer will employ the veteran in a position for which the veteran has been trained and that the employer expects that such a position will be available on a stable and permanent basis to the veteran at the end of the training period.

"(2) That the wages and benefits to be paid to a veteran participating in the employer's program of job training will be not less than the wages and benefits normally paid to other employees participating in a comparable program of job training.

"(3) That the employment of a veteran under the program—

"(A) will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits); and

"(B) will not be in a job (i) while any other individual is on layoff from the same or any substantially equivalent job, or (ii) the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its work force with the intention of hiring a veteran in such job under this Act.

"(4) That the employer will not employ in the program of job training a veteran who is already qualified by training and experience for the job for which training is to be provided.

"(5) That the job which is the objective of the training program is one that involves significant training.

"(6) That the training content of the program is adequate, in light of the nature of the occupation for which training is to be provided and of comparable training opportunities in such occupation, to accomplish the training objective certified under clause (2) of subsection (e).

"(7) That each participating veteran will be employed full time in the program of job training.

"(8) That the training period under the proposed program is not longer than the training periods that employers in the community customarily require new employees to complete in order to become competent in the occupation or job for which training is to be provided.

"(9) That there are in the training establishment or place of employment such space, equipment, instructional material, and instructor personnel as needed to accomplish the training objective certified under clause (2) of subsection (e).

"(10) That the employer will keep records adequate to show the progress made by each veteran participating in the program and otherwise to demonstrate compliance with the requirements established under this Act.

"(11) That the employer will furnish each participating veteran, before the veteran's entry into training, with a copy of the employer's certification under this subsection and will obtain and retain the veteran's signed acknowledgment of having received such certification.

"(12) That the program meets such other criteria as the Administrator may determine are essential for the effective implementation of the program established by this Act.

"(e) A certification under subsection (d) shall include—

"(1) a statement indicating (A) the total number of hours of participation in the program of job training to be offered a veteran, (B) the length of the program of job training, and (C) the starting rate of wages to be paid to a participant in the program; and

"(2) a description of the training content of the program (including any agreement the employer has entered into with an educational institution under section 10) and of the objective of the training.

"(f)(1) Except as specified in paragraph (2), each matter required to be certified to in paragraphs (1) through (11) of subsection (d) shall be considered to be a requirement established under this Act.

"(2)(A) For the purposes of section 8(c), only matters required to be certified in paragraphs (1) through (10) of subsection (d) shall be so considered.

"(B) For the purposes of section 11, a matter required to be certified under paragraph (12) of subsection (d) shall also be so considered.

"(g) In accordance with regulations which the Administrator shall prescribe, the Administrator may withhold approval of an employer's proposed program of job training pending the outcome of an investigation under section 12 and, based on the outcome of such an investigation, may disapprove such program.

"(h) For the purposes of this section, approval of a program of apprenticeship or other on-job training for the purposes of section 1787 of title 38, United States Code, shall be considered to meet all requirements established under the provisions of this Act (other than subsections (b) and (d)(3)) for approval of a program of job training.

"PAYMENTS TO EMPLOYERS; OVERPAYMENT

"SEC. 8. (a)(1) Except as provided in paragraph (3) and subsection (b) and subject to the provisions of section 9, the Administrator shall make quarterly payments to an employer of a veteran participating in an approved program of job training under this Act. Subject to section 5(c) and paragraph (2), the amount paid to an employer on behalf of a veteran for any period of time shall be 50 percent of the product of (A) the starting hourly rate of wages paid to the veteran by the employer (without regard to overtime or premium pay), and (B) the number of hours worked by the veteran during that period.

"(2) The total amount that may be paid to an employer on behalf of a veteran participating in a program of job training under this Act is $10,000.

"(3) In order to relieve financial burdens on business enterprises with relatively few numbers of employees, the Administrator may make payments under this Act on a monthly, rather than quarterly, basis to an employer with a number of employees less than a number which shall be specified in regulations which the Administrator shall prescribe for the purposes of this paragraph.

"(b) Payment may not be made to an employer for a period of training under this Act on behalf of a veteran until the Administrator has received—

"(1) from the veteran, a certification that the veteran was employed full time by the employer in a program of job training during such period; and

"(2) from the employer, a certification—

"(A) that the veteran was employed by the employer during that period and that the veteran's performance and progress during such period were satisfactory; and

"(B) of the number of hours worked by the veteran during that period.

With respect to the first such certification by an employer with respect to a veteran, the certification shall indicate the date on which the employment of the veteran began and the starting hourly rate of wages paid to the veteran (without regard to overtime or premium pay).

"(c)(1)(A) Whenever the Administrator finds that an overpayment under this Act has been made to an employer on behalf of a veteran as a result of a certification, or information contained in an application, submitted by an employer which was false in any material respect, the amount of such overpayment shall constitute a liability of the employer to the United States.

"(B) Whenever the Administrator finds that an employer has failed in any substantial respect to comply for a period of time with a requirement established under this Act (unless the employer's failure is the result of false or incomplete information provided by the veteran), each amount paid to the employer on behalf of a veteran for that period shall be considered to be an overpayment under this Act, and the amount of such overpayment shall constitute a liability of the employer to the United States.

"(2) Whenever the Administrator finds that an overpayment under this Act has been made to an employer on behalf of a veteran as a result of a certification by the veteran, or as a result of information provided to an employer or contained in an application submitted by the veteran, which was willfully or negligently false in any material respect, the amount of such overpayment shall constitute a liability of the veteran to the United States.

"(3) Any overpayment referred to in paragraph (1) or (2) may be recovered in the same manner as any other debt due the United States. Any overpayment recovered shall be credited to funds available to make payments under this Act. If there are no such funds, any overpayment recovered shall be deposited into the Treasury.

"(4) Any overpayment referred to in paragraph (1) or (2) may be waived, in whole or in part, in accordance with the terms and conditions set forth in section 3102 of title 38, United States Code.

"ENTRY INTO PROGRAM OF JOB TRAINING

"SEC. 9. Notwithstanding any other provision of this Act, the Administrator may withhold or deny approval of a veteran's entry into an approved program of job training if the Administrator determines that funds are not available to make payments under this Act on behalf of the veteran to the employer offering that program. Before the entry of a veteran into an approved program of job training of an employer for purposes of assistance under this Act, the employer shall notify the Administrator of the employer's intention to employ that veteran. The veteran may begin such program of job training with the employer two weeks after the notice is transmitted to the Administrator unless within that time the employer has received notice from the Administrator that approval of the veteran's entry into that program of job training must be withheld or denied in accordance with this section.

"PROVISION OF TRAINING THROUGH EDUCATIONAL INSTITUTIONS

"SEC. 10. An employer may enter into an agreement with an educational institution that has been approved for the enrollment of veterans under chapter 34 of title 38, United States Code, in order that such institution may provide a program of job training (or a portion of such a program) under this Act. When such an agreement has been entered into, the application of the employer under section 7 shall so state and shall include a description of the training to be provided under the agreement.

"DISCONTINUANCE OF APPROVAL OF PARTICIPATION IN CERTAIN EMPLOYER PROGRAMS

"SEC. 11. If the Administrator finds at any time that a program of job training previously approved by the Administrator for the purposes of this Act thereafter fails to meet any of the requirements established under this Act, the Administrator may immediately disapprove further participation by veterans in that program. The Administrator shall provide to the employer concerned, and to each veteran participating in the employer's program, a statement of the reasons for, and an opportunity for a hearing with respect to, such disapproval. The employer and each such veteran shall be notified of such disapproval, the reasons for such disapproval, and the opportunity for a hearing. Notification shall be by a certified or registered letter, and a return receipt shall be secured.

"INSPECTION OF RECORDS; INVESTIGATIONS

"SEC. 12. (a) The records and accounts of employers pertaining to veterans on behalf of whom assistance has been paid under this Act, as well as other records that the Administrator determines to be necessary to ascertain compliance with the requirements established under this Act, shall be available at reasonable times for examination by authorized representatives of the Federal Government.

"(b) The Administrator may monitor employers and veterans participating in programs of job training under this Act to determine compliance with the requirements established under this Act.

"(c) The Administrator may investigate any matter the Administrator considers necessary to determine compliance with the requirements established under this Act. The investigations authorized by this subsection may include examining records (including making certified copies of records), questioning employees, and entering into any premises or onto any site where any part of a program of job training is conducted under this Act, or where any of the records of the employer offering or providing such program are kept.

"(d) The Administrator may administer functions under subsections (b) and (c) in accordance with an agreement between the Administrator and the Secretary providing for the administration of such subsections (or any portion of such subsections) by the Department of Labor. Under such an agreement, any entity of the Department of Labor specified in the agreement may administer such subsections, notwithstanding section 4(b).

"COORDINATION WITH OTHER PROGRAMS

"SEC. 13. (a)(1) Assistance may not be paid under this Act to an employer on behalf of a veteran for any period of time described in paragraph (2) and to such veteran under chapter 31, 32, 34, 35, or 36 of title 38, United States Code, for the same period of time.

"(2) A period of time referred to in paragraph (1) is the period of time beginning on the date on which the veteran enters into an approved program of job training of an employer for purposes of assistance under this Act and ending on the last date for which such assistance is payable.

"(b) Assistance may not be paid under this Act to an employer on behalf of an eligible veteran for any period if the employer receives for that period any other form of assistance on account of the training or employment of the veteran, including assistance under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) or a credit under section 44B of the Internal Revenue Code of 1954 (26 U.S.C. 44B) (relating to credit for employment of certain new employees).

"(c) Assistance may not be paid under this Act on behalf of a veteran who has completed a program of job training under this Act.

"COUNSELING

"SEC. 14. (a) The Administrator and the Secretary may, upon request, provide employment counseling services to any veteran eligible to participate under this Act in order to assist such veteran in selecting a suitable program of job training under this Act.

"(b) The Secretary—

"(1) shall provide for a program under which periodic (not less than monthly) contact is maintained with each veteran participating in a program of job training under this Act for the purposes of avoiding unnecessary termination of employment, referring the veteran to appropriate counseling if necessary, and facilitating the veteran's successful completion of such program; and

"(2) after consultation with the Administrator, shall provide for a program of counseling services designed to resolve difficulties that may be encountered by veterans during their training under this Act and shall advise all veterans and employers participating under this Act of the availability of such services and other related counseling services and assistance and encourage them to request such services and assistance whenever appropriate.

"INFORMATION AND OUTREACH; USE OF AGENCY RESOURCES

"SEC. 15. (a)(1) The Administrator and the Secretary shall jointly provide for an outreach and public information program—

"(A) to inform veterans about the employment and job training opportunities available under this Act, under chapters 31, 34, 36, 41, and 42 of title 38, United States Code, and under other provisions of law; and

"(B) to inform private industry and business concerns (including small business concerns), public agencies and organizations, educational institutions, trade associations, and labor unions about the job training opportunities available under, and the advantages of participating in, the program established by this Act.

"(2) The Secretary, in consultation with the Administrator, shall promote the development of employment and job training opportunities for veterans by encouraging potential employers to make programs of job training under this Act available for eligible veterans, by advising other appropriate Federal departments and agencies of the program established by this Act, and by advising employers of applicable responsibilities under chapters 41 and 42 of title 38, United States Code, with respect to veterans.

"(b) The Administrator and the Secretary shall coordinate the outreach and public information program under subsection (a)(1), and job development activities under subsection (a)(2), with job counseling, placement, job development, and other services provided for under chapters 41 and 42 of title 38, United States Code, and with other similar services offered by other public agencies and organizations.

"(c)(1) The Administrator and the Secretary shall make available in regional and local offices of the Veterans' Administration and the Department of Labor such personnel as are necessary to facilitate the effective implementation of this Act.

"(2) In carrying out the responsibilities of the Secretary under this Act, the Secretary shall make maximum use of the services of State and Assistant State Directors for Veterans' Employment, disabled veterans' outreach program specialists, and employees of local offices appointed pursuant to sections 2003, 2003A, and 2004 of title 38, United States Code. The Secretary shall also use such resources as are available under part C of title IV [29 U.S.C. 1721 et seq.] of the Job Training Partnership Act (29 U.S.C. 1501 et seq.). To the extent that the Administrator withholds approval of veterans' applications under this Act pursuant to section 5(b)(2)(B), the Secretary shall take steps to assist such veterans in taking advantage of opportunities that may be available to them under title III of that Act [29 U.S.C. 1651 et seq.] or under any other program carried out with funds provided by the Secretary.

"(d) The Secretary shall request and obtain from the Administrator of the Small Business Administration a list of small business concerns and shall, on a regular basis, update such list. Such list shall be used to identify and promote possible training and employment opportunities for veterans.

"(e) The Administrator and the Secretary shall assist veterans and employers desiring to participate under this Act in making application and completing necessary certifications.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 16. There is authorized to be appropriated to the Veterans' Administration $150,000,000 for each of fiscal years 1984 and 1985 and $65,000,000 for fiscal year 1986 for the purpose of making payments to employers under this Act and for the purpose of section 18 of this Act. Amounts appropriated pursuant to this section shall remain available until September 30, 1988.

"TERMINATION OF PROGRAM

"SEC. 17. (a) Except as provided in subsection (b), assistance may not be paid to an employer under this Act—

"(1) on behalf of a veteran who initially applies for a program of job training under this Act after January 31, 1987; or

"(2) for any such program which begins after July 31, 1987.

"(b) If funds for fiscal year 1986 are appropriated for the purpose of making payments to employers under this Act but are not both so appropriated and made available by the Director of the Office of Management and Budget to the Veterans' Administration on or before February 1, 1986, for such purpose, assistance may be paid to an employer under this Act on behalf of a veteran if the veteran—

"(1) applies for a program of job training under this Act within 1 year after the date on which funds so appropriated are made available to the Veterans' Administration by the Director; and

"(2) begins participation in such program within 18 months after such date.

"EXPANSION OF TARGETED DELIMITING DATE EXTENSION

"SEC. 18. (a) Subject to the limitation on the availability of funds set forth in subsection (b), an associate degree program which is predominantly vocational in content may be considered by the Administrator, for the purposes of section 1662(a)(3) of title 38, United States Code, to be a course with an approved vocational objective if such degree program meets the requirements established in such title for approval of such program.

"(b) Funds for the purpose of carrying out subsection (a) shall be derived only from amounts appropriated pursuant to the authorizations of appropriations in section 16. Not more than a total of $25,000,000 of amounts so appropriated for fiscal years 1984 and 1985 shall be available for that purpose.

"EFFECTIVE DATE

"SEC. 19. This Act shall take effect on October 1, 1983."

Section 201(f) of Pub. L. 99-238 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending Pub. L. 98-77 above] shall take effect on the date of the enactment of this Act [Jan. 13, 1986].

"(2) The amendment made by subsection (e)(2) [amending section 17(a)(1) of Pub. L. 98-77 above] shall take effect on February 1, 1986."

COORDINATION WITH PROGRAMS UNDER OTHER LAWS

For provisions requiring coordination of programs under section 1516(b) of Title 38, Veterans' Benefits, with programs under the Veterans' Job Training Act [Pub. L. 98-77, set out above], see section 202 of Pub. L. 99-238, set out as a note under section 1516 of Title 38.

CROSS REFERENCES

Employment, training, and counseling programs for veterans, see sections 2000 et seq. and 2011 et seq. of Title 38, Veterans' Benefits.

PART E—LABOR MARKET INFORMATION

§ 1751. Labor market information; availability of funds

[See main edition for text of (a) and (b)]

(c) Funds available from other programs

Notwithstanding any other provision of law, funds available to other Federal agencies for carrying out chapter 35 of title 44, the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.], and the Act of June 6, 1933 (popularly known as the Wagner-Peyser Act) [29 U.S.C. 49 et seq.], may be made available by the head of each such agency to assist in carrying out the provisions of this part.

(As amended Pub. L. 98-524, § 4(a)(5), Oct. 19, 1984, 98 Stat. 2488.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (c), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-524 substituted "the Carl D. Perkins Vocational Education Act" for "the Vocational Education Act of 1963".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

§ 1753. Special Federal responsibilities

(a) Interdepartmental cooperation; review and coordination of national data systems; standardized national definitions; aid for State labor and occupational opportunity information systems

The Secretary, in cooperation with the Secretary of Commerce, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Education, and the Director of the Office of Management and Budget, through the National Occupational Information Coordinating Committee established under section 422 of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2422], shall—

[See main edition for text of (1) to (3); (b) and (c)]

(As amended Pub. L. 98-524, § 4(a)(6)(A), (D), Oct. 19, 1984, 98 Stat. 2488; Pub. L. 99-159, title VII, § 713(b)(2), Nov. 22, 1985, 99 Stat. 907.)

Amendments

1985—Subsec. (a). Pub. L. 99-159 repealed Pub. L. 98-524, § 4(a)(6)(D). See 1984 Amendment note below.

1984—Subsec. (a). Pub. L. 98-524, § 4(a)(6)(A), substituted "section 422 of the Carl D. Perkins Vocational Education Act" for "section 161(b) of the Vocational Education Act of 1963".

Pub. L. 98-524, § 4(a)(6)(D), which substituted "section 422 of the Carl D. Perkins Vocational Education Act" for "section 161(b) of the Vocational Education Act of 1963", was repealed by Pub. L. 99-159.

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-159 effective July 1, 1985, see section 714(a) of Pub. L. 99-159, set out as a note under section 2311 of Title 20, Education.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

Section Referred to in Other Sections

This section is referred to in section 1754 of this title; title 20 section 2421.

§ 1754. National Occupational Information Coordinating Committee

(a) Authorization limit; membership; support of State occupational information coordinating committees

(1) Of the amounts available for this part for each fiscal year, not more than $5,000,000 is authorized to be reserved for the National Occupational Information Coordinating Committee (established pursuant to section 422 of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2422]).

[*See main edition for text of* (2) *and* (3)]

(b) Special Federal responsibilities

In addition to its responsibilities under the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.], the National Occupational Information Coordinating Committee shall—

[*See main edition for text of* (1) *to* (7)]

(c) Funds available from other programs

All funds available to the National Occupational Information Coordinating Committee under this chapter, under section 422 of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2422], and under section 12 of the Career Education Act [20 U.S.C. 2611] [1] may be used by the Committee to carry out any of its functions and responsibilities authorized by law.

(As amended Pub. L. 98-524, § 4(a)(6)(B), (C), (E), Oct. 19, 1984, 98 Stat. 2488.)

References in Text

The Carl D. Perkins Vocational Education Act, referred to in subsecs. (a)(2) and (b), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

Section 12 of the Career Education Act [20 U.S.C. 2611], referred to in subsec. (c), was repealed by Pub. L. 97-35, title V, § 587(a)(4), Aug. 13, 1981, 95 Stat. 480.

Amendments

1984—Subsec. (a)(1). Pub. L. 98-524, § 4(a)(6)(B), substituted "section 422 of the Carl D. Perkins Vocational Education Act" for "section 161(b) of the Vocational Education Act of 1963".

Subsec. (b). Pub. L. 98-524, § 4(a)(6)(E), substituted "the Carl D. Perkins Vocational Education Act" for "the Vocational Education Act of 1963".

Subsec. (c). Pub. L. 98-524, § 4(a)(6)(C), substituted "section 422 of the Carl D. Perkins Vocational Education Act" for "section 161 of the Vocational Education Act of 1963".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

PART F—NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Part Referred to in Other Sections

This part is referred to in sections 1502, 1591 of this title.

§ 1772. Establishment

(a) Composition of membership

There is established a National Commission for Employment Policy (hereinafter in this part referred to as the "Commission"). The Commission shall be composed of 15 members, appointed by the President. The members of the Commission shall be individuals who are nationally prominent and the Commission shall be broadly representative of agriculture, business, labor, commerce, education (including elementary, secondary, postsecondary, and vocational and technical education), veterans, current State and local elected officials, community-based organizations, assistance programs, and members of the general public with expertise in human resource development or employment and training policy. One of the members shall be a representative of the National Council on Vocational Education (established under section 431 of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2431]). The membership of the Commission shall be generally representative of significant segments of the labor force, including women and minority groups.

[*See main edition for text of* (b) *to* (d)]

(As amended Pub. L. 98-524, § 4(a)(7), Oct. 19, 1984, 98 Stat. 2488.)

Amendments

1984—Subsec. (a). Pub. L. 98-524 substituted "National Council on Vocational Education (established under section 431 of the Carl D. Perkins Vocational Education Act" for "National Advisory Council on Vocational Education (established under section 162 of the Vocational Education Act of 1963)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

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[1] See References in Text note below.

§ 1773. Functions

The Commission shall—

[See main edition for text of (1) to (6)]

(7)(A) identify, after consultation with the National Council on Vocational Education, the employment and training and vocational education needs of the Nation and assess the extent to which employment and training, vocational education, rehabilitation, and other programs assisted under this chapter and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs; and

(B) comment, at least once annually, on the reports of the National Council on Vocational Education, which comments shall be included in one of the reports submitted by the National Commission pursuant to this subchapter and in one of the reports submitted by the National Council on Vocational Education pursuant to part D of subchapter IV of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2431];

[See main edition for text of (8) to (11)]

(As amended Pub. L. 98-524, § 4(a)(8), Oct. 19, 1984, 98 Stat. 2488.)

AMENDMENTS

1984—Par. (7). Pub. L. 98-524 substituted "National Council on Vocational Education" for "National Advisory Council on Vocational Education", wherever appearing, and "part D of subchapter IV of the Carl D. Perkins Vocational Education Act" for "section 162 of the Vocational Education Act of 1963".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

CHAPTER 21—HELEN KELLER NATIONAL CENTER FOR DEAF-BLIND YOUTHS AND ADULTS

Sec.

1901. Congressional findings.
1902. Continued operation of Center.
  (a) Omitted.
  (b) Administration by Secretary of Education.
  (c) Purposes of Center.
1903. Audit; monitoring and evaluation.
1904. Authorization of appropriations.
1905. Definitions.
1906. Construction; affect on agreements.

§ 1901. Congressional findings

The Congress finds that—

(1) deaf-blindness is among the most severe of all forms of disabilities, and there is a great and continuing need for services and training to help deaf-blind individuals attain the highest possible level of development;

(2) due to the rubella epidemic of the 1960's and recent advances in medical technology that have sustained the lives of many severely disabled individuals, including deaf-blind individuals, who might not otherwise have survived, the need for services for deaf-blind individuals is even more pressing now than in the past;

(3) helping deaf-blind individuals to become self-sufficient, independent, and employable by providing the services and training necessary to accomplish that end will benefit the Nation, both economically and socially;

(4) the Helen Keller National Center for Deaf-Blind Youths and Adults is a vital national resource for meeting the needs of deaf-blind individuals and no State currently has the facilities or personnel to meet such needs;

(5) the Federal Government has invested approximately $10,000,000 in capital, equipment, and operating funds for such Center since it was established; and

(6) it is in the national interest to continue to provide support for the Center, and it is a proper function of the Federal Government to be the primary source of such support.

(Pub. L. 98-221, title II, § 202, Feb. 22, 1984, 98 Stat. 32.)

PRIOR PROVISIONS

Provisions for the establishment, operation, and funding of the Helen Keller National Center for Deaf-Blind Youths and Adults, similar to those comprising this chapter, were contained in section 777c of this title prior to the repeal of that section and the enactment of this chapter by Pub. L. 98-221. Prior thereto provisions similar to those comprising this chapter and authorizing appropriations for fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, Sept. 30, 1977, and Sept. 30, 1978, for the establishment of the Helen Keller National Center for Deaf-Blind Youths and Adults were contained in former section 305 of Pub. L. 93-112, title III, Sept. 26, 1973, 87 Stat. 383, as amended by Pub. L. 93-516, title I, § 107, Dec. 7, 1974, 88 Stat. 1619; Pub. L. 93-651, title I, § 107, Nov. 21, 1974, 89 Stat. 2-4; Pub. L. 94-230, §§ 7, 11(b)(10), Mar. 15, 1976, 90 Stat. 212, 213; Pub. L. 94-288, §§ 1, 2, May 21, 1976, 90 Stat. 520, which was classified to section 775 of this title. Section 109(1) of Pub. L. 95-602 redesignated former section 305 as section 313 of Pub. L. 93-112. Section 313 of Pub. L. 93-112, as amended generally by section 116(2) of Pub. L. 95-602, was classified to section 777c of this title.

Prior similar provisions were also contained in former section 42a of this title.

SHORT TITLE

Section 201 of Pub. L. 98-221 provided that: "This title [enacting this chapter, amending section 777 of this title, and repealing section 777c of this title] may be cited as the 'Helen Keller National Center Act'."

§ 1902. Continued operation of Center

(a) Omitted

(b) Administration by Secretary of Education

The Secretary of Education shall continue to administer and support the Helen Keller National Center for Deaf-Blind Youths and Adults in the same manner as such Center was administered pursuant to section 313 of the Rehabilitation Act of 1973, to the extent such manner of administration is not inconsistent with any purpose described in subsection (c) of this section or any other requirement of this chapter.

(c) Purposes of Center

The purposes of the Center are to—

(1) provide specialized intensive services, or any other services, at the Center or anywhere else in the United States, which are necessary to encourage the maximum personal development of any deaf-blind individual;

(2) train professionals and allied personnel at the Center or anywhere else in the United States to provide services to deaf-blind individuals; and

(3) conduct applied research, development programs, and demonstrations with respect to communication techniques, teaching methods, aids and devices, and delivery of services.

(Pub. L. 98-221, title II, § 203, Feb. 22, 1984, 98 Stat. 33.)

REFERENCES IN TEXT

Section 313 of the Rehabilitation Act of 1973, referred to in subsec. (b), is section 313 of title III of Pub. L. 93-112, as added Pub. L. 95-602, title I, § 116(2), Nov. 6, 1978, 92 Stat. 2974, which was classified to section 777c of this title prior to its repeal by Pub. L. 98-221.

This chapter, referred to in subsec. (b), was in the original "this title", meaning title II of Pub. L. 98-221, Feb. 22, 1984, 98 Stat. 32, which is classified generally to this chapter (§ 1901 et seq.). For complete classification of this title to the Code, see Short Title note set out under section 1901 of this title and Tables. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 701 of this title and Tables.

§ 1903. Audit; monitoring and evaluation

(a) The books and accounts of the Center shall be audited annually by an independent auditor in the manner prescribed by the Secretary and a report on each such audit shall be submitted by the auditor to the Secretary at such time as the Secretary shall prescribe.

(b)(1) The Secretary shall establish procedures for monitoring, on a regular basis, the services performed and the training conducted by the Center.

(2) The Secretary shall, in addition to the regular monitoring required under paragraph (1), conduct an evaluation of the operation of the Center at the end of each fiscal year. A written report of such evaluation shall be submitted to the President, the Clerk of the House of Representatives, and the Secretary of the Senate within one hundred and eighty days after the end of the fiscal year for which such evaluation was conducted. The first such report shall be submitted for fiscal year 1983.

(Pub. L. 98-221, title II, § 204, Feb. 22, 1984, 98 Stat. 33.)

§ 1904. Authorization of appropriations

(a) There are authorized to be appropriated $4,000,000 for the fiscal year 1984, $4,200,000 for the fiscal year 1985, and $4,300,000 for the fiscal year 1986 to carry out the provisions of this chapter. Such sums shall remain available until expended.

(b) Any appropriation Act containing any appropriation authorized by subsection (a) of this section shall contain a statement of the specific amount being made available to the Center.

(Pub. L. 98-221, title II, § 205, Feb. 22, 1984, 98 Stat. 33.)

§ 1905. Definitions

For purposes of this chapter—

(1) the terms "Helen Keller National Center for Deaf-Blind Youths and Adults" and "Center" mean the Helen Keller National Center for Deaf-Blind Youths and Adults, and its affiliated network, operated pursuant to section 313 of the Rehabilitation Act of 1973 and continued under this chapter;

(2) the term "deaf-blind individual" means any individual—

(A) who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or central acuity of 20/200 if there is a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees,

(B) who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, and

(C) for whom the combination of the impairments described in subparagraphs (A) and (B) causes extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation,

and such term includes any other meaning the Secretary may prescribe by regulation; and

(3) the term "Secretary" means the Secretary of Education.

(Pub. L. 98-221, title II, § 206, Feb. 22, 1984, 98 Stat. 34.)

REFERENCES IN TEXT

Section 313 of the Rehabilitation Act of 1973, referred to in par. (1), is section 313 of title III of Pub. L. 93-112, as added Pub. L. 95-602, title I, § 116(2), Nov. 6, 1978, 92 Stat. 2974, which was classified to section 777c of this title prior to its repeal by Pub. L. 98-221.

§ 1906. Construction; affect on agreements

This chapter shall not be construed as modifying or affecting any agreement between the Department of Education or any other department or agency of the United States and the Industrial Home for the Blind, Incorporated, or any successor to or assignee of such corporation, with respect to the Center.

(Pub. L. 98-221, title II, § 207, Feb. 22, 1984, 98 Stat. 34.)

TITLE 30—MINERAL LANDS AND MINING

Chap.		Sec.
30.	National Critical Materials Council......	1801

CHAPTER 2—MINERAL LANDS AND REGULATIONS IN GENERAL

§ 22. Lands open to purchase by citizens

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 23. Length of claims on veins or lodes

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 24. Proof of citizenship

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 26. Locators' rights of possession and enjoyment

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 27. Mining tunnels; right to possession of veins on line with; abandonment of right

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 28. Mining district regulations by miners: location, recordation, and amount of work; marking of location on ground; records; annual labor or improvements on claims pending issue of patent; co-owner's succession in interest upon delinquency in contributing proportion of expenditures; tunnel as lode expenditure

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 28-1, 28b, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732; title 50 App. section 565.

§ 29. Patents; procurement procedure; filing: application under oath, plat and field notes, notices, and affidavits; posting plat and notice on claim; publication and posting notice in office; certificate; adverse claims; payment per acre; objections; nonresident claimant's agent for execution of application and affidavits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 30. Adverse claims; oath of claimants; requisites; waiver; stay of land office proceedings; judicial determination of right of possession; successful claimants' filing of judgment roll, certificate of labor, and description of claim in land office, and acreage and fee payments; issuance of patents for entire or partial claims upon certification of land office proceedings and judgment roll; alienation of patent title

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 33. Existing rights

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 34. Description of vein claims on surveyed and unsurveyed lands; monuments on ground to govern conflicting calls

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 35. Placer claims; entry and proceedings for patent under provisions applicable to vein or lode claims; conforming entry to legal subdivisions and surveys; limitation of claims; homestead entry of segregated agricultural land

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 37. Proceedings for patent where boundaries contain vein or lode; application; statement including vein or lode; issuance of patent; acreage payments for vein or lode and placer claim; costs of proceedings; knowledge affecting construction of application and scope of patent

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 39. Surveyors of mining claims

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 40. Verification of affidavits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 41. Intersecting or crossing veins

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 42. Patents for nonmineral lands: application, survey, notice, acreage limitation, payment

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

§ 47. Impairment of rights or interests in certain mining property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 42, 46, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

CHAPTER 3A—LEASES AND PROSPECTING PERMITS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 48, 49, 171, 351, 355, 505, 529, 530, 541e, 1003, 1004, 1005, 1232, 1256, 1292 of this title; title 16 sections 90c-1, 460q-5, 460v-4, 460dd-2, 460*ll*-3, 460mm-1, 3148, 3149, 3183; title 25 sections 398e, 459c, 459d, 640d-10; title 43 sections 315f, 1608, 1633, 1714, 1747, 1783; title 50 section 167a.

SUBCHAPTER I—GENERAL PROVISIONS

§ 185. Rights-of-way for pipelines through Federal lands

[*See main edition for text of* (*a*) *to* (*t*)]

(u) Limitations on export

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided*, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

[*See main edition for text of* (*v*) *to* (*y*)]

(As amended July 12, 1985, Pub. L. 99-64, title I, § 123(b), 99 Stat. 156.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (u), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

AMENDMENTS

1985—Subsec. (u). Pub. L. 99-64 substituted "Export Administration Act of 1979 (50 U.S.C. App. 2401 and following)" for "Export Administration Act of 1969 (Act of December 30, 1969; 83 Stat. 841)" and "Export Administration Act of 1979" for "Export Administration Act of 1969" in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 236a, 275, 285 of this title; title 10 sections 7421, 7435; title 16 section 3167; title 33 section 1522; title 42 sections 6271, 6502; title 43 sections 1652, 1768, 2009; title 50 App. section 2406.

§ 191. Disposition of moneys received

All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C. 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], notwithstanding the provisions of section 20 thereof [30 U.S.C. 1019], shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided,* That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(Feb. 25, 1920, ch. 85, § 35, 41 Stat. 450; May 27, 1947, ch. 83, 61 Stat. 119; Aug. 3, 1950, ch. 527, 64 Stat. 402; July 10, 1957, Pub. L. 85-88, § 2, 71 Stat. 282; July 7, 1958, Pub. L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351; Apr. 21, 1976, Pub. L. 94-273, § 6(2), 90 Stat. 377; Aug. 4, 1976, Pub. L. 94-377, § 9, 90 Stat. 1090; Sept. 28, 1976, Pub. L. 94-422, title III, § 301, 90 Stat. 1323; Oct. 21, 1976, Pub. L. 94-579, title III, § 317(a), 90 Stat. 2770; Jan. 12, 1983, Pub. L. 97-451, title I, §§ 104(a), 111(g), 96 Stat. 2451, 2456.)

AMENDMENTS

1983—Pub. L. 97-451, § 111(g), inserted reference to interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982.

Pub. L. 97-451, § 104(a), struck out "as soon as practicable after March 31 and September 30 of each year" after "Secretary of the Treasury" and "of those from Alaska", and added at the end provisions directing that payments to States be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, that warrants be issued by the Treasury not later than 10 days after receipt of the money by the Treasury, that moneys placed in a suspense account which are determined to be payable to a State be made not later than the last business day of the month in which a dispute is resolved, and that amounts placed in a suspense account pending resolution bear interest until the dispute is resolved.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 104(a) of Pub. L. 97-451 applicable with respect to payments received by the Secretary of the Treasury after Oct. 1, 1983, unless the Secretary by rule, prescribes an earlier effective date, see section 104(c) of Pub. L. 97-451, set out as an Effective Date note under section 1714 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 241, 275, 285, 292, 355, 541f, 1721 of this title; title 10 sections 7421, 7435; title 16 sections 460*ll*-3, 470h; title 31 section 6903; title 43 section 1747.

SUBCHAPTER II—COAL

§ 201. Leases and exploration

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 99-190, § 101(d) [title III, § 320], Dec. 19, 1985, 99 Stat. 1224, 1266, provided that: "The provisions of section 2(a)(2)(A) of the Mineral Lands Leasing Act of 1920 (41 Stat. 437) [subsec. (a)(2)(A) of this section], as amended by section 3 of the Federal Coal Leasing Amendments Act of 1976 (90 Stat. 1083) [Pub. L. 94-377, see 1976 Amendment note above] shall not take effect until December 31, 1986."

§ 208a. Repealed. Pub. L. 97-468, title VI, § 615(a)(3), Jan. 14, 1983, 96 Stat. 2578

Section, act July 19, 1932, ch. 513, 47 Stat. 707, authorized the general manager of the Alaska Railroad to purchase coal annually for the railroad from two or more operating companies in areas adjacent to the railroad.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 97-468 became effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(a) of Pub. L. 97-468.

SUBCHAPTER V—OIL SHALE

§ 241. Leases of lands

(a) Authorization; survey; terms, royalties and annual rentals; readjustments on renewals; rights of existing claimants; fraud of claimants

The Secretary of the Interior is hereby authorized to lease to any person or corporation qualified under this chapter any deposits of oil shale, and gilsonite (including all vein-type solid hydrocarbons) belonging to the United States and the surface of so much of the public lands containing such deposits, or land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, under such rules and regulations, not inconsistent with this chapter, as he may prescribe. No lease hereunder shall exceed five thousand one hundred and twenty acres of land, to be described by the legal subdivisions of the public-land surveys, or if unsurveyed, to be surveyed by the United States, at the expense of the applicant, in accordance with regulations to be prescribed by the Secretary of the Interior. Leases may be for indeterminate periods, upon such conditions as may be imposed by the Secretary of the Interior, including covenants relative to methods of mining, prevention of waste, and productive development. For the privilege of mining, extracting, and disposing of the oil or other minerals covered by a lease under this section the lessee shall pay to the United States such royalties as shall be specified in the lease and an annual rental, payable at the beginning of each year, at the rate of 50 cents per acre per annum, for the lands included in the lease, the rental paid for any one year to be credited against the royalties accruing for that year; such royalties to be subject to readjustment at the end of each twenty-year period by the Secretary of the Interior. For the purpose of encouraging the production of petroleum products from shales the Secretary may, in his discretion, waive the payment of any royalty and rental during the first five years of any lease. Any person having a valid claim to such minerals under existing laws on January 1, 1919, shall, upon the relinquishment of such claim, be entitled to a lease under the provisions of this section for such area of the land relinquished as shall not exceed the maximum area authorized by this section to be leased to an individual or corporation. No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section. Not more than one lease shall be granted under this section to any one person, association, or corporation except that with respect to leases for gilsonite (including all vein-type solid hydrocarbons) no person, association, or corporation shall acquire or hold more than seven thousand six hundred eighty acres in any one State without respect to the number of leases.

[*See main edition for text of* (*b*) *to* (*e*); *credits*]

CODIFICATION

Subsec. (a) is set out in this supplement to correct a typographical error appearing in the main edition.

CHAPTER 6—SYNTHETIC LIQUID FUEL DEMONSTRATION PLANTS

§§ 321 to 325. Omitted

CODIFICATION

Section 321, acts Apr. 5, 1944, ch. 172, § 1, 58 Stat. 190; Mar. 15, 1948, ch. 117, 62 Stat. 79; Sept. 22, 1950, ch. 988, § 1, 64 Stat. 905, authorized the Secretary of the Interior for not more than eleven years to construct, maintain, and operate plants producing synthetic liquid fuel from coal, oil shale, agricultural and forestry products and prescribed the size of the plants and amount of production.

Section 322, act Apr. 5, 1944, ch. 172, § 2, 58 Stat. 190, in order to carry out the 11 year demonstration plant program, authorized laboratory research and development, acquisition by purchase of license of secret processes, inventions, etc., acquisition of land, plants, etc., contracting for personnel, and cooperation with other Federal and State agencies. See note for section 321 above.

Section 323, acts Apr. 5, 1944, ch. 172, § 3, 58 Stat. 191; Oct. 31, 1951, ch. 654, § 4(2), 65 Stat. 709, related to licenses and patent rights under the 11 year demonstration plant program. See note for section 321 above.

Section 324, act Apr. 5, 1944, ch. 172, § 4, 58 Stat. 191, provided that moneys received under this chapter for products and royalties from the 11 year demonstration plant program be paid into the Treasury as miscellaneous receipts and a report to Congress on all operations under this chapter be rendered by the Secretary on or before the first day of January of each year. See note for section 321 above.

Section 325, act Apr. 5, 1944, ch. 172, § 5, 58 Stat. 191, authorized the Secretary to issue rules and regulations to carry out the 11 year demonstration plant program under this chapter and provided that the authority and duties of the Secretary be exercised through the Bureau of Mines. See note for section 321 above.

AUTHORIZATION OF APPROPRIATIONS

Section 6 of act Apr. 5, 1944, as amended by acts Mar. 15, 1948, and Sept. 22, 1950, § 1, authorized appropriations of not to exceed $87,600,000 to carry out the provisions of this chapter.

MORGANTOWN, W. VA., EXPERIMENT STATION

Section 2 of act Sept. 22, 1950, provided that out of the $87,600,000 authorized to carry out this chapter, not to exceed $2,600,000 be used for the construction and equipment of an experiment station in or near Morgantown, West Virginia, for research in mining, preparation, and utilization of coal, petroleum, natural gas, peat, and other minerals.

CHAPTER 19—LEAD AND ZINC STABILIZATION PROGRAM

§§ 681 to 689. Omitted

CODIFICATION

Section 681, Pub. L. 87-347, § 1, Oct. 3, 1961, 75 Stat. 766, stated the purpose of this chapter as the establishment and maintenance of a program of stabilization payments (which terminated December 31, 1969) to small domestic producers of lead and zinc ores and concentrates in order to stabilize the mining of lead and zinc by such producers. See note for section 687 below.

Section 682, Pub. L. 87-347, § 2, Oct. 3, 1961, 75 Stat. 766; Pub. L. 89-238, § 1(1), Oct. 5, 1965, 79 Stat. 925, provided for stabilization payments (which terminated December 31, 1969) and conditions and limitations of payments. See note for section 687 below.

Section 683, Pub. L. 87-347, § 3, Oct. 3, 1961, 75 Stat. 767; Pub. L. 89-238, § 1(2), Oct. 5, 1965, 79 Stat. 925, provided for additional limitations on payments which terminated on December 31, 1969. See note for section 687 below.

Section 684, Pub. L. 87-347, § 4, Oct. 3, 1961, 75 Stat. 767, authorized the Secretary to promulgate such regulations and require such reports as deemed necessary to carry out the program of stabilization payments (which terminated December 31, 1969) under this chapter. See note for section 687 below.

Section 685, Pub. L. 87-347, § 5, Oct. 3, 1961, 75 Stat. 768, authorized the Secretary to delegate functions relating to stabilization payments (which terminated December 31, 1969) under this chapter to the Administrator of General Services. See note for section 687 below.

Section 686, Pub. L. 87-347, § 6, Oct. 3, 1961, 75 Stat. 768; Pub. L. 88-75, July 25, 1963, 77 Stat. 92; Pub. L. 89-238, § 1(3), Oct. 5, 1965, 79 Stat. 925, defined terms as used in this chapter relating to stabilization payments which terminated December 31, 1969. See note for section 687 below.

Section 687, Pub. L. 87-347, § 7, Oct. 3, 1961, 75 Stat. 768; Pub. L. 89-238, § 1(4), Oct. 5, 1965, 79 Stat. 925, provided that no payment be made under this chapter after Dec. 31, 1969, but permitted authorized payment only if application therefor was filed not later than Mar. 31, 1970.

Section 688, Pub. L. 87-347, § 8, Oct. 3, 1961, 75 Stat. 768, required annual reports to Congress on operations relating to stabilization payments (which terminated December 31, 1969) under this chapter not later than the first day of March each year. See note for section 687 above.

Section 689, Pub. L. 87-347, § 9, Oct. 3, 1961, 75 Stat. 768; Pub. L. 89-238, § 1(5), Oct. 5, 1965, 79 Stat. 925, related to penalties for procuring a stabilization payment (which terminated December 31, 1969) not entitled to under this chapter and civil and criminal liability for keeping a payment not entitled to under this chapter. See note for section 687 above.

CHAPTER 22—MINE SAFETY AND HEALTH

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 961, 1211, 1266, 1292 of this title; title 2 section 906; title 29 section 557a; title 31 section 1105; title 42 section 6211.

SUBCHAPTER I—GENERAL

§ 816. Judicial review of Commission orders

(a) Petition by person adversely affected or aggrieved; temporary relief

(1) Any person adversely affected or aggrieved by an order of the Commission issued under this chapter may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or in the United States Court of Appeals for the District of Columbia Circuit, by filing in such court within 30 days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have exclusive jurisdiction of the proceeding and of the questions determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Commission may modify or set aside its original order by reason of such modified or new findings of fact. Upon the filing of the record after such remand proceedings, the jurisdiction of the court shall be exclusive and its judgment and degree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

[*See main edition for text of* (2) *and* (3);
(*b*) *and* (*c*)]

(As amended Pub. L. 98-620, title IV, § 402(34), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-620 struck out provision that petitions filed under this subsection had to be heard expeditiously.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER IV—BLACK LUNG BENEFITS

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1973

§ 931. Benefits under State workmen's compensation laws

[*See main edition for text of* (*a*)]

(b) Adequacy of compensation; listing of States providing adequate compensation; requisites for listing

[*See main edition for text of* (*1*)]

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

[*See main edition for text of* (*A*) *to* (*E*)]

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended [33 U.S.C. 901 et seq.], which are applicable under section 932(a) of this title, but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis.

[*See main edition for text of concluding provision;* (c); *credits*]

REFERENCES IN TEXT

Public Law 803, 69th Congress, referred to in subsec. (b)(2)(F), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, popularly known as the Longshore and Harbor Workers' Compensation Act, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

CODIFICATION

Subsec. (b)(2)(F) is set out in this supplement to conform to the original reference to Public Law 803, 69th Congress.

§ 932. Failure to meet workmen's compensation requirements

(a) Benefits; applicability of Longshore and Harbor Workers' Compensation Act; promulgation of regulations

Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during any period after December 31, 1973, in which a State workmen's compensation law is not included on the list published by the Secretary under section 931(b) of this title, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927) as amended [33 U.S.C. 901 et seq.], as it may be amended from time to time (other than the provisions contained in sections 1, 2, 3, 4, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) [33 U.S.C. 901, 902, 903, 904, 908, 909, 910, 912, 913, 929, 930, 931, 932, 933, 937, 938, 941, 943, 944, 945, 946, 947, 948, 948a, 949, 950], shall (except as otherwise provided in this subsection or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 9501(d) of title 26), be applicable to each operator of a coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) of section 921(c) of this title. In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

[*See main edition for text of* (*b*) *to* (*l*)]

(As amended Pub. L. 98-426, § 28(h)(2), Sept. 28, 1984, 98 Stat. 1655.)

REFERENCES IN TEXT

Section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, referred to in subsec. (a), is section 28(h)(1) of Pub. L. 98-426, which is set out as a note under section 907 of Title 33, Navigation and Navigable Waters.

Public Law 803, 69th Congress, referred to in subsec. (a), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, popularly known as the Longshore and Harbor Workers' Compensation Act, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

Section 42 of Public Law 803, referred to in subsec. (a), was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 647.

Section 43 of Public Law 803, referred to in subsec. (a), was repealed by Pub. L. 89-348, § 1(15), Nov. 8, 1965, 79 Stat. 1311.

Sections 45, 46, and 47 of Public Law 803, referred to in subsec. (a), were repealed by Pub. L. 98-426, § 25, Sept. 28, 1984, 98 Stat. 1654.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-426 substituted "Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during" for "During".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending on such date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

§ 933. Duties of operators in States not qualifying under workmen's compensation laws

(a) Securing of benefits for miners; self-insurers; mutual companies

During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 931(b) of this title each operator of a coal mine in such State shall secure the payment of benefits for which he is liable under section 932 of this title by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

[*See main edition for text of* (*b*)]

(c) Cancellation of insurance contracts

No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection[1] shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

(d) Penalties for failure to secure payment of benefits

[*See main edition for text of* (*1*)]

(2) Any employer of a miner who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets,[2] or de-

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[1] So in original. Probably should be "section".

[2] So in original. Probably should be "secretes,".

stroys any property belonging to such employer, after any miner employed by such employer has filed a claim under this subchapter, and with intent to avoid the payment of benefits under this subchapter to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable for such penalty of imprisonment as well as jointly liable with such corporation for such fine.

[*See main edition for text of* (*3*)*; credits*]

CODIFICATION

Subsecs. (a), (c), and (d)(1) are set out in this supplement to correct and indicate typographical errors.

SUBCHAPTER V—ADMINISTRATIVE PROVISIONS

§ 962. Acceptance of contributions and prosecution of projects; cooperative programs to promote health and safety education and training; use of funds for costs of mine rescue and survival operations

[*See main edition for text*]

(Pub. L. 99-178, title I, § 100, Dec. 12, 1985, 99 Stat. 1107.)

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of the Federal Mine Safety and Health Act of 1977 which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 98-619, title I, § 100, Nov. 8, 1984, 98 Stat. 3310.

Pub. L. 98-139, title I, § 100, Oct. 31, 1983, 97 Stat. 876.

Pub. L. 97-377, title I, § 101(e)(1), Dec. 21, 1982, 96 Stat. 1878, 1883.

CHAPTER 23—GEOTHERMAL STEAM AND ASSOCIATED GEOTHERMAL RESOURCES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 191, 530 of this title; title 16 section 543c.

§ 1008. Byproducts: production or use; water for beneficial uses under State water laws; substantial beneficial production or use; modification or waiver; preexisting rights of lease, claim, or permit holders

If the production, use, or conversion of geothermal steam is susceptible of producing a valuable byproduct or byproducts, including commercially demineralized water for beneficial uses in accordance with applicable State water laws, the Secretary shall require substantial beneficial production or use thereof unless, in individual circumstances he modifies or waives this requirement in the interest of conservation of natural resources or for other reasons satisfactory to him. However, the production or use of such byproducts shall be subject to the rights of the holders of preexisting leases, claims, or permits covering the same land or the same minerals, if any.

(Pub. L. 91-581, § 9, Dec. 24, 1970, 84 Stat. 1570.)

CODIFICATION

Section is set out in this supplement to correct a typographical error appearing in the main edition.

§ 1009. Relinquishment of geothermal rights; effective date; release of lessee or his surety or bond; exceptions

The holder of any geothermal lease at any time may make and file in the appropriate land office a written relinquishment of all rights under such lease or of any legal subdivision of the area covered by such lease. Such relinquishment shall be effective as of the date of its filing. Thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his surety or bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment, or from the continued obligation, in accordance with the applicable lease terms and regulations, (1) to make payment of all accrued rentals and royalties, (2) to place all wells on the relinquished lands in condition for suspension or abandonment, and (3) to protect or restore substantially the surface and surface resources.

(Pub. L. 91-581, § 10, Dec. 24, 1970, 84 Stat. 1570.)

CODIFICATION

Section is set out in this supplement to correct a typographical error appearing in the main edition.

CHAPTER 25—SURFACE MINING CONTROL AND RECLAMATION

SUBCHAPTER III—STATE MINING AND MINERAL RESOURCES RESEARCH INSTITUTES

Sec.
1221. Authorization of State allotments to institutes.
1222. Research funds to institutes.
    (a) Authorization of appropriations.
    (b) Application for funds; contents.
    (c) Research facilities; selection of institutes; designation of funds for scholarships and fellowships.
    (d) Requirements for receipt of funds.
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1223. Funding criteria.
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    (a) Consulting with other agencies; prescribing rules and regulations; furnishing advice and assistance; coordinating research.
    (b) Annual ascertainment of compliance.
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1225. Effect on colleges and universities.
1226. Research.
    (a) Coordination with existing programs; availability of information to public.
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    (c) Availability of results to public.
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Sec.
1227. Center for cataloging.
1228. Interagency cooperation.
1229. Committee on Mining and Mineral Resources Research.
  (a) Appointment; composition.
  (b) Consultation and recommendations.
  (c) Compensation, travel, subsistence and related expenses.
  (d) Chairmanship of Committee.
  (e) National plan for research.
  (f) Application of Federal Advisory Committee Act.
1230. Eligibility criteria.

SUBCHAPTER III—STATE MINING AND MINERAL RESOURCES RESEARCH INSTITUTES

Codification

Subchapter was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

Subchapter Referred to in Other Sections

This subchapter is referred to in title 43 section 1457a.

§ 1221. Authorization of State allotments to institutes

(a)(1) There are authorized to be appropriated to the Secretary of the Interior (hereafter in this subchapter referred to as the "Secretary") funds adequate to provide for each participating State $300,000 for the fiscal year ending September 30, 1985, and $400,000 to each participating State for each fiscal year thereafter for a total of five years, to assist the States in carrying on the work of a competent and qualified mining and mineral resources research institute or center (hereafter in this subchapter referred to as the "institute") at one public college or university in the State which meets the eligibility criteria established in section 1230 of this title.

(2)(A) Funds appropriated under this section shall be made available for grants to be matched on a basis of no less than one and one-half non-Federal dollars for each Federal dollar during the fiscal years ending September 30, 1985, and September 30, 1986, and no less than two non-Federal dollars for each Federal dollar during the fiscal years ending September 30, 1987, September 30, 1988, and September 30, 1989.

(B) If there is more than one such eligible college or university in a State, funds appropriated under this subchapter shall, in the absence of a designation to the contrary by act of the legislature of the State, be granted to one such college or university designated by the Governor of the State.

(C) Where a State does not have a public college or university eligible under section 1230 of this title, the Committee on Mining and Mineral Resources Research established in section 1229 of this title (hereafter in this subchapter referred to as the "Committee") may allocate the State's allotment to one private college or university which it determines to be eligible under such section.

(b) It shall be the duty of each institute to plan and conduct, or arrange for a component or components of the college or university with which it is affiliated to conduct research, investigations, demonstrations, and experiments of either, or both, a basic or practical nature in relation to mining and mineral resources, and to provide for the training of mineral engineers and scientists through such research, investigations, demonstrations, and experiments. The subject of such research, investigation, demonstration, experiment, and training may include exploration; extraction; processing; development; production of mineral resources; mining and mineral technology; supply and demand for minerals; conservation and best use of available supplies of minerals; the economic, legal, social, engineering, recreational, biological, geographic, ecological, and other aspects of mining, mineral resources, and mineral reclamation. Such research, investigation, demonstration, experiment and training shall consider the interrelationship with the natural environment, the varying conditions and needs of the respective States, and mining and mineral resources research projects being conducted by agencies of the Federal and State governments and other institutes.

(Pub. L. 98-409, § 1, Aug. 29, 1984, 98 Stat. 1536.)

Codification

Section was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

Prior Provisions

A prior section 1221, Pub. L. 95-87, title III, § 301, Aug. 3, 1977, 91 Stat. 451, contained provisions similar to this section covering fiscal years 1978 through 1984.

Section Referred to in Other Sections

This section is referred to in section 1223 of this title.

§ 1222. Research funds to institutes

(a) Authorization of appropriations

There is authorized to be appropriated to the Secretary $10,000,000 for the fiscal year ending September 30, 1985. This amount shall be increased by $1,000,000 for each fiscal year thereafter for four additional years, which shall remain available until expended. Such funds when appropriated shall be made available to institutes to meet the necessary expenses for purposes of—

(1) specific mineral research and demonstration projects of broad application, which could not otherwise be undertaken, including the expenses of planning and coordinating regional mining and mineral resources research projects by two or more institutes; and

(2) research into any aspects of mining and mineral resources problems related to the mission of the Department of the Interior, which are deemed by the Committee to be desirable and are not otherwise being studied.

(b) Application for funds; contents

Each application for funds under subsection (a) of this section shall state, among other things, the nature of the project to be undertaken; the period during which it will be pursued; the qualifications of the personnel who will direct and conduct it; the estimated costs; the importance of the project to the Nation, region, or State concerned; its relation to other known research projects theretofore pursued or being pursued; the extent to which the proposed project will provide opportunity for the training of mining and mineral engineers and scientists; and the extent of participation by nongovernmental sources in the project.

(c) Research facilities; selection of institutes; designation of funds for scholarships and fellowships

The Committee shall review all such funding applications and recommend to the Secretary the use of the institutes, insofar as practicable, to perform special research. Recommendations shall be made without regard to the race, religion, or sex of the personnel who will conduct and direct the research, and on the basis of the facilities available in relation to the particular needs of the research project; special geographic, geologic, or climatic conditions within the immediate vicinity of the institute; any other special requirements of the research project; and the extent to which such project will provide an opportunity for training individuals as mineral engineers and scientists. The Committee shall recommend to the Secretary the designation and utilization of such portions of the funds authorized to be appropriated by this section as it deems appropriate for the purpose of providing scholarships, graduate fellowships, and postdoctoral fellowships.

(d) Requirements for receipt of funds

No funds shall be made available under subsection (a) of this section except for a project approved by the Secretary and all funds shall be made available upon the basis of merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of individuals as mineral engineers and scientists.

(e) Restriction on application of funds

No funds made available under this section shall be applied to the acquisition by purchase or lease of any land or interests therein, or the rental, purchase, construction, preservation, or repair of any building.

(Pub. L. 98–409, § 2, Aug. 29, 1984, 98 Stat. 1537.)

Codification

Section was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

Prior Provisions

A prior section 1222, Pub. L. 95–87, title III, § 302, Aug. 3, 1977, 91 Stat. 452, contained provisions similar to this section covering fiscal years 1978 through 1984.

Section Referred to in Other Sections

This section is referred to in section 1223 of this title.

§ 1223. Funding criteria

(a) Funds available to institutes under sections 1221 and 1222 of this title shall be paid at such times and in such amounts during each fiscal year as determined by the Secretary, and upon vouchers approved by him. Each institute shall—

(1) set forth its plan to provide for the training of individuals as mineral engineers and scientists under a curriculum appropriate to the field of mineral resources and mineral engineering and related fields;

(2) set forth policies and procedures which assure that Federal funds made available under this subchapter for any fiscal year will supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available for purposes of this subchapter, and in no case supplant such funds; and

(3) have an officer appointed by its governing authority who shall receive and account for all funds paid under the provisions of this subchapter and shall make an annual report to the Secretary on or before the first day of September of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any provisions of this subchapter during the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary.

If any of the funds received by the authorized receiving officer of any institute under the provisions of this subchapter shall by any action or contingency be found by the Secretary to have been improperly diminished, lost, or misapplied, such funds shall be replaced by the State concerned and until so replaced no subsequent appropriation shall be allotted or paid to any institute of such State.

(b) The institutes are authorized and encouraged to plan and conduct programs under this subchapter in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the mining and mineral resources problems involved. Moneys appropriated pursuant to this subchapter shall be available for paying the necessary expenses of planning, coordinating, and conducting such cooperative research.

(Pub. L. 98–409, § 3, Aug. 29, 1984, 98 Stat. 1538.)

Codification

Section was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

Prior Provisions

A prior section 1223, Pub. L. 95–87, title III, § 303, Aug. 3, 1977, 91 Stat. 453, contained provisions similar to this section covering fiscal years 1978 through 1984.

Section Referred to in Other Sections

This section is referred to in section 1224 of this title.

§ 1224. Duties of Secretary

(a) Consulting with other agencies; prescribing rules and regulations; furnishing advice and assistance; coordinating research

The Secretary shall administer this subchapter and, after full consultation with other interested Federal agencies, shall prescribe such rules and regulations as may be necessary to carry out its provisions. The Secretary shall furnish such advice and assistance as will best promote the purposes of this subchapter, shall participate in coordinating research initiated under this subchapter by the institutes, shall indicate to them such lines of inquiry that seem most important, and shall encourage and assist in the establishment and maintenance of cooperation by and between the institutes and between them and other research organizations, the United States Department of the Interior, and other Federal establishments.

(b) Annual ascertainment of compliance

On or before the first day of July in each year beginning after August 29, 1984, the Secretary shall ascertain whether the requirements of section 1223(a) of this title have been met as to each institute and State.

(c) Annual report to Congress

The Secretary shall make an annual report to the Congress of the receipts, expenditures, and work of the institutes in all States under the provisions of this subchapter. The Secretary's report shall indicate whether any portion of an appropriation available for allotment to any State has been withheld and, if so, the reason therefor.

(Pub. L. 98-409, § 4, Aug. 29, 1984, 98 Stat. 1538.)

CODIFICATION

Section was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1224, Pub. L. 95-87, title III, § 304, Aug. 3, 1977, 91 Stat. 454, contained provisions similar to this section covering fiscal years 1978 through 1984.

§ 1225. Effect on colleges and universities

Nothing in this subchapter shall be construed to impair or modify the legal relationship existing between any of the colleges or universities under whose direction an institute is established and the government of the State in which it is located, and nothing in this subchapter shall in any way be construed to authorize Federal control or direction of education at any college or university.

(Pub. L. 98-409, § 5, Aug. 29, 1984, 98 Stat. 1539.)

CODIFICATION

Section was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1225, Pub. L. 95-87, title III, § 305, Aug. 3, 1977, 91 Stat. 454, contained provisions similar to this section covering fiscal years 1978 through 1984.

§ 1226. Research

(a) Coordination with existing programs; availability of information to public

The Secretary shall obtain the continuing advice and cooperation of all agencies of the Federal Government concerned with mining and mineral resources, of State and local governments, and of private institutions and individuals to assure that the programs authorized by this subchapter will supplement and not be redundant with respect to established mining and minerals research programs, and to stimulate research in otherwise neglected areas, and to contribute to a comprehensive nationwide program of mining and minerals research, with due regard for the protection and conservation of the environment. The Secretary shall make generally available information and reports on projects completed, in progress, or planned under the provisions of this subchapter, in addition to any direct publication of information by the institutes themselves.

(b) Effect on Federal agencies

Nothing in this subchapter is intended to give or shall be construed as giving the Secretary any authority over mining and mineral resources research conducted by any agency of the Federal Government, or as repealing or diminishing existing authorities or responsibilities of any agency of the Federal Government to plan and conduct, contract for, or assist in research in its area of responsibility and concern with regard to mining and mineral resources.

(c) Availability of results to public

No research, demonstration, or experiment shall be carried out under this subchapter by an institute financed by grants under this subchapter, unless all uses, products, processes, patents, and other developments resulting therefrom, with such exception or limitation, if any, as the Secretary may find necessary in the public interest, are made available promptly to the general public. Patentable inventions shall be governed by the provisions of Public Law 96-517. Nothing contained in this section shall deprive the owner of any background patent relating to any such activities of any rights which that owner may have under that patent.

(d) Authorization of appropriation

There are authorized to be appropriated after September 30, 1984, such sums as are necessary for the printing and publishing of the results of activities carried out by institutes under this subchapter and for administrative planning and direction, but such appropriations shall not exceed $1,000,000 in any single fiscal year.

(Pub. L. 98-409, § 6, Aug. 29, 1984, 98 Stat. 1539.)

REFERENCES IN TEXT

Public Law 96-517, referred to in subsec. (c), is Pub. L. 96-517, Dec. 12, 1980, 94 Stat. 3015. Section 6(a) of Pub. L. 96-517, relating to patent rights in inventions made with Federal assistance, is classified to chapter 18 (§ 200 et seq.) of Title 35, Patents. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1226, Pub. L. 95-87, title III, § 306, Aug. 3, 1977, 91 Stat. 454, contained provisions similar to this section covering fiscal years 1978 through 1984.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1328 of this title.

§ 1227. Center for cataloging

The Secretary shall establish a center for cataloging current and projected scientific research in all fields of mining and mineral resources. Each Federal agency doing mining and mineral resources research shall cooperate by providing the cataloging center with information on work underway or scheduled by it. The cataloging center shall classify and maintain for public use a catalog of mining and mineral resources research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of government, colleges, universities, private institutions, firms, and individuals as may make such information available.

(Pub. L. 98-409, § 7, Aug. 29, 1984, 98 Stat. 1540.)

CODIFICATION

Section was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1227, Pub. L. 95-87, title III, § 307, Aug. 3, 1977, 91 Stat. 455, contained provisions similar to this section covering fiscal years 1978 through 1984.

§ 1228. Interagency cooperation

The President shall, by such means as he deems appropriate, clarify agency responsibility for Federal mining and mineral resources research and provide for interagency coordination of such research, including the research authorized by this subchapter. Such coordination shall include—

(1) continuing review of the adequacy of the Government-wide program in mining and mineral resources research;

(2) identification and elimination of duplication and overlap between agency programs;

(3) identification of technical needs in various mining and mineral resources research categories;

(4) recommendations with respect to allocation of technical effort among Federal agencies;

(5) review of technical manpower needs, and findings concerning management policies to improve the quality of the Government-wide research effort; and

(6) actions to facilitate interagency communication at management levels.

(Pub. L. 98-409, § 8, Aug. 29, 1984, 98 Stat. 1540.)

CODIFICATION

Section was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1228, Pub. L. 95-87, title III, § 308, Aug. 3, 1977, 91 Stat. 455, contained provisions similar to this section covering fiscal years 1978 through 1984.

§ 1229. Committee on Mining and Mineral Resources Research

(a) Appointment; composition

The Secretary shall appoint a Committee on Mining and Mineral Resources Research composed of—

(1) the Assistant Secretary of the Interior responsible for minerals and mining research, or his delegate;

(2) the Director, Bureau of Mines, or his delegate;

(3) the Director, United States Geological Survey, or his delegate;

(4) the Director of the National Science Foundation, or his delegate;

(5) the President, National Academy of Sciences, or his delegate;

(6) the President, National Academy of Engineering, or his delegate; and

(7) not more than six other persons who are knowledgeable in the fields of mining and mineral resources research, including two university administrators involved in the conduct of programs authorized by section 301 of the Surface Mining Control and Reclamation Act of 1977, two representatives from the mining industry, a working miner, and a representative from the conservation community. In making these six appointments, the Secretary shall consult with interested groups.

(b) Consultation and recommendations

The Committee shall consult with, and make recommendations to, the Secretary on all matters relating to mining and mineral resources research and the determinations that are required to be made under this subchapter. The Secretary shall consult with, and consider recommendations of, such Committee in such matters.

(c) Compensation, travel, subsistence and related expenses

Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing Committee business, paid at a rate fixed by the Secretary but not [1] excess of the daily equivalent of the maximum rate of pay for grade GS-18 of the General Schedule under section 5332 of title 5, and shall be fully reimbursed for travel, subsistence, and related expenses.

(d) Chairmanship of Committee

The Committee shall be jointly chaired by the Assistant Secretary of the Interior responsible for minerals and mining and a person to be elected by the Committee from among the members referred to in paragraphs (5), (6), and (7) of subsection (a) of this section.

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[1] So in original. Probably should be followed by "in".

(e) National plan for research

The Committee shall develop a national plan for research in mining and mineral resources, considering ongoing efforts in the universities, the Federal Government, and the private sector, and shall formulate and recommend a program to implement the plan utilizing resources provided for under this subchapter. The Committee shall submit such plan to the Secretary, the President, and the Congress on or before March 1, 1986, and shall update the plan annually thereafter.

(f) Application of Federal Advisory Committee Act

Section 10 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee.

(Pub. L. 98-409, § 9, Aug. 29, 1984, 98 Stat. 1540.)

REFERENCES IN TEXT

Section 301 of the Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (a)(7), is section 301 of Pub. L. 95-87, title III, Aug. 3, 1977, 91 Stat. 451, which was classified to section 1221 of this title, prior to the enactment of this subchapter by Pub. L. 98-409.

The Federal Advisory Committee Act, referred to in subsec. (f), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1229, Pub. L. 95-87, title III, § 309, Aug. 3, 1977, 91 Stat. 455, contained provisions similar to this section covering fiscal years 1978 through 1984.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1221 of this title.

§ 1230. Eligibility criteria

(a) The Committee shall determine the eligibility of a college or university to participate as a mining and mineral resources research institute under this subchapter using criteria which include—

(1) the presence of a substantial program of graduate instruction and research in mining or mineral extraction or closely related fields which has a demonstrated history of achievement;

(2) evidence of institutional commitment for the purposes of this subchapter;

(3) evidence that such institution has or can obtain significant industrial cooperation in activities within the scope of this subchapter; and

(4) the presence of an engineering program in mining or minerals extraction that is accredited by the Accreditation Board for Engineering and Technology, or evidence of equivalent institutional capability as determined by the Committee.

(b) Notwithstanding the provisions of subsection (a) of this section, those colleges or universities which, on August 29, 1984, have a mining or mineral resources research institute program which has been found to be eligible pursuant to title III of the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 445) shall continue to be eligible pursuant to this subchapter for a period of four fiscal years beginning October 1, 1984.

(Pub. L. 98-409, § 10, Aug. 29, 1984, 98 Stat. 1541.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (b), is Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445, as amended. Title III of the Surface Mining Control and Reclamation Act of 1977 was classified generally to this subchapter prior to the enactment of this subchapter by Pub. L. 98-409. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1221 of this title.

SUBCHAPTER IV—ABANDONED MINE RECLAMATIONS

§ 1231. Abandoned Mine Reclamation Fund

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Use of moneys

Moneys in the fund may be used for the following purposes:

(1) reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ; prevention, abatement, and control of coal mine subsidence; and establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved in accordance with section 1253 of this title: *Provided*, That funds used for this purpose shall not exceed $3,000,000 of the funds made available to any State under section 1232(g)(2) of this title;

[See main edition for text of (2) *to* (10); (d)*]*

(As amended Pub. L. 98-473, title I, § 101(c) [title I, § 324], Oct. 12, 1984, 98 Stat. 1837, 1875.)

Amendments

1984—Subsec. (c)(1). Pub. L. 98-473 added "and establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved in accordance with section 1253 of this title: *Provided*, That funds used for this purpose shall not exceed $3,000,000 of the funds made available to any State under section 1232(g)(2) of this title;".

SUBCHAPTER V—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

Subchapter Referred to in Other Sections

This subchapter is referred to in section 1211 of this title; title 26 section 468.

§ 1253. State programs

Section Referred to in Other Sections

This section is referred to in sections 1231, 1235, 1252, 1254, 1256, 1268, 1271, 1272, 1291, 1292, 1309 of this title.

§ 1257. Application requirements

Preparation of Cross-Sections, Maps, and Plans of Land By or Under Direction of Qualified Registered Professional Engineers, Geologists, or Land Surveyors

Pub. L. 98-146, title I, § 115, Nov. 4, 1983, 97 Stat. 938, provided that: "Notwithstanding section 507(b)(14) of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) [subsec. (b)(14) of this section], cross-sections, maps or plans of land to be affected by an application for a surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans."

§ 1261. Revision of permits

Section Referred to in Other Sections

This section is referred to in title 26 section 468.

§ 1278. Surface mining operations not subject to this chapter

Section Referred to in Other Sections

This section is referred to in title 26 section 468.

SUBCHAPTER IX—ENERGY RESOURCE GRADUATE FELLOWSHIPS

§ 1328. Research, development projects, etc., relating to alternative coal mining technologies

[See main edition for text of (a) *to* (d)*]*

(e) Availability of information to public

Subject to the patent provisions of section 306(d) of this Act,[1] all information and data resulting from any research studies, surveys, experiments, or demonstration projects conducted or financed under this chapter shall be promptly made available to the public.

[See main edition for credits]

References in Text

Section 306(d) of this Act, referred to in subsec. (e), was classified to section 1226(d) of this title and was omitted from the Code pursuant to the replacement of subchapter III (§ 1221 et seq.) of this chapter by Pub. L. 98-409. See section 1226(c) of this title.

CHAPTER 26—DEEP SEABED HARD MINERAL RESOURCES

SUBCHAPTER I—REGULATION OF EXPLORATION AND COMMERCIAL RECOVERY BY UNITED STATES CITIZENS

§ 1412. Licenses for exploration and permits for commercial recovery

[See main edition for text of (a) *and* (b)*]*

(c) Restrictions

[See main edition for text of (1) *to* (3)*]*

(4) For purposes of the shipping laws of the United States, any vessel documented under the laws of the United States and used in the commercial recovery, processing, or transportation from any mining site of hard mineral resources recovered under a permit issued under this subchapter shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 1244(a) of title 46, Appendix, and shall be deemed to be a vessel as defined in section 1271(b) of title 46, Appendix.

[See main edition for text of (5); *credits]*

References in Text

The shipping laws of the United States, referred to in subsec. (c)(4), are classified generally to Title 46, Shipping, and Title 46, Appendix.

Codification

Subsec. (c)(4) is set out in this supplement to reflect the transfer of sections 1244 and 1271 of title 46, referred to in text, to title 46, Appendix.

§ 1422. Safety of life and property at sea

References in Text

The International Voyage Load Line Act of 1973, referred to in subsec. (b), is Pub. L. 93-115, Oct. 1, 1973, 87 Stat. 418, which is classified generally to subchapter I (§ 86 et seq.) of chapter 2A of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 86 of Title 46, Appendix, and Tables.

Title 52 of the Revised Statutes, referred to in subsec. (b), consisted of R.S. §§ 4399 to 4500, which were classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of former Title 46, Shipping. For complete classification of R.S. §§ 4399 to 4500 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46,

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[1] See References in Text note below.

Shipping, by Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, see Table at beginning of Title 46.

Title 53 of the Revised Statutes, referred to in subsec. (b), consisted of R.S. §§ 4501 to 4612, which were classified to sections 541 to 543, 545 to 549, 561, 562, 564 to 571, 574 to 578, 591 to 597, 600, 602 to 605, 621 to 628, 641 to 643, 644, 645, 651 to 660, 661 to 669, 674 to 679, 681 to 687, 701 to 710, and 711 to 713 of former Title 46, Shipping. For complete classification of R.S. §§ 4501 to 4612 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, see Table at beginning of Title 46.

SUBCHAPTER III—ENFORCEMENT AND MISCELLANEOUS PROVISIONS

§ 1470. Authorization of appropriations

There are authorized to be appropriated to the Administrator, for purposes of carrying out the provisions of subchapters I and II of this chapter and this subchapter, such sums as may be necessary for the fiscal years ending September 30, 1981, and September 30, 1982, and $1,469,000 for the fiscal year ending September 30, 1983, $2,150,000 for the fiscal year ending September 30, 1984, and $1,500,000 for each of the fiscal years ending September 30, 1985, and September 30, 1986.

(As amended Pub. L. 98-623, title IV, § 403, Nov. 8, 1984, 98 Stat. 3408.)

AMENDMENTS

1984—Pub. L. 98-623 added provisions authorizing appropriations of $1,500,000 for each of the fiscal years ending Sept. 30, 1985, and Sept. 30, 1986.

CHAPTER 27—GEOTHERMAL ENERGY

SUBCHAPTER II—STUDY, ESTABLISHMENT, AND IMPLEMENTATION OF INSURANCE PROGRAM

§ 1522. Establishment of program

[*See main edition for text of* (a)]

(b) Definitions

For the purpose of this section—

[*See main edition for text of* (1) *to* (6)]

(7) the term "person" means any public or private agency, institution, association, partnership, corporation, political subdivision, or other legal entity which is a United States citizen as determined by application of the test for United States citizenship contained in section 2(a)-(c) of the Shipping Act, 1916 [46 App. U.S.C. 802], or in the first sentence of section 27A of the Merchant Marine Act, 1920 [46 App. U.S.C. 883-1(a)-(e)].

[*See main edition for text of* (c) *to* (k); *credits*]

CODIFICATION

Subsec. (b)(7) is set out in this supplement to reflect the transfer of sections 802 and 883-1 of title 46, referred to in text, to title 46, Appendix.

CHAPTER 28—MATERIALS AND MINERALS POLICY, RESEARCH, AND DEVELOPMENT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1803, 1804 of this title.

§ 1601. Congressional statement of findings; "materials" defined

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1811 of this title.

CHAPTER 30—NATIONAL CRITICAL MATERIALS COUNCIL

Sec.
1801. Congressional findings and declaration of purposes.
1802. Establishment of National Critical Materials Council.
1803. Responsibilities and authorities of Council.
  (a) Primary responsibilities of Council.
  (b) Specific authorities of Council.
  (c) Collaboration and cooperation of Council and Federal agencies with responsibilities related to materials.
1804. Program and policy for advanced materials research and technology.
  (a) Functions of Council.
  (b) Review by Office of Management and Budget.
1805. Innovation in basic and advanced materials industries.
  (a) Centers for Industrial Technology; recommendations for establishment; activities.
  (b) Mechanism for dissemination of data; establishment; computerization.
1806. Compensation of members and reimbursement.
  (a) Basic pay for levels II and III of Executive Schedule.
  (b) Reimbursement of travel expenses for attendance at meetings.
1807. Executive Director.
  (a) Function, appointment, and compensation.
  (b) Personnel and services of experts and consultants; rules and regulations.
  (c) Consultation with other groups; utilization of public and private services, facilities, and information.
  (d) Utilization of voluntary and uncompensated labor and services.
1808. Responsibilities and duties of Director.
1809. General authority of Council.
1810. Authorization of appropriations.
1811. "Materials" defined.

§ 1801. Congressional findings and declaration of purposes

(a) The Congress finds that—

(1) the availability of adequate supplies of strategic and critical industrial minerals and materials continues to be essential for national security, economic well-being, and industrial production;

(2) the United States is increasingly dependent on foreign sources of materials and vulnerable to supply interruption in the case of many of those minerals and materials essential to the Nation's defense and economic well-being;

(3) together with increasing import dependence, the Nation's industrial base, including the capacity to process minerals and materials, is deteriorating—both in terms of facilities and in terms of a trained labor force;

(4) research, development, and technological innovation, especially related to improved materials and new processing technologies, are important factors which affect our long-term capability for economic competitiveness, as well as for adjustment to interruptions in supply of critical minerals and materials;

(5) while other nations have developed and implemented specific long-term research and technology programs to develop high-performance materials, no such policy and program evolution has occurred in the United States;

(6) establishing critical materials reserves, by both the public and private sectors and with proper organization and management, represents one means of responding to the genuine risks to our economy and national defense from dependency on foreign sources;

(7) there exists no single Federal entity with the authority and responsibility for establishing critical materials policy and for coordinating and implementing that policy; and

(8) the importance of materials to national goals requires an organizational means for establishing responsibilities for materials programs and for the coordination, within and at a suitably high level of the Executive Office of the President, with other existing policies within the Federal Government.

(b) It is the purpose of this chapter—

(1) to establish a National Critical Materials Council under and reporting to the Executive Office of the President which shall—

(A) establish responsibilities for and provide for necessary coordination of critical materials policies, including all facets of research and technology, among the various agencies and departments of the Federal Government, and make recommendations for the implementation of such policies;

(B) bring to the attention of the President, the Congress, and the general public such materials issues and concerns, including research and development, as are deemed critical to the economic and strategic health of the Nation; and

(C) ensure adequate and continuing consultation with the private sector concerning critical materials, materials research and development, use of materials, Federal materials policies, and related matters;

(2) to establish a national Federal program for advanced materials research and technology, including basic phenomena through processing and manufacturing technology; and

(3) to stimulate innovation and technology utilization in basic as well as advanced materials industries.

(Pub. L. 98-373, title II, § 202, July 31, 1984, 98 Stat. 1249.)

SHORT TITLE

Section 201 of Pub. L. 98-373 provided that: "This title [enacting this chapter] may be cited as the 'National Critical Materials Act of 1984'."

§ 1802. Establishment of National Critical Materials Council

There is hereby established a National Critical Materials Council (hereinafter referred to as the "Council") under and reporting to the Executive Office of the President. The Council shall be composed of three members who shall be appointed by the President and who shall serve at the pleasure of the President. Members so appointed who are not already Senate-confirmed officers of the Government shall be appointed by and with the advice and consent of the Senate. The President shall designate one of the members to serve as Chairman. Each member shall be a person who, as a result of training, experience, and achievement, is qualified to carry out the duties and functions of the Council, with particular emphasis placed on fields relating to materials policy or materials science and engineering. In addition, at least one of the members shall have a background in and understanding of environmentally related issues.

(Pub. L. 98-373, title II, § 203, July 31, 1984, 98 Stat. 1250.)

§ 1803. Responsibilities and authorities of Council

(a) Primary responsibilities of Council

It shall be the primary responsibility of the Council—

(1) to assist and advise the President in establishing coherent national materials policies consistent with other Federal policies, and making recommendations necessary to implement such policies;

(2) to assist in establishing responsibilities for, and to coordinate, Federal materials-related policies, programs, and research and technology activities, as well as recommending to the Office of Management and Budget budget priorities for materials activities in each of the Federal departments and agencies;

(3) to review and appraise the various programs and activities of the Federal Government in accordance with the policy and directions given in the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601) [30 U.S.C. 1601 et seq.], and to determine the extent to which such programs and activities are contributing to the achievement of such policy and directions;

(4) to monitor and evaluate the critical materials needs of basic and advanced technology industries and the Government, including the critical materials research and development needs of the private and public sectors;

(5) to advise the President of mineral and material[1] trends, both domestic and foreign,

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[1] So in original. Probably should be "materials".

the implications thereof for the United States and world economies and the national security, and the probable effects of such trends on domestic industries;

(6) to assess through consultation with the materials academic community the adequacy and quality of materials-related educational institutions and the supply of materials scientists and engineers;

(7) to make or furnish such studies, analyses, reports, and recommendations with respect to matters of materials-related policy and legislation as the President may request;

(8)(A) to prepare a report providing a domestic inventory of critical materials with projections on the prospective needs of Government and industry for these materials, including a long-range assessment, prepared in conjunction with the Office of Science and Technology Policy in accordance with the National Materials and Minerals Policy, Research and Development Act of 1980, and in conjunction with such other Government departments or agencies as may be considered necessary, of the prospective major critical materials problems which the United States is likely to confront in the immediate years ahead and providing advice as to how these problems may best be addressed, with the first such report being due on April 1, 1985, and (B) review and update such report and assessment as appropriate and report thereon to the Congress at least biennially; and

(9) to recommend to the Congress such changes in current policies, activities, and regulations of the Federal Government, and such legislation, as may be considered necessary to carry out the intent of this chapter and the National Materials and Minerals Policy, Research and Development Act of 1980.

(b) Specific authorities of Council

In carrying out its responsibilities under this section the Council shall have the authority—

(1) to establish such special advisory panels as it considers necessary, with each such panel consisting of representatives of industry, academia, and other members of the private sector, not to exceed ten members, and being limited in scope of subject and duration; and

(2) to establish and convene such Federal interagency committees as it considers necessary in carrying out the intent of this chapter.

(c) Collaboration and cooperation of Council and Federal agencies with responsibilities related to materials

In seeking to achieve the goals of this chapter and related Acts, the Council and other Federal departments and agencies with responsibilities or jurisdiction related to materials or materials policy, including the National Security Council, the Council on Environmental Quality, the Office of Management and Budget, and the Office of Science and Technology Policy, shall work collaboratively and in close cooperation.

(Pub. L. 98-373, title II, § 204, July 31, 1984, 98 Stat. 1250.)

REFERENCES IN TEXT

The National Materials and Minerals Policy, Research and Development Act of 1980, referred to in subsec. (a)(3), (8), and (9), is Pub. L. 96-479, Oct. 21, 1980, 94 Stat. 2305, which is classified generally to chapter 28 (§ 1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1804 of this title.

§ 1804. Program and policy for advanced materials research and technology

(a) Functions of Council

In addition to the responsibilities described in section 1803 of this title, the Council shall be responsible for coordination with appropriate agencies and departments of the Federal Government relative to Federal materials research and development policies and programs. Such policies and programs shall be consistent with the policies and goals described in the National Materials and Minerals Policy, Research and Development Act of 1980 [30 U.S.C. 1601 et seq.]. In carrying out this responsibility the Council shall—

(1)(A) establish a national Federal program plan for advanced materials research and development, recommend the designation of the key responsibilities for carrying out such research, and to provide [2] for coordination of this plan with the Office of Science and Technology Policy, the Office of Management and Budget, and such other Federal offices and agencies as may be deemed appropriate, and (B) annually review such plan and report thereon to the Congress;

(2) review annually the materials research, development, and technology authorization requests and budgets of all Federal agencies and departments; and in this activity the Council shall make recommendations, in cooperation with the Office of Science and Technology Policy, the Office of Management and Budget, and all other Federal offices and agencies deemed appropriate, to ensure close coordination of the goals and directions of such programs with the policies determined by the Council; and

(3) assist the Office of Science and Technology Policy in the preparation of such long-range materials assessments and reports as may be required by the National Materials and Minerals Policy, Research and Development Act of 1980, and assist other Federal entities in the preparation of analyses and reporting relating to critical and advanced materials.

(b) Review by Office of Management and Budget

The Office of Management and Budget, in reviewing the materials research, development, and technology authorization requests of the various Federal departments and agencies for any fiscal year, and the recommendations of the Council, shall consider all of such requests and recommendations as an integrated, coherent, multiagency request which shall be reviewed by the Office of Management and Budget for its adherence to the national Federal materials program plan in effect for such fiscal year under subsection (a) of this section.

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[2] So in original. Probably should be "and provide".

(Pub. L. 98-373, title II, § 205, July 31, 1984, 98 Stat. 1251.)

REFERENCES IN TEXT

The National Materials and Minerals Policy, Research and Development Act of 1980, referred to in subsec. (a), is Pub. L. 96-479, Oct. 21, 1980, 94 Stat. 2305, which is classified generally to chapter 28 (§ 1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

§ 1805. Innovation in basic and advanced materials industries

(a) Centers for Industrial Technology; recommendations for establishment; activities

(1) In order to promote the use of more cost-effective, advanced technology and other means of providing for innovation and increased productivity within the basic and advanced materials industries, the Council shall evaluate and make recommendations regarding the establishment of Centers for Industrial Technology as provided in Public Law 96-480 (15 U.S.C. 3705).

(2) The activities of such Centers shall focus on, but not be limited to, the following generic materials areas: corrosion; welding and joining of materials; advanced processing and fabrication technologies; microfabrication; and fracture and fatigue.

(b) Mechanism for dissemination of data; establishment; computerization

In order to promote better use and innovation of materials in design for improved safety or efficiency, the Council shall establish in cooperation with the appropriate Federal agencies and private industry, an effective mechanism for disseminating materials property data in an efficient and timely manner. In carrying out this responsibility, the Council shall consider, where appropriate, the establishment of a computerized system taking into account, to the maximum extent practicable, existing available resources.

(Pub. L. 98-373, title II, § 206, July 31, 1984, 98 Stat. 1252.)

REFERENCES IN TEXT

Public Law 96-480, referred to in subsec. (a)(1), is Pub. L. 96-480, Oct. 21, 1980, 94 Stat. 2311, known as the Stevenson-Wydler Technology Innovation Act of 1980, which is classified generally to chapter 63 (§ 3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

§ 1806. Compensation of members and reimbursement

(a) Basic pay for levels II and III of Executive Schedule

The Chairman of the Council, if not otherwise a paid officer or employee of the Federal Government, shall be paid at the rate not to exceed the rate of basic pay provided for level II of the Executive Schedule. The other members of the Council, if not otherwise paid officers or employees of the Federal Government, shall be paid at a per diem rate comparable to the rate not to exceed the rate of basic pay provided for level III of the Executive Schedule.

(b) Reimbursement of travel expenses for attendance at meetings

Subject to existing law and regulations governing conflicts of interest, the Council may accept reimbursement from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, or from any State or local government, for reasonable travel expenses incurred by any member or employee of the Council in connection with such member's or employee's attendance at any conference, seminar, or similar meeting.

(Pub. L. 98-373, title II, § 207, July 31, 1984, 98 Stat. 1252.)

REFERENCES IN TEXT

Levels II and III of the Executive Schedule, referred to in subsec. (a), are set out in sections 5313 and 5314, respectively, of Title 5, Government Organization and Employees.

§ 1807. Executive Director

(a) Function, appointment, and compensation

There shall be an Executive Director (hereinafter referred to as the "Director"), who shall be chief administrator of the Council. The Director shall be appointed by the Council full time and shall be paid at the rate not to exceed the rate of basic pay provided for level III of the Executive Schedule.

(b) Personnel and services of experts and consultants; rules and regulations

The Director is authorized—

(1) to employ such personnel as may be necessary for the Council to carry out its duties and functions under this chapter, but not to exceed twelve compensated employees;

(2) to obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5; and

(3) to develop, subject to approval by the Council, rules and regulations necessary to carry out the purposes of this chapter.

(c) Consultation with other groups; utilization of public and private services, facilities, and information

In exercising his responsibilities and duties under this chapter, the Director—

(1) may consult with representatives of academia, industry, labor, State and local governments, and other groups; and

(2) shall utilize to the fullest extent possible the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals.

(d) Utilization of voluntary and uncompensated labor and services

Notwithstanding section 1342 of title 31, the Council may utilize voluntary and uncompensated labor and services in carrying out its duties and functions.

(Pub. L. 98-373, title II, § 208, July 31, 1984, 98 Stat. 1253.)

References in Text

Level III of the Executive Schedule, referred to in subsec. (a), is set out in section 5314 of Title 5, Government Organization and Employees.

Codification

In subsec. (d), "section 1342 of title 31" was substituted for "section 367(b) of the Revised Statutes (31 U.S.C. 665(b))" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 1808. Responsibilities and duties of Director

In carrying out his functions the Director shall assist and advise the Council on policies and programs of the Federal Government affecting critical and advanced materials by—

(1) providing the professional and administrative staff and support for the Council;

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, including research and development, which affect critical materials availability and needs;

(3) cataloging, as fully as possible, research and development activities of the Government, private industry, and public and private institutions; and

(4) initiating Government and private studies and analyses, including those to be conducted by or under the auspices of the Council, designed to advance knowledge of critical or advanced materials issues and develop alternative proposals, including research and development, to resolve national critical materials problems.

(Pub. L. 98-373, title II, § 209, July 31, 1984, 98 Stat. 1253.)

§ 1809. General authority of Council

The Council is authorized—

(1) to establish such internal rules and regulations as may be necessary for its operation;

(2) to enter into contracts and acquire materials and supplies necessary for its operation to such extent or in such amounts as are provided for in appropriation Acts;

(3) to publish, consistent with title 44, or arrange to publish critical materials information that it deems to be useful to the public and private industry to the extent that such publication is consistent with the national defense and economic interest;

(4) to utilize such services or personnel as may be provided to the Council on a reimbursable basis by any agency of the United States; and

(5) to exercise such authorities as may be necessary and incidental to carrying out its responsibilities and duties under this chapter.

(Pub. L. 98-373, title II, § 210, July 31, 1984, 98 Stat. 1253.)

§ 1810. Authorization of appropriations

There are hereby authorized to be appropriated to carry out the provisions of this chapter a sum not to exceed $500,000 for the fiscal year ending September 30, 1985, and such sums as may be necessary thereafter: *Provided*, That the authority provided for in this chapter shall expire on September 30, 1990, unless otherwise authorized by Congress.

(Pub. L. 98-373, title II, § 211, July 31, 1984, 98 Stat. 1254.)

§ 1811. "Materials" defined

As used in this chapter, the term "materials" has the meaning given it by section 1601(b) of this title.

(Pub. L. 98-373, title II, § 212, July 31, 1984, 98 Stat. 1254.)

TITLE 31—MONEY AND FINANCE

This title was enacted by Pub. L. 97-258, § 1, Sept. 13, 1982, 96 Stat. 877

REPEALS

Section 6(a) of Pub. L. 98-216, Feb. 14, 1984, 98 Stat. 7, provided that: "The repeal of a law enacted by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal."

Section 6(b) of Pub. L. 98-216, Feb. 14, 1984, 98 Stat. 7, repealed specified laws, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before Feb. 14, 1984.

Section 4(a) of Pub. L. 97-452, Jan. 12, 1983, 96 Stat. 2479, provided that: "The repeal of a law enacted by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal."

Section 4(b) of Pub. L. 97-452, Jan. 12, 1983, 96 Stat. 2480, repealed specified laws, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before Jan. 12, 1983.

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 98-216; LEGISLATIVE PURPOSE; INCONSISTENT PROVISIONS; CORRESPONDING PROVISIONS; SAVINGS AND SEPARABILITY OF PROVISIONS

Pub. L. 98-216, § 5, Feb. 14, 1984, 98 Stat. 7, provided that:

"(a) Sections 1-4 of this Act restate, without substantive change, laws enacted before April 1, 1983, that were replaced by those sections. Sections 1-4 may not be construed as making a substantive change in the laws replaced. Laws enacted after March 31, 1983, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

"(b) A reference to a law replaced by sections 1-4 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

"(c) An order, rule, or regulation in effect under a law replaced by sections 1-4 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

"(d) An action taken or an offense committed under a law replaced by sections 1-4 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

"(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline of the provision.

"(f) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications."

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 26 section 6050I; title 40 section 490b.

SUBTITLE I—GENERAL

CHAPTER 3—DEPARTMENT OF THE TREASURY

SUBCHAPTER II—ADMINISTRATIVE

Sec.	
332.	Miscellaneous administrative authority.

AMENDMENTS

1984—Pub. L. 98-302, § 3(b), May 25, 1984, 98 Stat. 218, added item 332.

SUBCHAPTER I—ORGANIZATION

§ 301. Department of the Treasury

[*See main edition for text of* (*a*) *to* (*c*)]

(d) The Department has 2 Under Secretaries, 2 Deputy Under Secretaries, and a Treasurer of the United States, appointed by the President, by and with the advice and consent of the Senate. The Department also has a Fiscal Assistant Secretary appointed by the Secretary. They shall carry out duties and powers prescribed by the Secretary. The President may designate one Under Secretary as Counselor. When appointing each Deputy Under Secretary, the President may designate the Deputy Under Secretary as an Assistant Secretary.

(e) The Department has 7 Assistant Secretaries appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretaries shall carry out duties and powers prescribed by the Secretary. The Assistant Secretaries appointed under this subsection are in addition to the Assistant Secretaries appointed under subsection (d) of this section.

[*See main edition for text of* (*f*) *and* (*g*)]

(As amended Pub. L. 98-594, § 1(a), Oct. 30, 1984, 98 Stat. 3129; Pub. L. 99-190, § 141, Dec. 19, 1985, 99 Stat. 1324.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-190 substituted "2 Under Secretaries" for "an Under Secretary, an Under Secretary for Monetary Affairs", and "The President may designate one Under Secretary as Counselor" for "When appointing the Under Secretary, the President may designate the Under Secretary as Counselor".

1984—Subsec. (e). Pub. L. 98-594 substituted "7" for "5".

SUBCHAPTER II—ADMINISTRATIVE

§ 321. General authority of the Secretary

[*See main edition for text of* (*a*) *to* (*c*)] (d)(1) The Secretary of the Treasury may accept, hold, administer, and use gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department of the Treasury. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed on order of the Secretary of the Treasury. Property accepted under this paragraph, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(2) For purposes of the Federal income, estate, and gift taxes, property accepted under paragraph (1) shall be considered as a gift or bequest to or for the use of the United States.

(3) The Secretary of the Treasury may invest and reinvest the fund in public debt securities with maturities suitable for the needs of the fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities. Income accruing from the securities, and from any other property accepted under paragraph (1), shall be deposited to the credit of the fund, and shall be disbursed on order of the Secretary of the Treasury for purposes as nearly as possible in accordance with the terms of the gifts or bequests.

(4) The Secretary of the Treasury shall, not less frequently than annually, make a public disclosure of the amount (and sources) of the gifts and bequests received under this subsection, and the purposes for which amounts in the separate fund established under this subsection are expended.

(As amended Pub. L. 98-369, div. A, title IV, § 445, July 18, 1984, 98 Stat. 816.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 added subsec. (d).

§ 322. Working capital fund

(a) The Department of the Treasury has a working capital fund. Amounts in the fund are available for expenses of operating and maintaining common administrative services of the Department that the Secretary of the Treasury, with the approval of the Director of the Office of Management and Budget, decides may be carried out more advantageously and more economically as central services.

[*See main edition for text of* (b) *to* (d)]

(As amended Pub. L. 98-369, div. A, title IV, § 442, July 18, 1984, 98 Stat. 816.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 struck out provision placing a $1,000,000 limitation on the fund.

§ 324. Disposing and extending the maturity of obligations

[*See main edition for text of* (a)]

(b) The Secretary may dispose or extend the maturity of obligations under subsection (a) of this section in the way, in amounts, at prices (for cash, obligations, property, or a combination of cash, obligations, or property), and on conditions the Secretary considers advisable and in the public interest.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-369, div. A, title IV, § 444, July 18, 1984, 98 Stat. 816.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 struck out provision that the Secretary could not dispose of obligations of one issuer, held by the Secretary at one time, having on the date of disposal a total face or par value of more than $1,000,000 or, if no-par obligations, a stated or book value of more than $1,000,000.

§ 326. Availability of appropriations for certain expenses

[*See main edition for text of* (a)]

(b) The Secretary may approve reimbursement to agents on protective missions for subsistence expenses authorized by law without regard to rates and amounts established under section 5702 of title 5.

(As amended Pub. L. 99-234, title I, § 107(e), Jan. 2, 1986, 99 Stat. 1759.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-234 substituted "rates and amounts" for "rates".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-234 effective (1) on the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as a note under section 5701 of Title 5, Government Organization and Employees.

§ 330. Practice before the Department

[*See main edition for text of* (a) *and* (b)]

(c) After notice and opportunity for a hearing to any appraiser with respect to whom a penalty has been assessed under section 6701(a) of the Internal Revenue Code of 1954, the Secretary may—

(1) provide that appraisals by such appraiser shall not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service, and

(2) bar such appraiser from presenting evidence or testimony in any such proceeding.

(As amended Pub. L. 98-369, div. A, title I, § 156(a), July 18, 1984, 98 Stat. 695.)

REFERENCES IN TEXT

Section 6701(a) of the Internal Revenue Code of 1954, referred to in subsec. (c), is classified to section 6701(a) of Title 26, Internal Revenue Code.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 156(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall apply to penalties assessed after the date of the enactment of this Act [July 18, 1984]."

§ 332. Miscellaneous administrative authority

The Secretary of the Treasury may to the extent provided in advance by appropriation Acts—

(1) contract for the temporary or intermittent services of experts or consultants as authorized by section 3109 of title 5, United States Code, at rates not to exceed the per diem equivalent to the rate for GS-18;

(2) contract with and reimburse the Department of State for health and medical services for employees of the Department of the Treasury and their dependents serving in foreign countries;

(3) provide for official functions, and reception and representation activities;

(4) maintain, repair, and clean uniforms furnished by the Department of the Treasury to uniformed employees;

(5) provide athletic and related activities for students at the Federal Law Enforcement Training Center, Glynco, Georgia;

(6) install and maintain fencing, lighting, guard booths, and other facilities as necessary for the performance of protective functions of the Department of the Treasury on property not owned by or under jurisdiction and control of the United States Government and, subsequently, to remove the facilities therefrom;

(7) enter into reciprocal assistance agreements with State and local law enforcement agencies and, in connection with the agreements and otherwise, train employees of those agencies, when necessary, with or without reimbursement;

(8) provide laboratory assistance to State and local law enforcement agencies, with or without reimbursement;

(9) obtain insurance for official motor vehicles operated in foreign countries; and

(10)(A) when necessary for the performance of official business—

(i) acquire in foreign countries real property by lease for periods not greater than 10 years and personal property for use in foreign countries by purchase, lease, or otherwise, and

(ii) manage, maintain, repair, improve, and insure by purchase of commercial insurance policies properties referred to in clause (i), and

(B) when appropriate, dispose of (by sale, rent, transfer, or otherwise) properties referred to in subparagraph (A)(i).

(Added Pub. L. 98-302, § 3(a), May 25, 1984, 98 Stat. 217.)

REFERENCES IN TEXT

GS-18, referred to in par. (2), is set out under section 5332 of Title 5, Government Organization and Employees.

CHAPTER 5—OFFICE OF MANAGEMENT AND BUDGET

SUBCHAPTER I—ORGANIZATION

§ 501. Office of Management and Budget

EX. ORD. NO. 12479. MANAGEMENT REFORM IN THE FEDERAL GOVERNMENT

Ex. Ord. No. 12479, May 24, 1984, 49 F.R. 22243, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to coordinate and implement policies with respect to management reform in the Federal government, it is hereby ordered as follows:

SECTION 1. *Establishment of the President's Council on Management Improvement.*

(a) There is established as an interagency committee the President's Council on Management Improvement.

(b) The Council shall be composed of the following members:

(1) The Deputy Director of the Office of Management and Budget, who shall be Chairman of the Council;

(2) The Assistant Secretary for Administration, Department of Agriculture;

(3) The Assistant Secretary for Administration, Department of Commerce;

(4) The Assistant Secretary (Comptroller), Department of Defense;

(5) The Deputy Under Secretary for Management, Department of Education;

(6) The Assistant Secretary for Management and Administration, Department of Energy;

(7) The Assistant Secretary for Management and Budget, Department of Health and Human Services;

(8) The Assistant Secretary for Administration, Department of Housing and Urban Development;

(9) The Assistant Secretary for Policy, Budget and Administration, Department of the Interior;

(10) The Assistant Attorney General for Administration, Department of Justice;

(11) The Assistant Secretary for Administration and Management, Department of Labor;

(12) The Assistant Secretary for Administration, Department of State;

(13) The Assistant Secretary for Administration, Department of Transportation;

(14) The Assistant Secretary for Administration, Department of the Treasury;

(15) The Assistant to the Administrator for Management, Agency for International Development;

(16) The Assistant Administrator for Administration and Resources Management, Environmental Protection Agency;

(17) The Deputy Administrator, General Services Administration;

(18) The Associate Administrator for Management, National Aeronautics and Space Administration;

(19) The Associate Director for Management, Office of Management and Budget;

(20) The Associate Director for Administration, Office of Personnel Management;

(21) The Associate Deputy Administrator for Resource Management, Small Business Administration;

(22) The Associate Deputy Administrator for Information and Resources Management, Veterans' Administration;

(23) The Assistant to the President for Policy Development, or a Federal employee designated by that official, to advise on management and administration; and

(24) The Assistant to the President for Presidential Personnel, or a Federal employee designated by that official, to advise on human resource development.

SEC. 2. *Functions of the Council.* The Council shall:

(a) develop and oversee the implementation of improved management and administrative systems for government-wide application;

(b) formulate long-range plans to promote improvements in the management and administrative systems of the Federal government;

(c) identify specific department and agency management reforms applicable to other agencies and assist in their implementation;

(d) work to resolve interagency management problems; and

(e) work with the Office of Management and Budget, the General Services Administration and the Office of Personnel Management to ensure timely implementation and coordination of their policies.

In conducting these functions, the Council shall not interfere with existing lines of authority and responsibility in the departments and agencies.

SEC. 3. *Responsibilities of the Chairman.* The Chairman shall:

(a) establish, in consultation with the members of the Council, procedures for the Council and establish the agenda for Council activities;

(b) on behalf of the Council, report to the President, the goals and the results of the Council on management projects shall be reported to the President through the Cabinet Council on Management and Administration; the Chairman shall advise the Council with respect to the reaction of the President and the Cabinet Council to its activities;

(c) provide agency heads with summary reports of the activities of the Council;

(d) establish such committees of the Council, including an executive committee, as may be deemed necessary or appropriate for the efficient conduct of Council functions; committees of the Council may act for the Council in those areas that affect the membership of the committee;

(e) appoint Vice-Chairmen to one-year terms to assist the Chairman in representing the Council and perform duties as determined by the Chairman;

(f) appoint other Federal officials as at-large members to one-year terms to provide special expertise to the Council and perform duties as determined by the Chairman; and

(g) be supported by the Associate Director for Management of the Office of Management and Budget, who shall advise and assist the Chairman in the execution of the entire range of responsibilities set forth above and act for the Chairman in his absence.

SEC. 4. *Administrative Provisions.*

(a) The Director of the Office of Management and Budget shall provide the Council with such administrative support as may be necessary for the performance of its functions.

(b) The head of each agency represented on the Council shall provide its representative with such administrative support as may be necessary, in accordance with law, to enable the agency representative to carry out his or her responsibilities.

RONALD REAGAN.

CHAPTER 7—GENERAL ACCOUNTING OFFICE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3555 of this title.

SUBCHAPTER II—GENERAL DUTIES AND POWERS

§ 716. Availability of information and inspection of records

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3523 of this title; title 44 section 3519; title 50 App. section 2411.

SUBCHAPTER III—PERSONNEL

§ 731. General

[See main edition for text of (a)]

(b) The Comptroller General may establish for appropriate officers and employees a merit pay system consistent with section 5401 of title 5.

[See main edition for text of (c) and (d)]

(e) The Comptroller General may procure the services of experts and consultants under section 3109 of title 5 at rates not in excess of the maximum daily rate for GS-18 under section 5332 of such title, except that the services of not more than—

(1) 15 experts and consultants may be procured for not more than 3 years; and

[See main edition for text of (2)]

(As amended Pub. L. 98-326, § 1(a), June 22, 1984, 98 Stat. 269; Pub. L. 98-615, title II, § 204(b), Nov. 8, 1984, 98 Stat. 3216.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-615 substituted "section 5401 of title 5" for "section 5401(a) of title 5".

Subsec. (e). Pub. L. 98-236 substituted "title 5 at rates not in excess of the maximum daily rate for GS-18 under section 5332 of such title" for "title 5" in provisions preceding par. (1) and "15" for "10" in par. (1).

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of Title 5, Government Organization and Employees.

Section 2 of Pub. L. 98-326 provided that: "The amendments made by this Act [amending sections 731 to 733 of this title] shall take effect beginning on October 1, 1984."

§ 732. Personnel management system

[See main edition for text of (a) and (b)]

(c) Under the personnel management system—

[See main edition for text of (1) to (3)]

(4) the pay schedule for officers and employees of the Office may provide that the basic pay rates for not more than 119 positions may be at rates not more than the highest rate for GS-18, less the number of positions in the General Accounting Office Senior Executive Service under section 733 of this title (except positions included in the Service under section 733(c) of this title); and

[See main edition for text of (5); (d) to (g)]

(As amended Pub. L. 98-326, § 1(b), June 22, 1984, 98 Stat. 269.)

AMENDMENTS

1984—Subsec. (c)(4). Pub. L. 98-326 substituted "119" for "100".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-326 effective Oct. 1, 1984, see section 2 of Pub. L. 98-326, set out as a note under section 731 of this title.

§ 733. Senior Executive Service

[See main edition for text of (a) and (b)]

(c) The Office Senior Executive Service may include positions referred to in section 731(c), (d), (e)(1), or (e)(2) of this title.

[See main edition for text of (d)]

(As amended Pub. L. 98-326, § 1(c), June 22, 1984, 98 Stat. 269.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-326 added "(e)(1)," after "(d),".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-326 effective Oct. 1, 1984, see section 2 of Pub. L. 98-326, set out as a note under section 731 of this title.

§ 734. Assignments and details to Congress

The Comptroller General may assign or detail an officer or employee of the General Accounting Office to full-time continuous duty with a committee of Congress for not more than one year.

(As amended Pub. L. 98-367, title I, § 8, July 17, 1984, 98 Stat. 475.)

AMENDMENTS

1984—Pub. L. 98-367 struck out designation of provisions as "(a)" and struck out subsec. (b) which read as follows: "A committee of the Senate or a joint committee of Congress for which the Secretary of the Senate disburses amounts shall reimburse the Comptroller General for the pay of each officer or employee of the Office for the time the officer or employee is assigned or detailed to the committee or joint committee."

SUBCHAPTER IV—PERSONNEL APPEALS BOARD

§ 755. Judicial review

A final decision under section 753(a)(1)-(3), (6), or (7) of this title may be reviewed by the United States Court of Appeals for the District of Columbia Circuit or by the court of appeals of the United States for the circuit in which the petitioner resides. Chapter 158 of title 28 applies to a review under this subchapter, except the petition for review shall be filed by the 30th day after the petitioner receives notice of the decision. The court shall set aside a final decision the court decides is—

[See main edition for text of (1) to (3)]

(As amended Pub. L. 98-216, § 1(1), Feb. 14, 1984, 98 Stat. 3.)

HISTORICAL AND REVISION NOTES

1984 ACT

This clarifies section 755 by conforming it more closely to the language of the source provision of the section.

AMENDMENTS

1984—Pub. L. 98-216 substituted "A final decision under section 753(a)(1)-(3), (6), or (7) of this title may be reviewed by the United States Court of Appeals for the District of Columbia Circuit or by the court of appeals of the United States for the circuit in which the petitioner resides" for "A person may apply for review of a final decision under section 753(a)(1)-(3), (6), or (7) of this title by filing a petition for review with the United States Court of Appeals for the District of Columbia Circuit or with the court of appeals of the United States for the circuit in which the person resides" in provisions preceding par. (1).

SUBTITLE II—THE BUDGET PROCESS

CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1512, 9109 of this title; title 7 sections 934, 1932; title 19 section 2232; title 42 sections 1487, 1962b-6, 8107, 10156, 10222.

§ 1101. Definitions

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-501, title II, § 201, Oct. 19, 1984, 98 Stat. 2324, provided that: "This title [amending section 1105 of this title and enacting a provision set out as a note under section 1105 of this title] may be cited as the 'Federal Capital Investment Program Information Act of 1984'."

§ 1104. Budget and appropriations authority of the President

[See main edition for text of (a) and (b)]

(c) When the President makes a basic change in the form of the budget, the President shall submit with the budget information showing where items in the budget for the prior fiscal year are contained in the present budget. However, the President may change the functional categories in the budget only in consultation with the Committees on Appropriations and on the Budget of both Houses of Congress. Committees of the House of Representatives and Senate shall receive prompt notification of all such changes.

[See main edition for text of (d) and (e)]

(As amended Pub. L. 99-177, title II, § 224, Dec. 12, 1985, 99 Stat. 1060.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-177 added provisions relating to notice to Committees of the House of Representatives and Senate.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of Title 2, The Congress.

§ 1105. Budget contents and submission to Congress

(a) On or before the first Monday after January 3 of each year (or on or before February 5 in 1986), the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

[*See main edition for text of* (*1*) *to* (*25*);
(*b*) *to* (*d*)]

(e)(1) The President shall submit with materials related to each budget transmitted under subsection (a) on or after January 1, 1985, an analysis for the ensuing fiscal year that shall identify requested appropriations or new obligational authority and outlays for each major program that may be classified as a public civilian capital investment program and for each major program that may be classified as a military capital investment program, and shall contain summaries of the total amount of such appropriations or new obligational authority and outlays for public civilian capital investment programs and summaries of the total amount of such appropriations or new obligational authority and outlays for military capital investment programs. In addition, the analysis under this paragraph shall contain—

(A) an estimate of the current service levels of public civilian capital investment and of military capital investment and alternative high and low levels of such investments over a period of ten years in current dollars and over a period of five years in constant dollars;

(B) the most recent assessment analysis and summary, in a standard format, of public civilian capital investment needs in each major program area over a period of ten years;

(C) an identification and analysis of the principal policy issues that affect estimated public civilian capital investment needs for each major program; and

(D) an identification and analysis of factors that affect estimated public civilian capital investment needs for each major program, including but not limited to the following factors:

(i) economic assumptions;

(ii) engineering standards;

(iii) estimates of spending for operation and maintenance;

(iv) estimates of expenditures for similar investments by State and local governments; and

(v) estimates of demand for public services derived from such capital investments and estimates of the service capacity of such investments.

To the extent that any analysis required by this paragraph relates to any program for which Federal financial assistance is distributed under a formula prescribed by law, such analysis shall be organized by State and within each State by major metropolitan area if data are available.

(2) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classified as a public civilian capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for a number of years and is not classified as a military capital investment under paragraph (3). Such assets shall include (but not be limited to)—

(A) roadways or bridges,

(B) airports or airway facilities,

(C) mass transportation systems,

(D) wastewater treatment or related facilities,

(E) water resources projects,

(F) hospitals,

(G) resource recovery facilities,

(H) public buildings,

(I) space or communications facilities,

(J) railroads, and

(K) federally assisted housing.

(3) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classified as a military capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for purposes of national defense and security for a number of years. Such assets shall include military bases, posts, installations, and facilities.

(4) Criteria and guidelines for use in the identification of public civilian and military capital investments, for distinguishing between public civilian and military capital investments, and for distinguishing between major and nonmajor capital investment programs shall be issued by the Director of the Office of Management and Budget after consultation with the Comptroller General and the Congressional Budget Office. The analysis submitted under this subsection shall be accompanied by an explanation of such criteria and guidelines.

(5) For purposes of this subsection—

(A) the term "construction" includes the design, planning, and erection of new structures and facilities, the expansion of existing structures and facilities, the reconstruction of a project at an existing site or adjacent to an existing site, and the installation of initial and replacement equipment for such structures and facilities;

(B) the term "acquisition" includes the addition of land, sites, equipment, structures, facilities, or rolling stock by purchase, lease-purchase, trade, or donation; and

(C) the term "rehabilitation" includes the alteration of or correction of deficiencies in an existing structure or facility so as to extend the useful life or improve the effectiveness of the structure or facility, the modernization or replacement of equipment at an existing structure or facility, and the modernization of, or replacement of parts for, rolling stock.

(f)(1) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared on the basis of the best estimates then available, in such a manner as to ensure that the deficit for such fiscal year shall not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7) of section 3 of the Congressional Budget and Impoundment Control Act of 1974.

(2) The deficit set forth in the budget so transmitted for any fiscal year shall not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7) of section 3 of the Congressional Budget and Impoundment Control Act of 1974, with budget outlays and Federal revenues at such levels as the President may consider most desirable and feasible.

(3) Paragraphs (1) and (2) shall not apply if a declaration of war by the Congress is in effect.

(As amended Pub. L. 98-501, title II, § 203, Oct. 19, 1984, 98 Stat. 2324; Pub. L. 99-177, title II, § 241, Dec. 12, 1985, 99 Stat. 1063.)

REFERENCES IN TEXT

Paragraph (7) of section 3 of the Congressional Budget and Impoundment Control Act of 1974, referred to in subsec. (f)(1) and (2), is classified to section 622(7) of Title 2, The Congress.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-177, § 241(a), substituted "On or before the first Monday after January 3 of each year (or on or before February 5 in 1986)" for "During the first 15 days of each regular session of Congress".

Subsec. (f). Pub. L. 99-177, § 241(b), added subsec. (f).

1984—Subsec. (e). Pub. L. 98-501 added subsec. (e).

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Amendment of subsec. (a) and enactment of subsec. (f) of this section by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, but with subsec. (f) to expire Sept. 30, 1991, see section 275(a)(1), (b)(2)(C) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of Title 2, The Congress.

TWO-YEAR BUDGET CYCLE FOR DEPARTMENT OF DEFENSE

Pub. L. 99-145, title XIV, § 1405, Nov. 8, 1985, 99 Stat. 744, provided that:

"(a) FINDINGS.—The Congress finds that the programs and activities of the Department of Defense could be more effectively and efficiently planned and managed if funds for the Department were provided on a two-year cycle rather than annually.

"(b) REQUIREMENT FOR TWO-YEAR BUDGET PROPOSAL.—The President shall include in the budget submitted to the Congress pursuant to section 1105 of title 31, United States Code, for fiscal year 1988 a single proposed budget for the Department of Defense and related agencies for fiscal years 1988 and 1989. Thereafter, the President shall submit a proposed two-year budget for the Department of Defense and related agencies every other year.

"(c) REPORT.—Not later than April 1, 1986, the Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a report containing the Secretary's views on the following:

"(1) The advantages and disadvantages of operating the Department of Defense and related agencies on a two-year budget cycle.

"(2) The Secretary's plans for converting to a two-year budget cycle.

"(3) A description of any impediments (statutory or otherwise) to converting the operations of the Department of Defense and related agencies to a two-year budget cycle beginning with fiscal year 1988."

FEDERAL CAPITAL INVESTMENT PROGRAM: CONGRESSIONAL STATEMENT OF PURPOSES

Section 202 of Pub. L. 98-501 provided that: "The purposes of this title [amending this section and enacting provisions set out as notes under this section and section 1101 of this title] are—

"(1) to provide budget projections for major Federal capital investment programs;

"(2) to provide a summary of the most recent needs assessment analyses for these programs;

"(3) to provide information on the sensitivity of the needs estimates to major policy issues and technical and economic variables;

"(4) to assist the planning capabilities of State and local governments on the assessment of major capital investment programs; and

"(5) to improve legislative oversight over Federal capital investment programs."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1104, 1106, 1107, 9103, 9109 of this title; title 2 sections 358, 622, 655, 902, 904; title 5 section 1205; title 10 sections 136a, 139, 1465, 2006, 2859; title 20 sections 241-1, 1070e-1; title 29 section 762a; title 38 sections 210, 4118, 5010, 5011; title 39 section 2009; title 50 section 98h-2.

§ 1106. Supplemental budget estimates and changes

[See main edition for text of (a)]

(b) Before July 16 of each year, the President shall submit to Congress a statement of changes in budget authority requested, estimated budget outlays, and estimated receipts for the fiscal year for which the budget is submitted (including prior changes proposed for the executive branch of the Government) that the President decides are necessary and appropriate based on current information. The statement shall include the effect of those changes on the information submitted under section 1105(a)(1)–(14) and (b) of this title and shall include supporting information as practicable. The statement submitted before July 16 may be included in the information submitted under subsection (a)(1) of this section.

(c) Subsection (f) of section 1105 shall apply to revisions and supplemental summaries submitted under this section to the same extent that such subsection applies to the budget submitted under section 1105(a) to which such revisions and summaries relate.

(As amended Pub. L. 99-177, title II, § 242, Dec. 12, 1985, 99 Stat. 1063.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-177, § 242(a), struck out "April 11 and" before "July 16".

Subsec. (c). Pub. L. 99-177, § 242(b), added subsec. (c).

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Amendment of subsec. (b) and enactment of subsec. (c) of this section by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, but with subsec. (c) to expire Sept. 30, 1991, see section 275(a)(1), (b)(2)(C) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 904.

§ 1108. Preparation and submission of appropriations requests to the President

Section Referred to in Other Sections

This section is referred to in section 3512 of this title; title 19 section 2345; title 49 App. section 1602.

§ 1109. Current programs and activities estimates

(a) On or before the first Monday after January 3 of each year (on or before February 5 in 1986), the President shall submit to both Houses of Congress the estimated budget outlays and proposed budget authority that would be included in the budget for the following fiscal year if programs and activities of the United States Government were carried on during that year at the same level as the current fiscal year without a change in policy. The President shall state the estimated budget outlays and proposed budget authority by function and subfunction under the classifications in the budget summary table under the heading "Budget Authority and Outlays by Function and Agency", by major programs in each function, and by agency. The President also shall include a statement of the economic and program assumptions on which those budget outlays and budget authority are based, including inflation, real economic growth, and unemployment rates, program caseloads, and pay increases.

(b) The Joint Economic Committee shall review the estimated budget outlays and proposed budget authority and submit an economic evaluation of the budget outlays and budget authority to the Committees on the Budget of both Houses before March 1 of each year.

(As amended Pub. L. 99-177, title II, § 222, Dec. 12, 1985, 99 Stat. 1060.)

Amendments

1985—Subsec. (a). Pub. L. 99-177, § 222(a), substituted "On or before the first Monday after January 3 of each year (on or before February 5 in 1986)" for "Before November 11 of each year".

Subsec. (b). Pub. L. 99-177, § 222(b), substituted "March 1" for "January 1".

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of Title 2, The Congress.

CHAPTER 13—APPROPRIATIONS

SUBCHAPTER I—GENERAL

§ 1301. Application

Short Title of 1984 Amendment

Pub. L. 98-359, § 1, July 13, 1984, 98 Stat. 402, provided: "That this Act [amending section 1322 of this title] may be cited as the 'Postal Savings System Statute of Limitations Act'."

§ 1304. Judgments, awards, and compromise settlements

Section Referred to in Other Sections

This section is referred to in section 3723 of this title; title 10 sections 2733, 2734; title 16 sections 79g, 460bb-2; title 28 section 1961; title 32 sections 334, 715; title 40 section 759; title 41 section 612.

§ 1305. Miscellaneous permanent appropriations

Necessary amounts are appropriated for the following:

[See main edition for text of (1) to (6)]

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING

(7) to make payments required under contracts made under section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c).

COLLEGE HOUSING GRANTS

(8) to make payments required under contracts made under title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749 et seq.).

RENT SUPPLEMENT PROGRAM

(9) to make payments required under contracts under section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. 1701s).

HOMEOWNERSHIP AND RENTAL HOUSING ASSISTANCE

(10) to make payments required under contracts under sections 235 and 236, respectively, of the National Housing Act, as amended (12 U.S.C. 1715z, 1715z-1).

(As amended Pub. L. 98-371, title I, § 101, July 18, 1984, 98 Stat. 1220.)

References in Text

Section 103(b) of the Housing Act of 1949 (42 U.S.C. 1453(b)), referred to in par. (5), was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated the authority to make grants or loans under title I of that Act (42 U.S.C. 1450 et seq.) after Jan. 1, 1975.

The Housing Act of 1950, referred to in par. (8), is act Apr. 20, 1950, ch. 94, 64 Stat. 48, as amended. Title IV of the Housing Act of 1950 is classified generally to subchapter IX (§ 1749 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title of 1950 Amendment note set out under section 1701 of Title 12 and Tables.

Section 101 of the Housing and Urban Development Act of 1965, as amended, referred to in par. (9), is section 101 of Pub. L. 89-117, title I, Aug. 10, 1965, 79 Stat. 451, which enacted section 1701s of Title 12, and amended sections 1451 and 1465 of this title.

Amendments

1984—Pars. (7) to (10). Pub. L. 98-371 added pars. (7) to (10).

§ 1306. Use of foreign credits

Section Referred to in Other Sections

This section is referred to in section 3343 of this title; title 7 sections 1704, 1708; title 16 section 1537; title 22 sections 1754, 1922, 2103, 2194, 2291a, 2407.

SUBCHAPTER II—TRUST FUNDS AND REFUNDS

§ 1321. Trust funds

(a) The following are classified as trust funds:

[*See main edition for text of* (*1*) *to* (*11*)]

(12) Relief and rehabilitation, Longshore and Harbor Workers' Compensation Act.

[*See main edition for text of* (*13*) *to* (*90*); (*b*)]

(As amended Pub. L. 98-426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

References in Text

The Longshore and Harbor Workers' Compensation Act, referred to in subsec. (a)(12), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

Amendments

1984—Subsec. (a)(12). Pub. L. 98-426 substituted "Longshore" for "Longshoremen's".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

§ 1322. Payments of unclaimed trust fund amounts and refund of amounts erroneously deposited

[*See main edition for text of* (*a*) *and* (*b*)]

(c)(1) The Secretary of the Treasury shall hold in the Treasury trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts Are Unknown" the balance remaining after the final distribution of unclaimed Postal Savings System deposits under subsection (a) of the first section of the Act of August 13, 1971 (Public Law 92-117; 85 Stat. 337). The Secretary shall use the balance to pay claims for Postal Savings System deposits without regard to the State law or the law of other jurisdictions of deposit concerning the disposition of unclaimed or abandoned property.

(2) Necessary amounts may be appropriated without fiscal year limitation to the trust fund receipt account to pay claims for deposits when the balance in the account is not sufficient to pay the claims made within the time limitation set forth in paragraph (3) of this subsection.

(3) No claim for any Postal Savings System deposit may be brought more than one year from the date of the enactment of the Postal Savings System Statute of Limitations Act.

(4) The United States Postal Service shall assist the Secretary of the Treasury in providing public notice of the time limitation set forth in paragraph (3) of this subsection by posting notices thereof in all post offices as soon as practicable after the date of the enactment of the Postal Savings System Statute of Limitations Act.

(As amended Pub. L. 98-359, § 2, July 13, 1984, 98 Stat. 402.)

References in Text

Subsection (a) of the first section of the Act of August 13, 1971 (Public Law 92-117; 85 Stat. 337), referred to in subsec. (c)(1), was repealed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1081.

The date of the enactment of the Postal Savings System Statute of Limitations Act, referred to in subsec. (c)(3) and (4), is the date of enactment of Pub. L. 98-359, which was approved July 13, 1984.

Amendments

1984—Subsec. (c)(1). Pub. L. 98-359 substituted provision authorizing the balance to be held by the Secretary for provision authorizing the balance to be held by the Secretary in perpetuity.

Subsec. (c)(2). Pub. L. 98-359 substituted reference to par. (3) of this subsection for reference to par. (1) of this subsection.

Subsec. (c)(3), (4). Pub. L. 98-359 added pars. (3) and (4).

Cross References

Deposit in trust fund of unclaimed money, etc., of deceased seaman, see section 10710 of Title 46, Shipping.

SUBCHAPTER III—LIMITATIONS, EXCEPTIONS, AND PENALTIES

§ 1341. Limitations on expending and obligating amounts

Section Referred to in Other Sections

This section is referred to in sections 1349, 1350, 1351 of this title; title 2 section 60a-2; title 5 section 5307; title 12 section 1749bbb-8; title 20 sections 241-1, 646, 1225; title 22 sections 277d-3, 1461b, 3723; title 42 sections 2204, 2204a, 2210, 2295, 2394; title 49 App. section 1519.

§ 1342. Limitation on voluntary services

Section Referred to in Other Sections

This section is referred to in sections 1349, 1350, 1351 of this title; title 2 section 60a-2; title 5 sections 575, 3102, 3111, 5307; title 10 section 1588; title 15 sections 636, 2076, 2218; title 18 section 4204; title 19 section 2171; title 21 section 1114; title 22 sections 277d-3, 1461b, 2509, 3723; title 25 section 2020; title 28 section 995; title 29 sections 783, 1579; title 30 section 1807; title 33 section 1123; title 42 sections 609, 2204, 2204a, 2210, 2295, 2394, 3788, 4343, 5613; title 44 section 2105; title 46 App. section 1717; title 47 sections 154, 332.

§ 1343. Buying and leasing passenger motor vehicles and aircraft

Maximum Purchase Price of Motor Vehicles; Exceptions

Pub. L. 99-190, § 101(h) [H.R. 3036, title VI, § 601], Dec. 19, 1985, 99 Stat. 1291, provided that: "Unless otherwise specifically provided, the maximum amount allowable during the current fiscal year in accordance with section 16 of the Act of August 2, 1946 (60 Stat. 810) [31 U.S.C. 1343], for the purchase of any passenger motor vehicle (exclusive of buses and ambulances), is hereby fixed at $6,600 except station wagons for which the maximum shall be $7,600: *Provided*, That these limits may be exceeded by not to exceed $2,700 for police-type vehicles, and by not to exceed $4,000 for special heavy-duty vehicles: *Provided further*, That the limits set forth in this section shall not apply to electric or hybrid vehicles purchased for demonstration under the provisions of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 [15 U.S.C. 2501 et seq.]."

Similar provisions were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(j) [H.R. 5798, title VI, § 602], 98 Stat. 1963.

Nov. 14, 1983, Pub. L. 98-151, § 101(f) [H.R. 4139, title VI, § 602], 97 Stat. 973.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(a) [H.R. 7158, title VI, § 602], 96 Stat. 1830.

Dec. 15, 1981, Pub. L. 97-92, § 101(a) [H.R. 4121, title VI, § 602], 95 Stat. 1183.

Dec. 16, 1980, Pub. L. 96-536, § 113, 94 Stat. 3171.

Sept. 29, 1979, Pub. L. 96-74, title VI, § 601, 93 Stat. 573.

Oct. 10, 1978, Pub. L. 95-429, title VI, § 601, 92 Stat. 1015.

July 31, 1977, Pub. L. 95-81, title VI, § 601, 91 Stat. 354.

July 14, 1976, Pub. L. 94-363, title VI, § 601, 90 Stat. 977.

Aug. 9, 1975, Pub. L. 94-91, title VI, § 601, 89 Stat. 458.

Aug. 21, 1974, Pub. L. 93-381, title VI, § 601, 88 Stat. 630.

Oct. 30, 1973, Pub. L. 93-143, title VI, § 601, 87 Stat. 524.

July 13, 1972, Pub. L. 92-351, title VI, § 601, 86 Stat. 487.

July 9, 1971, Pub. L. 92-49, title VI, § 601, 85 Stat. 122.

Oct. 7, 1970, Pub. L. 91-439, title V, § 501, 84 Stat. 902.

Dec. 11, 1969, Pub. L. 91-144, title V, § 501, 83 Stat. 336.

Aug. 12, 1968, Pub. L. 90-479, title V, § 501, 82 Stat. 717.

Nov. 20, 1967, Pub. L. 90-147, title V, § 501, 81 Stat. 482.

Oct. 15, 1966, Pub. L. 89-689, title V, § 501, 80 Stat. 1014.

Oct. 28, 1965, Pub. L. 89-299, title V, § 501, 79 Stat. 1108.

Aug. 30, 1964, Pub. L. 88-511, title V, § 501, 78 Stat. 693.

Dec. 31, 1963, Pub. L. 88-257, title V, § 501, 77 Stat. 855.

Oct. 24, 1962, Pub. L. 87-880, title V, § 501, 76 Stat. 1227.

Aug. 3, 1961, Pub. L. 87-125, title V, § 501, 75 Stat. 282.

July 12, 1960, Pub. L. 86-642, title II, § 201, 74 Stat. 476.

July 8, 1959, Pub. L. 86-79, title II, § 201, 73 Stat. 165.

June 25, 1958, Pub. L. 85-468, title II, § 201, 72 Stat. 224.

June 5, 1957, Pub. L. 85-48, title II, § 201, 71 Stat. 53.

June 13, 1956, ch. 385, title II, § 201, 70 Stat. 279.

June 29, 1955, ch. 226, title II, § 201, 69 Stat. 195.

Aug. 26, 1954, ch. 935, ch. XIII, § 1301, 68 Stat. 828.

Aug. 7, 1953, ch. 340, ch. XIII, § 1301, 67 Stat. 435.

July 15, 1952, ch. 758, ch. XIV, § 1401, 66 Stat. 659.

Nov. 1, 1951, ch. 664, ch. XIII, § 1301, 65 Stat. 755.

Sept. 6, 1950, ch. 896, title XII, § 1201, 64 Stat. 763.

Aug. 24, 1949, ch. 506, title III, § 301, 63 Stat. 661.

Apr. 20, 1948, ch. 219, title II, § 201, 62 Stat. 193.

July 30, 1947, ch. 359, title II, § 201, 61 Stat. 608.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3374; title 22 sections 2588, 3622; title 33 section 576a; title 40 section 491.

§ 1345. Expenses of meetings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 3788.

§ 1348. Telephone installation and charges

[See main edition for text of (a) to (c)]

(d) Under regulations prescribed by the Secretary of Defense, funds appropriated to the Department of Defense are available to install, repair, and maintain telephone wiring in residences owned or leased by the United States Government and, if necessary for national defense purposes, in other private residences.

(As amended Pub. L. 98-407, title VIII, § 811(a), Aug. 28, 1984, 98 Stat. 1523.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-407 added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 811(b) of Pub. L. 98-407 provided that: "The amendment made by subsection (a) [amending this section] shall be effective as of January 1, 1984. Funds appropriated to the Department of Defense may be used to reimburse persons for expenditures made after December 31, 1983, for the installation, repair, and maintenance of telephone wiring in any Government-owned or leased housing unit before the date of the enactment of this Act [Aug. 28, 1984]."

§ 1349. Adverse personnel actions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 60a-2; title 5 sections 3374, 5307; title 22 sections 277d-3, 1461b, 2396, 2588, 3622, 3723; title 40 section 491; title 42 sections 2204, 2204a, 2210, 2295, 2394.

CHAPTER 15—APPROPRIATION ACCOUNTING

SUBCHAPTER I—GENERAL

§ 1502. Balances available

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 19 section 2345; title 49 App. section 1602.

SUBCHAPTER III—TRANSFERS AND REIMBURSEMENTS

§ 1531. Transfers of functions and activities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 3501; title 42 sections 5872, 7291; title 46 App. section 1605; title 49 App. section 1554.

§ 1535. Agency agreements

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if—

[See main edition for text of (1) and (2)]

(3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and

(4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

(b) Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided.

(c) A condition or limitation applicable to amounts for procurement of an agency or unit placing an order or making a contract under this section applies to the placing of the order or the making of the contract.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-216, § 1(2), Feb. 14, 1984, 98 Stat. 3.)

Historical and Revision Notes

1984 Act

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1535(a)	31 App.:686(a) (1st sentence words before 15th comma, proviso)	May 21, 1920, ch. 194, § 7(a) (1st, 2d sentences), 41 Stat. 613; June 30, 1932, ch. 314, § 601, 47 Stat. 417; restated July 20, 1942, ch. 507, 56 Stat. 661; Aug. 23, 1958, Pub. L. 85-726, § 1407, 72 Stat. 808; Aug. 6, 1981, Pub. L. 97-136, § 11, 95 Stat. 1707; Oct. 15, 1982, Pub. L. 97-332, § 1(1)-(3), 96 Stat. 1622.
1535(b)	31 App.:686(a) (1st sentence words between 15th comma and proviso, 2d sentence)	
1535(c)	31 App.:686(a) (last sentence)	May 21, 1920, ch. 194, 41 Stat. 607, § 7(a) (last sentence); added Oct. 15, 1982, Pub. L. 97-332, § 1(4), 96 Stat. 1622.

Amendments

1984—Subsec. (a)(3). Pub. L. 98-216, § 1(2)(A), inserted "or get by contract" after "provide".

Subsec. (a)(4). Pub. L. 98-216, § 1(2)(B), inserted "by contract" after "provided".

Subsecs. (b), (c). Pub. L. 98-216, § 1(2)(C)-(E), redesignated subsec. (c) as (b). Former subsec. (b), which provided that the Secretary of Defense, the Secretary of a military department of the Department of Defense, the Secretary of Transportation in carrying out duties and powers related to aviation and the Coast Guard, the Secretary of the Treasury, the Administrator of General Services, and the Administrator of the Maritime Administration could place orders under this section for goods and services that an agency or unit filling the order might be able to provide or procure by contract, was struck out.

Section Referred to in Other Sections

This section is referred to in section 1536 of this title; title 10 section 2205; title 16 section 825k; title 22 section 2358; title 24 section 168b; title 38 sections 620A, 5010; title 40 sections 270f, 298b; title 42 section 254; title 48 section 1469d; title 50 section 414.

§ 1536. Crediting payments from purchases between executive agencies

Section Referred to in Other Sections

This section is referred to in title 10 section 2205; title 16 section 825k; title 38 section 620A; title 40 sections 270f, 298b; title 42 section 254; title 48 section 1469d; title 50 section 414.

SUBTITLE III—FINANCIAL MANAGEMENT

CHAPTER 31—PUBLIC DEBT

Chapter Referred to in Other Sections

This chapter is referred to in title 2 section 651; title 5 section 8348; title 7 sections 903, 934, 947, 1032, 1516, 1929, 1929a, 1988; title 12 sections 635b, 635c, 635d, 1431, 1701g-5b, 1701q, 1719, 1721, 1723g, 1723h, 1725, 1749, 1783, 1824, 2216i, 2288; title 15 sections 78ddd, 633, 713a-4, 1848, 2509; title 16 sections 831n-1, 831n-3, 831n-4, 838k, 1456a, 1606a; title 20 sections 76*o*, 1081, 1087-2, 1087hh, 2009; title 22 sections 282e, 283e, 284e, 286e, 286m, 1980, 2195, 2906; title 26 sections 454, 1037; title 29 sections 773, 1305; title 30 section 1144; title 33 section 985; title 38 section 1823; title 39 section 2007; title 40 section 875; title 42 sections 291j-6, 293f, 293i, 294g, 300e-7, 300q-2, 401, 1104, 1395e, 1395i, 1395t, 1437b, 1440, 1481, 1487, 2414, 5308, 8795, 10156, 10222; title 43 section 1812; title 45 sections 231n, 602, 664, 720, 832; title 46 App. sections 1241h, 1275; title 48 section 1574b; title 50 section 167j; title 50 App. section 2312.

SUBCHAPTER I—BORROWING AUTHORITY

Subchapter Referred to in Other Sections

This subchapter is referred to in title 22 section 2183.

§ 3101. Public debt limit

[*See main edition for text of* (a)]

(b) The face amount of obligations issued under this chapter and the face amount of obligations whose principal and interest are guaranteed by the United States Government (except guaranteed obligations held by the Secretary of the Treasury) may not be more than $1,847,800,000,000, or $2,078,700,000,000 on and after October 1, 1985, outstanding at one time, subject to changes periodically made in that amount as provided by law through the congressional budget process described in Rule XLIX of the Rules of the House of Representatives or otherwise.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-34, § 1(a), May 26, 1983, 97 Stat. 196; Pub. L. 98-161, Nov. 21, 1983, 97 Stat. 1012; Pub. L. 98-342, § 1(a), July 6, 1984, 98 Stat. 313; Pub. L. 98-475, Oct. 13, 1984, 98 Stat. 2206; Pub. L. 99-177, § 1, Dec. 12, 1985, 99 Stat. 1037.)

Amendments

1985—Subsec. (b). Pub. L. 99-177 substituted "$1,847,800,000,000, or $2,078,700,000,000 on and after October 1, 1985" for "$1,575,700,000,000, or $1,823,800,000,000 on and after October 1, 1984".

1984—Subsec. (b). Pub. L. 98-475 substituted "$1,575,700,000,000, or $1,823,800,000,000 on and after October 1, 1984," for "$1,573,000,000,000".

Pub. L. 98-342 substituted "$1,573,000,000,000" for "$1,389,000,000,000, or $1,490,000,000,000 on and after October 1, 1983,".

1983—Subsec. (b). Pub. L. 98-161 inserted ", or $1,490,000,000,000 on and after October 1, 1983," after "$1,389,000,000,000".

Pub. L. 98-34 substituted "$1,389,000,000,000" for "$400,000,000,000".

REPEAL OF PERMANENT INCREASE IN PUBLIC DEBT LIMIT

Pub. L. 98-302, § 1, May 25, 1984, 98 Stat. 217, which permanently increased the public debt limit by $30,000,000,000 effective May 25, 1984, was repealed by Pub. L. 98-342, § 1(b), July 6, 1984, 98 Stat. 313, effective on and after July 6, 1984.

TEMPORARY INCREASES IN PUBLIC DEBT LIMIT

The public debt limit set forth in this section was temporarily increased for limited periods by the following acts:

Nov. 14, 1985, Pub. L. 99-155, § 1, 99 Stat. 814—Provided for a temporary increase of an amount determined by the Secretary of the Treasury as necessary, but not to exceed a public debt limit of $1,903,800,000,000 for the period Nov. 14, 1985, to Dec. 6, 1985.

REPEALS OF TEMPORARY INCREASES IN PUBLIC DEBT LIMIT

Pub. L. 97-270, Sept. 30, 1982, 96 Stat. 1156, providing for a temporary increase in public debt limit of $890,200,000,000 for the period Oct. 1, 1982, to Sept. 30, 1983, was repealed by Pub. L. 98-34, § 1(b), May 26, 1983, 97 Stat. 196, effective May 26, 1983.

§ 3102. Bonds

(a) With the approval of the President, the Secretary of the Treasury may borrow on the credit of the United States Government amounts necessary for expenditures authorized by law and may issue bonds of the Government for the amounts borrowed and may buy, redeem, and make refunds under section 3111 of this title. The Secretary may issue bonds authorized by this section to the public and to Government accounts at any annual interest rate and prescribe conditions under section 3121 of this title. However, the face amount of bonds issued under this section and held by the public with interest rates of more than 4.25 percent a year may not be more than $200,000,000,000.

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Pub. L. 98-34, § 2, May 26, 1983, 97 Stat. 196; Pub. L. 98-302, § 2, May 25, 1984, 98 Stat. 217.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-302 substituted "$200,000,000,000" for "$150,000,000,000".

1983—Subsec. (a). Pub. L. 98-34 substituted "$150,000,000,000" for "$110,000,000,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3108, 3121, 3123 of this title; title 29 section 213; title 45 sections 231f, 231n.

§ 3107. Increasing interest rates and investment yields on retirement bonds

With the approval of the President, the Secretary of the Treasury may increase by regulation the interest rate or investment yield on an offering of bonds issued under this chapter that are described in sections 405(b) and 409(a) of the Internal Revenue Code of 1954 (26 U.S.C. 405(b), 409(a)), as in effect before the enactment of the Tax Reform Act of 1984. The increased yield shall be for interest accrual periods specified in the regulations so that the interest rate or investment yield on the bonds for those periods is consistent with the interest rate or investment yield on a new offering of those bonds.

(As amended Pub. L. 98-369, div. A, title IV, § 491(d)(59), July 18, 1984, 98 Stat. 852.)

REFERENCES IN TEXT

Sections 405(b) and 409(a) of the Internal Revenue Code of 1954 (26 U.S.C. 405(b), 409(a)), referred to in text, were repealed by Pub. L. 98-369, div. A, title IV, § 491(a), (b), July 18, 1984, 98 Stat. 848.

Enactment of the Tax Reform Act of 1984, referred to in text, means the date of enactment of division A of Pub. L. 98-369, which was approved July 18, 1984.

AMENDMENTS

1984—Pub. L. 98-369 inserted ", as in effect before the enactment of the Tax Reform Act of 1984" after "(26 U.S.C. 405(b), 409(a))".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of Title 26, Internal Revenue Code.

SUBCHAPTER II—ADMINISTRATIVE

§ 3121. Procedure

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-216, § 4(a), (b), Feb. 14, 1984, 98 Stat. 6, 7, provided that:

"(a)(1) Except as provided in paragraph (2) of this subsection, the amendment made by section 1(9) of the Act of January 12, 1983 (Public Law 97-452, 96 Stat. 2468) [amending this section], applies to an obligation issued under section 3102(a) of title 31, United States Code, after September 3, 1982.

"(2) The amendment made by section 1(9) of the Act of January 12, 1983 (Public Law 97-452, 96 Stat. 2468) [amending this section], applies to an obligation issued after June 30, 1983, if—

"(A) interest on the obligation is exempt from tax (decided without regard to the amendments made by section 310 of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248, 96 Stat. 595) [enacting section 4701 of Title 26, Internal Revenue Code, section 757c-5 of former Title 31, Money and Finance, amending sections 103, 103A, 163, 165, 312, and 1232 of Title 26, and enacting a provision set out as a note under section 103 of Title 26]) under law (without regard to the identity of the holder); and

"(B) the obligation was not required to be in registered form under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) as in effect on September 2, 1982.

"(b) The amendment made by section 1(9) of the Act of January 12, 1983 (Public Law 97-452, 96 Stat. 2468) [amending this section], applies to an obligation issued under section 3103(a) of title 31, United States Code, after December 31, 1982."

§ 3124. Exemption from taxation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 2055, 2079; title 20 section 1087-2.

CHAPTER 33—DEPOSITING, KEEPING, AND PAYING MONEY

SUBCHAPTER I—DEPOSITS AND DEPOSITARIES

§ 3302. Custodians of money

[*See main edition for text of* (*a*) *and* (*b*)]

(c)(1) A person having custody or possession of public money, including a disbursing official having public money not for current expenditure, shall deposit the money without delay in the Treasury or with a depositary designated by the Secretary of the Treasury under law. The Secretary or a depositary receiving a deposit shall issue duplicate receipts for the money deposited. The original receipt is for the Secretary and the duplicate is for the custodian. Except as provided in paragraph (2), money required to be deposited pursuant to this subsection shall be deposited not later than the third day after the custodian receives the money,[1]

(2) The Secretary of the Treasury may by regulation prescribe that a person having custody or possession of money required by this subsection to be deposited shall deposit such money during a period of time that is greater or lesser than the period of time specified by the second sentence of paragraph (1).

[*See main edition for text of* (*d*) *to* (*f*)]

(As amended Pub. L. 98-369, div. B, title VI, § 2652(b)(1), July 18, 1984, 98 Stat. 1152.)

Historical and Revision Notes

1984 Act (Pub. L. 98-216)

Section 3618 (1st sentence related to non-military deposits) of the Revised Statutes inadvertently was omitted as a source credit for 31:3302. Table 2A of H. Rep. 97-651 (p. 298) states that the sentence was omitted as superseded by various sections of title 10. Title 10 supersedes the sentence only as it applies to military deposits. However, the language of section 3618 (1st sentence related to non-military deposits) is subsumed in the broader language of section 3617 of the Revised Statutes, the source credit for 31:3302(b). Therefore, while section 3618 (1st sentence related to non-military deposits) should be a source credit for 31:3302(b), it is not necessary that the language of the sentence be restated.

Amendments

1984—Subsec. (c). Pub. L. 98-369 designated existing provisions as par. (1), in par. (1) as so redesignated, struck out ", but not later than the 30th day after the custodian receives the money," after "without delay" and added "Except as provided in paragraph (2), money required to be deposited pursuant to this subsection shall be deposited not later than the third day after the custodian receives the money,", and added par. (2).

Effective Date of 1984 Amendment

Section 2652(b)(2) of Pub. L. 98-369 provided that: "The amendments made by this subsection [amending this section] shall become effective January 1, 1985."

Delegation of Functions

For delegation to the Secretary of the Treasury of authority vested in the President by subsec. (a) of this section, see section 1(g) of Ex. Ord. No. 10289, eff. Sept. 17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

Section Referred to in Other Sections

This section is referred to in sections 327, 3322, 3718, 3720 of this title; title 10 section 7605; title 15 section 2514; title 18 section 1963; title 22 sections 1475e, 4226; title 38 section 1820; title 42 section 5812.

SUBCHAPTER II—PAYMENTS

§ 3322. Disbursing officials

(a) The Secretary of the Treasury shall transfer public money to a disbursing official only by draft or warrant written on the Treasury. Except as provided in subsection (b) of this section, a disbursing official shall—

(1) deposit public money as required by section 3302 of this title; and

(2) draw public money from the Treasury or a depositary only—

(A) as necessary to make payments; and

(B) payable to persons to whom payment is to be made.

(b) In a place without a depositary, the Secretary, on deciding it is essential to the public interest, may authorize specially in writing that public money be—

(1) deposited in any other public depositary; or

(2) kept in another manner under regulations the Secretary decides are the safest and most effective in making a payment to a public creditor easier.

(c) A disbursing official is not liable for an overpayment provided under a United States Government bill of lading or transportation request when the overpayment is caused by the—

(1) use of improper transportation rates or classifications; or

(2) failure to deduct the proper amount under—

(A) a land grant law; or

(B) an equalization or other agreement.

(As amended Pub. L. 98-216, § 1(3), Feb. 14, 1984, 98 Stat. 3.)

Historical and Revision Notes

1984 Act

This is necessary because section 3620(a) (last sentence) of the Revised Statutes inadvertently was omitted from the codification of title 31 by section 1 of the Act of September 13, 1982 (Pub. L. 97-258, 96 Stat. 877).

In subsection (a), before clause (1), the words "Except as provided in subsection (b) of this section" are added because of the restatement.

In subsection (b), before clause (1), the word "however" is omitted as surplus. The words "treasurer or" are omitted as obsolete because of the 1st-4th pars. under the heading "Independent Treasury" in the Act of May 29, 1920 (ch. 214, 41 Stat. 654). In clause (2), the words "rules and" are omitted as surplus.

Amendments

1984—Subsec. (a). Pub. L. 98-216 amended subsec. (a) generally, substituting "Except as provided in subsection (b) of this section, a" for "A" in second sentence.

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[1] So in original. The comma probably should be a period.

Subsecs. (b), (c). Pub. L. 98-216 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-216 effective Sept. 13, 1982, see section 4(c) of Pub. L. 98-216, set out as a note under section 490 of Title 18, Crimes and Criminal Procedure.

§ 3324. Advances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3726 of this title; title 2 section 475; title 5 sections 3381, 4109, 5923, 5924; title 7 sections 427i, 1624, 3318; title 10 sections 2127, 2239, 2388, 2852, 6154, 7522; title 12 sections 1701c, 1701z-2, 3012; title 15 sections 196, 634, 2056, 2451, 2609, 2626; title 16 sections 460*l*-1, 565a-1, 581i-1, 1645, 2107; title 18 sections 4109, 4204; title 19 sections 2076, 2080; title 20 sections 959, 1221e-3, 2012, 2106, 2431; title 21 sections 360d, 360j; title 22 sections 287e-1, 289c, 294, 2103, 2179; title 28 section 995; title 29 section 1774; title 33 section 1254; title 37 section 1006; title 38 section 4142; title 40 section 462; title 42 sections 242m, 254b, 254*l*, 263d, 285a-2, 285b-3, 290bb, 292f, 294z, 295g-10, 296k, 300c-22, 300e-2, 300e-3, 300u, 1870, 2473, 3105, 4101, 4372, 7403, 7404; title 49 App. sections 1353, 1603, 1604; title 50 sections 491, 502, 522; title 50 App. section 1918.

§ 3332. Checks payable to financial organizations designated by Government officers and employees

[*See main edition for text of* (*a*)]

(b) An officer or employee of an agency may designate in writing not more than 3 financial organizations to which a payment of pay of the officer or employee shall be sent without charge and the amount to be sent to each organization. The head of the agency shall authorize a disbursing official to issue a check payable to each of the organizations in the amount designated for—

(1) credit to the checking account of the officer or employee;

(2) deposit of savings for the officer or employee; or

(3) buying shares for the officer or employee.

(c) If more than one officer or employee making a designation under this section designates the same financial organization, the head of the agency may authorize a disbursing official to issue a check payable to the organization for the total amount designated by the officers and employees, accompanied by a schedule stating the amount to be credited to the account of each officer and employee.

(d) Payment by the Government by more than one check, issued under this section and properly endorsed, is complete payment of the amount due to the officer or employee requesting payment.

(e) On the written request of a person to whom payment is to be made, this section may be applied to any class of recurring payments.

(f) The Secretary of the Senate shall prescribe regulations for the Senate in carrying out this section. With the approval of the Committee on House Administration of the House of Representatives, the Clerk of the House shall prescribe regulations for the House in carrying out this section. The Secretary of the Treasury shall prescribe regulations for all other agencies in carrying out this section.

(As amended Pub. L. 98-369, div. B, title VIII, § 2814, July 18, 1984, 98 Stat. 1207.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 2814(a), added "without charge" after "shall be sent".

Subsecs. (c) to (g). Pub. L. 98-369, § 2814(b), struck out subsec. (c) which related to reimbursement of an agency for issuing additional checks, and redesignated subsecs. (d) to (g) as (c) to (f), respectively.

CHAPTER 35—ACCOUNTING AND COLLECTION

SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

Sec.
3551. Definitions.
3552. Protests by interested parties concerning procurement actions.
3553. Review of protests; effect on contracts pending decision.
3554. Decisions on protests.
3555. Regulations; authority of Comptroller General to verify assertions.
3556. Nonexclusivity of remedies; matters included in agency record.

AMENDMENTS

1984—Pub. L. 98-369, div. B, title VII, § 2741(b), July 18, 1984, 98 Stat. 1203, added subchapter V heading and items 3551 to 3556.

SUBCHAPTER II—ACCOUNTING REQUIREMENTS, SYSTEMS, AND INFORMATION

§ 3512. Executive agency accounting systems

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3511, 7502 of this title.

SUBCHAPTER III—AUDITING AND SETTLING ACCOUNTS

§ 3523. General audit authority of the Comptroller General

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 104a; title 42 sections 2996h, 10711.

§ 3528. Responsibilities and relief from liability of certifying officials

[*See main edition for text of* (*a*)]

(b)(1) The Comptroller General may relieve a certifying official from liability when the Comptroller General decides that—

(A) the certification was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information; or

(B)(i) the obligation was incurred in good faith;

(ii) no law specifically prohibited the payment; and

(iii) the United States Government received value for payment.

(2) The Comptroller General may deny relief when the Comptroller General decides the

head of the agency did not carry out diligently collection action under procedures prescribed by the Comptroller General.

[*See main edition for text of (c) and (d)*]

(As amended Pub. L. 98-216, § 1(4), Feb. 14, 1984, 98 Stat. 4.)

HISTORICAL AND REVISION NOTES

1984 ACT

This clarifies section 3528(b) by restoring the authority of the Comptroller General to deny relief to certifying officials in the same way relief may be denied to disbursing officials.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-216, § 1(4)(A)-(E), designated existing provisions as par. (1) and in par. (1) as so redesignated, substituted the designations of subpars. (A) and (B) and cls. (i), (ii), and (iii) for the former designations of pars. (1) and (2) and subpars. (A), (B), and (C), respectively.

Subsec. (b)(2). Pub. L. 98-216, § 1(4)(F), added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-216 effective Sept. 13, 1982, see section 4(c) of Pub. L. 98-216, set out as a note under section 490 of Title 18, Crimes and Criminal Procedure.

§ 3530. Adjusting accounts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5514.

SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 40 section 759.

§ 3551. Definitions

In this subchapter—

(1) "protest" means a written objection by an interested party to a solicitation by an [1] Federal agency for bids or proposals for a proposed contract for the procurement of property or services or a written objection by an interested party to a proposed award or the award of such a contract;

(2) "interested party", with respect to a contract or proposed contract described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract; and

(3) "Federal agency" has the meaning given such term by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

(Added Pub. L. 98-369, div. B, title VII, § 2741(a), July 18, 1984, 98 Stat. 1199, and amended Pub. L. 99-145, title XIII, § 1304(d), Nov. 8, 1985, 99 Stat. 742.)

AMENDMENTS

1985—Par. (1). Pub. L. 99-145 substituted "Federal agency" for "executive agency".

EFFECTIVE DATE

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

§ 3552. Protests by interested parties concerning procurement actions

A protest concerning an alleged violation of a procurement statute or regulation shall be decided by the Comptroller General if filed in accordance with this subchapter. An interested party who has filed a protest under section 111(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)) with respect to a procurement or proposed procurement may not file a protest with respect to that procurement under this subchapter.

(Added Pub. L. 98-369, div. B, title VII, § 2741(a), July 18, 1984, 98 Stat. 1199.)

EFFECTIVE DATE

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

§ 3553. Review of protests; effect on contracts pending decision

(a) Under procedures prescribed under section 3555 of this title, the Comptroller General shall decide a protest submitted to the Comptroller General by an interested party.

(b)(1) Within one working day of the receipt of a protest, the Comptroller General shall notify the Federal agency involved of the protest.

(2) Except as provided in paragraph (3) of this subsection, a Federal agency receiving a notice of a protested procurement under paragraph (1) of this subsection shall submit to the Comptroller General a complete report (including all relevant documents) on the protested procurement—

(A) within 25 working days from the date of the agency's receipt of that notice;

(B) if the Comptroller General, upon a showing by the Federal agency, determines (and states the reasons in writing) that the specific circumstances of the protest require a longer period, within the longer period determined by the Comptroller General; or

(C) in a case determined by the Comptroller General to be suitable for the express option under section 3554(a)(2) of this title, within 10 working days from the date of the Federal agency's receipt of that determination.

(3) A Federal agency need not submit a report to the Comptroller General pursuant to paragraph (2) of this subsection if the agency is sooner notified by the Comptroller General that the protest concerned has been dismissed under section 3554(a)(3) of this title.

(c)(1) Except as provided in paragraph (2) of this subsection, a contract may not be awarded in any procurement after the Federal agency has received notice of a protest with respect to such procurement from the Comptroller General and while the protest is pending.

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[1] So in original. Probably should be "a".

(2) The head of the procuring activity responsible for award of a contract may authorize the award of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

(A) upon a written finding that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General under this subchapter; and

(B) after the Comptroller General is advised of that finding.

(3) A finding may not be made under paragraph (2)(A) of this subsection unless the award of the contract is otherwise likely to occur within 30 days thereafter.

(d)(1) If a Federal agency receives notice of a protest under this section after the contract has been awarded but within 10 days of the date of the contract award, the Federal agency (except as provided under paragraph (2)) shall, upon receipt of that notice, immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract. Performance of the contract may not be resumed while the protest is pending.

(2) The head of the procuring activity responsible for award of a contract may authorize the performance of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

(A) upon a written finding—

(i) that performance of the contract is in the best interests of the United States; or

(ii) that urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest; and

(B) after the Comptroller General is notified of that finding.

(e) The authority of the head of the procuring activity to make findings and to authorize the award and performance of contracts under subsections (c) and (d) of this section may not be delegated.

(f) Within such deadlines as the Comptroller General prescribes, upon request each Federal agency shall provide to an interested party any document relevant to a protested procurement action (including the report required by subsection (b)(2) of this section) that would not give that party a competitive advantage and that the party is otherwise authorized by law to receive.

(Added Pub. L. 98-369, div. B, title VII, § 2741(a), July 18, 1984, 98 Stat. 1200.)

EFFECTIVE DATE

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3554, 3556 of this title.

§ 3554. Decisions on protests

(a)(1) To the maximum extent practicable, the Comptroller General shall provide for the inexpensive and expeditious resolution of protests under this subchapter. Except as provided under paragraph (2) of this subsection, the Comptroller General shall issue a final decision concerning a protest within 90 working days from the date the protest is submitted to the Comptroller General unless the Comptroller General determines and states in writing the reasons that the specific circumstances of the protest require a longer period.

(2) The Comptroller General shall, by regulation prescribed pursuant to section 3555 of this title, establish an express option for deciding those protests which the Comptroller General determines suitable for resolution within 45 calendar days from the date the protest is submitted.

(3) The Comptroller General may dismiss a protest that the Comptroller General determines is frivolous or which, on its face, does not state a valid basis for protest.

(b)(1) With respect to a solicitation for a contract, or a proposed award or the award of a contract, protested under this subchapter, the Comptroller General may determine whether the solicitation, proposed award, or award complies with statute and regulation. If the Comptroller General determines that the solicitation, proposed award, or award does not comply with a statute or regulation, the Comptroller General shall recommend that the Federal agency—

(A) refrain from exercising any of its options under the contract;

(B) recompete the contract immediately;

(C) issue a new solicitation;

(D) terminate the contract;

(E) award a contract consistent with the requirements of such statute and regulation;

(F) implement any combination of recommendations under clauses (A), (B), (C), (D), and (E); or

(G) implement such other recommendations as the Comptroller General determines to be necessary in order to promote compliance with procurement statutes and regulations.

(2) If the head of the procuring activity responsible for a contract makes a finding under section 3553(d)(2)(A)(i) of this title, the Comptroller General shall make recommendations under this subsection without regard to any cost or disruption from terminating, recompeting, or reawarding the contract.

(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may declare an appropriate interested party to be entitled to the costs of—

(A) filing and pursuing the protest, including reasonable attorneys' fees; and

(B) bid and proposal preparation.

(2) Monetary awards to which a party is declared to be entitled under paragraph (1) of this subsection shall be paid promptly by the Federal agency concerned out of funds avail-

able to or for the use of the Federal agency for the procurement of property and services.

(d) Each decision of the Comptroller General under this subchapter shall be signed by the Comptroller General or a designee for that purpose. A copy of the decision shall be made available to the interested parties, the head of the procuring activity responsible for the solicitation, proposed award, or award of the contract, and the senior procurement executive of the Federal agency involved.

(e)(1) The head of the procuring activity responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General, if the Federal agency has not fully implemented those recommendations within 60 days of receipt of the Comptroller General's recommendations under subsection (b) of this section.

(2) Not later than January 31 of each year, the Comptroller General shall transmit to Congress a report describing each instance in which a Federal agency did not fully implement the Comptroller General's recommendations during the preceding fiscal year.

(Added Pub. L. 98-369, div. B, title VII, § 2741(a), July 18, 1984, 98 Stat. 1201.)

Effective Date

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

Section Referred to in Other Sections

This section is referred to in sections 3553, 3555, 3556 of this title.

§ 3555. Regulations; authority of Comptroller General to verify assertions

(a) Not later than January 15, 1985, the Comptroller General shall prescribe such procedures as may be necessary to the expeditious decision of protests under this subchapter, including procedures for accelerated resolution of protests under the express option authorized by section 3554(a)(2) of this title. Such procedures shall provide that the protest process may not be delayed by the failure of a party to make a filing within the time provided for the filing.

(b) The Comptroller General may use any authority available under chapter 7 of this title and this chapter to verify assertions made by parties in protests under this subchapter.

(Added Pub. L. 98-369, div. B, title VII, § 2741(a), July 18, 1984, 98 Stat. 1202.)

Effective Date

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

Section Referred to in Other Sections

This section is referred to in sections 3553, 3554 of this title.

§ 3556. Nonexclusivity of remedies; matters included in agency record

This subchapter does not give the Comptroller General exclusive jurisdiction over protests, and nothing contained in this subchapter shall affect the right of any interested party to file a protest with the contracting agency or to file an action in a district court of the United States or the United States Claims' Court. In any such action based on a procurement or proposed procurement with respect to which a protest has been filed under this subchapter, the reports required by sections 3553(b)(2) and 3554(e)(1) of this title with respect to such procurement or proposed procurement and any decision or recommendation of the Comptroller General under this subchapter with respect to such procurement or proposed procurement shall be considered to be part of the agency record subject to review.

(Added Pub. L. 98-369, div. B, title VII, § 2741(a), July 18, 1984, 98 Stat. 1202.)

Effective Date

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

CHAPTER 37—CLAIMS

SUBCHAPTER II—CLAIMS OF THE UNITED STATES GOVERNMENT

Sec.

3720. Collection of payments.
3720A. Reduction of tax refund by amount of debt.

Amendments

1984—Pub. L. 98-369, div. B, title VI, §§ 2652(a)(2), 2653(a)(2), July 18, 1984, 98 Stat. 1152, 1154, added items 3720 and 3720A.

SUBCHAPTER II—CLAIMS OF THE UNITED STATES GOVERNMENT

§ 3711. Collection and compromise

[*See main edition for text of* (*a*) *and* (*b*)]

(c) [*See main edition for text of* (*1*)]

(2) The Secretary of Transportation may not compromise for less than $250 a penalty under section 6 of the Act of March 2, 1893 (45 U.S.C. 6), section 4 of the Act of April 14, 1910 (45 U.S.C. 13), section 9 of the Act of February 17, 1911 (45 U.S.C. 34), and section 25(h) of the Interstate Commerce Act (49 App. U.S.C. 26(h)).

[*See main edition for text of* (*d*) *to* (*f*)]

(As amended Pub. L. 98-216, § 1(5), Feb. 14, 1984, 98 Stat. 4.)

Historical and Revision Notes

1984 Act

This is necessary to reflect the transfer of the nonpositive law provisions of title 49 to title 49 appendix.

Amendments

1984—Subsec. (c)(2). Pub. L. 98-216 substituted "(49 App. U.S.C. 26(h))" for "(49 U.S.C. 26(h))".

Section Referred to in Other Sections

This section is referred to in sections 3701, 3716 of this title; title 5 sections 552a, 5514; title 7 section 2025; title 18 section 1114; title 20 section 1234a; title

22 section 2671; title 26 section 6103; title 42 section 5042; title 45 section 64a.

§ 3717. Interest and penalty on claims

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3701 of this title; title 5 section 5514; title 7 section 2025; title 18 section 1114; title 20 section 1234a; title 22 section 2671; title 26 section 6103; title 42 section 5042; title 45 section 64a.

§ 3718. Contracts for collection services

[*See main edition for text of* (*a*) *and* (*b*)]

(c) A contract under subsection (a) of this section is effective only to the extent and in the amount provided in an appropriation law. This limitation does not apply in the case of a contract that authorizes a person to collect a fee as provided in subsection (b) of this section.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-167, Nov. 29, 1983, 97 Stat. 1104.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-167 added sentence providing that the limitation set out in subsec. (c) does not apply in the case of a contract that authorizes a person to collect a fee as provided in subsec. (b) of this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3302, 3701 of this title; title 5 section 5514; title 7 section 2025; title 18 section 1114; title 20 section 1234a; title 22 section 2671; title 26 section 6103; title 42 section 5042; title 45 section 64a.

§ 3720. Collection of payments

(a) Each head of an executive agency (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely deposit of money by officials and agents of such agency in accordance with section 3302, and for the collection and timely deposit of sums owed to such agency by the use of such procedures as withdrawals and deposits by electronic transfer of funds, automatic withdrawals from accounts at financial institutions, and a system under which financial institutions receive and deposit, on behalf of the executive agency, payments transmitted to post office lockboxes. The Secretary is authorized to collect from any agency not complying with the requirements imposed pursuant to the preceding sentence a charge in an amount the Secretary determines to be the cost to the general fund caused by such noncompliance.

(b) The head of an executive agency shall pay to the Secretary of the Treasury charges imposed pursuant to subsection (a). Payments shall be made out of amounts appropriated or otherwise made available to carry out the program to which the collections relate. The amounts of the charges paid under this subsection shall be deposited in the Cash Management Improvements Fund established by subsection (c).

(c) There is established in the Treasury of the United States a revolving fund to be known as the "Cash Management Improvements Fund". Sums in the fund shall be available without fiscal year limitation for the payment of expenses incurred in developing the methods of collection and deposit described in subsection (a) of this section and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.

(Added Pub. L. 98-369, div. B, title VI, § 2652(a)(1), July 18, 1984, 98 Stat. 1152.)

RULES AND REGULATIONS

Section 2652(a)(3) of Pub. L. 98-369 provided that: "The Secretary of the Treasury shall prescribe regulations, including regulations under section 3720 of title 31, United States Code, designed to achieve by October 1, 1986, full implementation of the purposes of this subsection."

§ 3720A. Reduction of tax refund by amount of debt

(a) Any Federal agency that is owed a past-due legally enforceable debt (other than any OASDI overpayment and past-due support) by a named person shall, in accordance with regulations issued pursuant to subsection (d), notify the Secretary of the Treasury of the amount of such debt.

(b) No Federal agency may take action pursuant to subsection (a) with respect to any debt until such agency—

(1) notifies the person incurring such debt that such agency proposes to take action pursuant to such paragraph with respect to such debt;

(2) gives such person at least 60 days to present evidence that all or part of such debt is not past-due or not legally enforceable;

(3) considers any evidence presented by such person and determines that an amount of such debt is past due and legally enforceable; and

(4) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under paragraph (3) with respect to such debt is valid and that the agency has made reasonable efforts to obtain payment of such debt.

(c) Upon receiving notice from any Federal agency that a named person owes to such agency a past-due legally enforceable debt, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such person. If the Secretary of the Treasury finds that any such amount is payable, he shall reduce such refunds by an amount equal to the amount of such debt, pay the amount of such reduction to such agency, and notify such agency of the individual's home address.

(d) The Secretary of the Treasury shall issue regulations prescribing the time or times at which agencies must submit notices of past-due legally enforceable debts, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall specify the minimum amount of debt to which the reduction procedure established by subsection (c) may be applied and the fee that an agency must pay to reimburse the Secretary of the Treasury for the full cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(e) Any Federal agency receiving notice from the Secretary of the Treasury that an erroneous payment has been made to such agency under subsection (c) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such agency under such subsection have been paid to such agency).

(f) For purposes of this section—

(1) the term "Federal agency" means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code);

(2) the term "past-due support" means any delinquency subject to section 464 of the Social Security Act; and

(3) the term "OASDI overpayment" means any overpayment of benefits made to an individual under title II of the Social Security Act.

(Added Pub. L. 98-369, div. B, title VI, § 2653(a)(1), July 18, 1984, 98 Stat. 1153.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of Title 42, The Public Health and Welfare. Section 464 of the Social Security Act, referred to in subsec. (f)(2), is classified to section 664 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

EFFECTIVE AND TERMINATION DATES

Section applicable with respect to refunds payable under section 6402 of Title 26 after Dec. 31, 1985, and before Jan. 1, 1988, see section 2653(c) of Pub. L. 98-369, set out as a note under section 6402 of Title 26, Internal Revenue Code.

SUBCHAPTER III—CLAIMS AGAINST THE UNITED STATES GOVERNMENT

§ 3721. Claims of personnel of agencies and the District of Columbia government for personal property damage or loss

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6402.

§ 3726. Payment for transportation

[See main edition for text of (a)]

(b) Not later than 3 years (excluding time of war) after the time a bill is paid, the Government may deduct from an amount subsequently due a carrier or freight forwarder an amount paid on the bill that was greater than the rate allowed under—

(1) a lawful tariff on file with the Interstate Commerce Commission, the Secretary of Transportation with respect to foreign air transportation (as defined in the Federal Aviation Act of 1958), the Federal Maritime Commission, or a State transportation authority; or

[See main edition for text of (2); (c) and (d)]

(As amended Pub. L. 98-443, § 9(f), Oct. 4, 1984, 98 Stat. 1707.)

REFERENCES IN TEXT

The Federal Aviation Act of 1958, referred to in subsec. (b)(1), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to chapter 20 (§ 1301 et seq.) of Title 49, Appendix, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49, Appendix, and Tables.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-443 substituted "Secretary of Transportation with respect to foreign air transportation (as defined in the Federal Aviation Act of 1958)" for "Civil Aeronautics Board".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

§ 3729. False claims

A person not a member of an armed force of the United States is liable to the United States Government for a civil penalty of $2,000, an amount equal to 2 times the amount of damages the Government sustains because of the act of that person, and costs of the civil action, if the person—

[See main edition for text of (1) to (6); credits]

CODIFICATION

Introductory text of this section is set out in this supplement to correct typographical error appearing in the main edition.

INCREASED PENALTIES FOR FALSE CLAIMS IN DEFENSE PROCUREMENT

Pub. L. 99-145, title IX, § 931(b), Nov. 8, 1985, 99 Stat. 699, provided that: "Notwithstanding section 3729 of title 31, United States Code, the amount of the liability under that section in the case of a person who makes a false claim related to a contract with the Department of Defense shall be a civil penalty of $2,000, an amount equal to three times the amount of the damages the Government sustains because of the act of the person, and costs of the civil action."

[Section 931(c) of Pub. L. 99-145 provided that section 931(b) is applicable to claims made or presented on or after Nov. 8, 1985.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3730 of this title; title 10 section 2324.

CHAPTER 39—PROMPT PAYMENT

§ 3902. Interest penalties

[*See main edition for text of* (*a*)]

(b) Except as provided in section 3906 of this title, the interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made. However, a penalty may not be paid if payment for the item is made—

(1) when the item is a meat or meat food product described in section 3903(2) of this title, before the 4th day after the required payment date;

(2) when the item is an agricultural commodity described in section 3903(3) of this title, before the 6th day after the required payment date; or

[*See main edition for text of* (*3*); (*c*) *to* (*e*)]

(As amended Pub. L. 98-216, § 1(6), Feb. 14, 1984, 98 Stat. 4.)

HISTORICAL AND REVISION NOTES

1984 ACT

This is necessary to correct cross-references in section 3902(b).

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-216 substituted "3903(2)" for "3903(2)(A)" in par. (1) and "3903(3)" for "3903(2)(B)" in par. (2).

§ 3903. Regulations

EDIBLE FRESH OR FROZEN POULTRY MEAT, PERISHABLE POULTRY MEAT FOOD PRODUCTS, FRESH EGGS, AND PERISHABLE EGG PRODUCTS

Pub. L. 98-181, title II, § 2002, Nov. 30, 1983, 97 Stat. 1297, provided in part that: "Notwithstanding any other provision of law, the terms 'meat' and 'meat food products' as used in the Prompt Payment Act (Public Law 97-177; 96 Stat. 85) in section 2(a)(2)(B)(i) [now 31 U.S.C. 3903(2)] thereof shall include also edible fresh or frozen poultry meat, perishable poultry meat food products, fresh eggs and perishable egg products".

SUBTITLE IV—MONEY

CHAPTER 51—COINS AND CURRENCY

SUBCHAPTER I—MONETARY SYSTEM

§ 5103. Legal tender

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5112 of this title.

SUBCHAPTER II—GENERAL AUTHORITY

§ 5112. Denominations, specifications, and design of coins

(a) The Secretary of the Treasury may mint and issue only the following coins:

[*See main edition for text of* (*1*) *to* (*6*)]

(7) A fifty dollar gold coin that is 32.7 millimeters in diameter, weighs 33.931 grams, and contains one troy ounce of fine gold.

(8) A twenty-five dollar gold coin that is 27.0 millimeters in diameter, weighs 16.966 grams, and contains one-half troy ounce of fine gold.

(9) A ten dollar gold coin that is 22.0 millimeters in diameter, weighs 8.483 grams, and contains one-fourth troy ounce of fine gold.

(10) A five dollar gold coin that is 16.5 millimeters in diameter, weighs 3.393 grams, and contains one-tenth troy ounce of fine gold.

[*See main edition for text of* (*b*) *to* (*d*)]

(e) Notwithstanding any other provision of law, the Secretary shall mint and issue, in quantities sufficient to meet public demand, coins which—

(1) are 40.6 millimeters in diameter and weigh 31.103 grams;

(2) contain .999 fine silver;

(3) have a design—

(A) symbolic of Liberty on the obverse side; and

(B) of an eagle on the reverse side;

(4) have inscriptions of the year of minting or issuance, and the words "Liberty", "In God We Trust", "United States of America", "1 Oz. Fine Silver", "E Pluribus Unum", and "One Dollar"; and

(5) have reeded edges.

(f) The Secretary shall sell the coins minted under subsection (e) to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing such coins (including labor, materials, dyes, use of machinery, and overhead expenses).

(g) For purposes of section 5132(a)(1) of this title, all coins minted under subsection (e) of this section shall be considered to be numismatic items.

(h) The coins issued under this title shall be legal tender as provided in section 5103 of title 31, United States Code.[1]

(i)(1) Notwithstanding section 5111(a)(1) of this title, the Secretary shall mint and issue the gold coins described in paragraphs (7), (8), (9), and (10) of subsection (a) of this section, in quantities sufficient to meet public demand, and such gold coins shall—

(A) have a design determined by the Secretary, except that the fifty dollar gold coin shall have—

(i) on the obverse side, a design symbolic of Liberty; and

(ii) on the reverse side, a design representing a family of eagles, with the male carrying an olive branch and flying above a nest containing a female eagle and hatchlings;

(B) have inscriptions of the denomination, the weight of the fine gold content, the year of minting or issuance, and the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum"; and

(C) have reeded edges.

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[1] So in original. Probably should be "section 5103 of this title".

(2)(A) The Secretary shall sell the coins minted under this subsection to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing such coins (including labor, materials, dies, use of machinery, and promotional and overhead expenses).

(B) The Secretary shall make bulk sales of the coins minted under this subsection at a reasonable discount.

(3) For purposes of section 5132(a)(1) of this title, all coins minted under this subsection shall be considered to be numismatic items.

(As amended Pub. L. 99-61, title II, § 202, July 9, 1985, 99 Stat. 115; Pub. L. 99-185, § 2(a), (b), Dec. 17, 1985, 99 Stat. 1177.)

AMENDMENTS

1985—Subsec. (a)(7) to (10). Pub. L. 99-185, § 2(a), added pars. (7) to (10).

Subsec. (e). Pub. L. 99-61 added subsec. (e). Former subsec. (e), providing for the minting of 150,000,000 silver and copper alloy dollar coins bearing the likeness of Dwight David Eisenhower, was struck out.

Subsec. (f). Pub. L. 99-61 added subsec. (f). Former subsec. (f), providing for the minting of up to 10,000,000 silver and copper alloy half-dollar coins symbolizing the 250th anniversary of the birth of George Washington, was struck out.

Subsecs. (g), (h). Pub. L. 99-61 added subsecs. (g) and (h).

Subsec. (i). Pub. L. 99-185, § 2(b), added subsec. (i).

EFFECTIVE DATE OF 1985 AMENDMENTS

Section 3 of Pub. L. 99-185 provided that: "This Act [amending sections 5112, 5116, 5118, and 5132 of this title and enacting provisions set out as notes under this section] shall take effect on October 1, 1985, except that no coins may be issued or sold under section 5112(i) of title 31, United States Code, before October 1, 1986."

Section 205 of title II of Pub. L. 99-61 provided that: "This title [amending sections 5112, 5116, and 5132 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1985, except that no coins may be issued or sold under subsection (e) of section 5112 of title 31, United States Code, before September 1, 1986, or before the date on which all coins minted under title I of this Act [set out as a note below] have been sold, whichever is earlier."

SHORT TITLE OF 1985 AMENDMENTS

Section 1 of Pub. L. 99-185 provided that: "This Act [amending sections 5112, 5116, 5118, and 5132 of this title and enacting provisions set out as notes under this section] may be cited as the 'Gold Bullion Coin Act of 1985'."

Section 201 of title II of Pub. L. 99-61 provided that: "This title [amending sections 5112, 5116, and 5132 of this title and enacting provisions set out as a note under this section] may be cited as the 'Liberty Coin Act'."

AMOUNT EQUAL TO PROFIT FROM SALE OF GOLD COINS DEPOSITED IN GENERAL FUND OF TREASURY TO REDUCE NATIONAL DEBT

Section 2(f) of Pub. L. 99-185 provided that: "Notwithstanding any other provision of law, an amount equal to the amount by which the proceeds from the sale of the coins issued under section 5112(i) of title 31, United States Code, exceed the sum of—

"(1) the cost of minting, marketing, and distributing such coins, and

"(2) the value of gold certificates (not exceeding forty-two and two-ninths dollars a fine troy ounce) retired from the use of gold contained in such coins, shall be deposited in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt."

ISSUANCE OF GOLD COINS TO RESULT IN NO NET COST TO UNITED STATES

Section 2(g) of Pub. L. 99-185 provided that: "The Secretary shall take all actions necessary to ensure that the issuance of the coins minted under section 5112(i) of title 31, United States Code, shall result in no net cost to the United States Government."

STATUE OF LIBERTY-ELLIS ISLAND COMMEMORATIVE COINS

Pub. L. 99-61, title I, July 9, 1985, 99 Stat. 113, required the Secretary of the Treasury to issue not more than 500,000 five dollar coins, ten million one dollar coins, and twenty-five million half dollar coins commemorating the Statue of Liberty and Ellis Island, and provided for coin specifications, sources of bullion, design of coins, requirements for issuance, waiver of procurement regulations, distribution of surcharges, audit by the Comptroller General, establishment of a coinage profit fund, and financial assurances.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5102, 5111, 5113, 5116, 5132 of this title.

§ 5116. Buying and selling gold and silver

(a) [*See main edition for text of (1) and (2)*]

(3) The Secretary shall acquire gold for the coins issued under section 5112(i) of this title by purchase of gold mined from natural deposits in the United States, or in a territory or possession of the United States, within one year after the month in which the ore from which it is derived was mined. The Secretary shall pay not more than the average world price for the gold. In the absence of available supplies of such gold at the average world price, the Secretary may use gold from reserves held by the United States to mint the coins issued under section 5112(i) of this title. The Secretary shall issue such regulations as may be necessary to carry out this paragraph.

(b)(1) The Secretary may buy silver mined from natural deposits in the United States, or in a territory or possession of the United States, that is brought to a United States mint or assay office within one year after the month in which the ore from which it is derived was mined. The Secretary may use the coinage metal fund under section 5111(b) of this title to buy silver under this subsection.

(2) The Secretary may sell or use Government silver to mint coins, except silver transferred to stockpiles established under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.). The Secretary shall obtain the silver for the coins authorized under section 5112(e) of this title by purchase from stockpiles established under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.). The Secretary shall sell silver under conditions the Secretary considers appropriate for at least $1.292929292 a fine troy ounce.

(As amended Pub. L. 99-61, title II, § 203, July 9, 1985, 99 Stat. 116; Pub. L. 99-185, § 2(c), Dec. 17, 1985, 99 Stat. 1178.)

Amendments

1985—Subsec. (a)(3). Pub. L. 99-185 added par. (3).

Subsec. (b)(1). Pub. L. 99-61, § 203(1), (2), substituted "The Secretary may buy silver" for "The Secretary shall buy silver", and struck out provision directing that the Secretary pay $1.25 a fine troy ounce for silver.

Subsec. (b)(2). Pub. L. 99-61, § 203(3), added provision directing that the Secretary obtain the silver for the coins authorized under section 5112(e) of this title by purchase from stockpiles established under the Strategic and Critical Materials Stock Piling Act.

Effective Date of 1985 Amendments

Amendment by Pub. L. 99-185 effective Oct. 1, 1985, except that no coins may be issued or sold under section 5112(i) of this title before Oct. 1, 1986, see section 3 of Pub. L. 99-185, set out as a note under section 5112 of this title.

Amendment by Pub. L. 99-61 effective Oct. 1, 1985, with exception as to issuance or sale of coins under section 5112(e) of this title, see section 205 of Pub. L. 99-61, set out as a note under section 5112 of this title.

§ 5118. Gold clauses and consent to sue

[See main edition for text of (a)]

(b) The United States Government may not pay out any gold coin. A person lawfully holding United States coins and currency may present the coins and currency to the Secretary of the Treasury for exchange (dollar for dollar) for other United States coins and currency (other than gold and silver coins) that may be lawfully held. The Secretary shall make the exchange under regulations prescribed by the Secretary.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 99-185, § 2(d), Dec. 17, 1985, 99 Stat. 1178.)

Amendments

1985—Subsec.(b). Pub. L. 99-185 struck out "or deliver" after "pay out" and inserted "(other than gold and silver coins)" before "that may be lawfully held".

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-185 effective Oct. 1, 1985, except that no coins may be issued or sold under section 5112(i) of this title before Oct. 1, 1986, see section 3 of Pub. L. 99-185, set out as a note under section 5112 of this title.

SUBCHAPTER III—BUREAU OF THE MINT

§ 5132. Administrative

(a)(1) Except as provided in this chapter, the Secretary of the Treasury shall deposit in the Treasury as miscellaneous receipts amounts the Secretary receives from the operations of the Bureau of the Mint. However, amounts from numismatic items shall be reimbursed to the current appropriation used to pay the cost of preparing and selling the items. The Secretary shall annually sell to the public, directly and by mail, sets of uncirculated and proof coins minted under paragraphs (1) through (6) of section 5112(a) of this title, and shall solicit such sales through the use of the customer list of the Bureau of the Mint. The Secretary may not use amounts the Secretary receives from profits on minting coins or from charges on gold or silver bullion under section 5122 of this title to pay officers and employees.

[See main edition for text of (2); (b) and (c)]

(As amended Pub. L. 98-151, § 123, Nov. 14, 1983, 97 Stat. 979; Pub. L. 98-216, § 1(7), Feb. 14, 1984, 98 Stat. 4; Pub. L. 99-61, title II, § 204, July 9, 1985, 99 Stat. 116; Pub. L. 99-185, § 2(e), Dec. 17, 1985, 99 Stat. 1178.)

Historical and Revision Notes

1984 Act

This is necessary because the language was restated by section 382(h)(1) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, 95 Stat. 432) but inadvertently codified as 31:5132(a)(1) (last sentence) by section 1 of the Act of September 13, 1982 (Pub. L. 97-258, 96 Stat. 989.)

Amendments

1985—Subsec. (a)(1). Pub. L. 99-185 inserted "paragraphs (1) through (6) of" before "section 5112(a) of this title".

Pub. L. 99-61 inserted "minted under section 5112(a) of this title" after "proof coins".

1984—Subsec. (a)(1). Pub. L. 98-216 struck out provision requiring the Secretary to pay the costs of the mints and assay offices not provided for in this subsection out of appropriations.

1983—Subsec. (a)(1). Pub. L. 98-151 added provisions relating to authority of Secretary to sell sets of uncirculated and proof coins and solicitation of such sales through the customer lists of the Bureau of the Mint.

Effective Date of 1985 Amendments

Amendment by Pub. L. 99-185 effective Oct. 1, 1985, except that no coins may be issued or sold under section 5112(i) of this title before Oct. 1, 1986, see section 3 of Pub. L. 99-185, set out as a note under section 5112 of this title.

Amendment by Pub. L. 99-61 effective Oct. 1, 1985, with exception as to issuance or sale of coins under section 5112(e) of this title, see section 205 of Pub. L. 99-61, set out as a note under section 5112 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-216 effective Sept. 13, 1982, see section 4(c) of Pub. L. 98-216, set out as a note under section 490 of Title 18, Crimes and Criminal Procedure.

Section Referred to in Other Sections

This section is referred to in section 5112 of this title.

CHAPTER 53—MONETARY TRANSACTIONS

SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

Sec.	
5323.	Rewards for informants.

Amendments

1984—Pub. L. 98-473, title II, § 901(f), Oct. 12, 1984, 98 Stat. 2136, added item 5323.

Chapter Referred to in Other Sections

This chapter is referred to in title 19 sections 1613a, 1613b.

SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 12 sections 1829b, 3401; title 18 section 1961.

§ 5312. Definitions and application

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6050I.

§ 5316. Reports on exporting and importing monetary instruments

(a) Except as provided in subsection (c) of this section, a person or an agent or bailee of the person shall file a report under subsection (b) of this section when the person, agent, or bailee knowingly—

(1) transports or has transported, or attempts to transport or have transported, monetary instruments of more than $10,000 at one time—

[*See main edition for text of* (*A*) *and* (*B*), (*2*); (*b*) *and* (*c*)]

(As amended Pub. L. 98-473, title II, § 901(c), Oct. 12, 1984, 98 Stat. 2135.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-473 added ", or attempts to transport or have transported," after "transports or has transported" and substituted "$10,000" for "$5,000".

§ 5317. Search and forfeiture of monetary instruments

[*See main edition for text of* (*a*)]

(b) A customs officer may stop and search, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States with respect to which or whom the officer has reasonable cause to believe there is a monetary instrument being transported in violation of section 5316 of this title.

(c) A monetary instrument being transported may be seized and forfeited to the United States Government when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement. A monetary instrument transported by mail or a common carrier, messenger, or bailee is being transported under this subsection from the time the instrument is delivered to the United States Postal Service, common carrier, messenger, or bailee through the time it is delivered to the addressee, intended recipient, or agent of the addressee or intended recipient without being transported further in, or taken out of, the United States.

(As amended Pub. L. 98-473, title II, § 901(d), Oct. 12, 1984, 98 Stat. 2135.)

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98-473, § 901, added subsec. (b) and redesignated former subsec. (b) as (c).

§ 5321. Civil penalties

(a)(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) is liable to the United States Government for a civil penalty of not more than $10,000. For a violation of section 5318(2) of this title or a regulation prescribed under section 5318(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

[*See main edition for text of* (*2*) *and* (*3*); (*b*) *and* (*c*)]

(As amended Pub. L. 98-473, title II, § 901(a), Oct. 12, 1984, 98 Stat. 2135.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-473 substituted "$10,000" for "$1,000".

§ 5322. Criminal penalties

(a) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) shall be fined not more than $250,000, or imprisonment [1] not more than five years, or both.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98-473, title II, § 901(b), Oct. 12, 1984, 98 Stat. 2135.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, which directed the substitution of "$250,000, or imprisonment not more than five years, or both" for "$1,000, or imprisonment not more than one year, or both", was executed by substituting the quoted wording for "$1,000, imprisoned for not more than one year, or both" to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 2516.

§ 5323. Rewards for informants

(a) The Secretary may pay a reward to an individual who provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which exceeds $50,000, for a violation of this chapter.

(b) The Secretary shall determine the amount of a reward under this section. The Secretary may not award more than 25 per centum of the net amount of the fine, penalty, or forfeiture collected or $150,000, whichever is less.

(c) An officer or employee of the United States, a State, or a local government who provides information described in subsection (a) in the performance of official duties is not eligible for a reward under this section.

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[1] So in original. Probably should be "imprisoned for".

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Added Pub. L. 98-473, title II, § 901(e), Oct. 12, 1984, 98 Stat. 2135.)

SUBTITLE V—GENERAL ASSISTANCE ADMINISTRATION

Chap. Sec.
75. **Requirements for Single Audits** 7501

AMENDMENTS

1984—Pub. L. 98-502, § 2(c), Oct. 19, 1984, 98 Stat. 2334, added item for chapter 75.

CHAPTER 61—PROGRAM INFORMATION

Sec.
6105. Oversight responsibility of Director.
6106. Authorization of appropriations.

AMENDMENTS

1983—Pub. L. 98-169, § 6, Nov. 29, 1983, 97 Stat. 1115, added items 6105 and 6106, and struck out item 6105 "Authorization of appropriations".

§ 6101. Definitions

In this chapter—

[See main edition for text of (1) to (4)]

(5) "Director" means the Director of the Office of Management and Budget.

(6) "Administrator" means the Administrator of General Services.

(7) "formula" means any prescribed method employing objective data or statistical estimates for making individual determinations among recipients of Federal funds, either in terms of eligibility or actual funding allocations, that can be written in the form of either—

(A) a closed mathematical statement; or

(B) an iterative procedure or algorithm which can be written as a computer program;

and from which the results can be objectively replicated, within reasonable limits due to rounding error, through independent application of such statement, procedures, or algorithm, by different qualified individuals.

(As amended Pub. L. 98-169, §§ 1(1), 3(a), Nov. 29, 1983, 97 Stat. 1113.)

AMENDMENTS

1983—Pars. (5), (6). Pub. L. 98-169, § 1(1), added pars. (5) and (6).

Par. (7). Pub. L. 98-169, § 3(a), added par. (7).

TRANSFER OF PERSONNEL, PROPERTY, RECORDS, AND APPROPRIATIONS

Section 7 of Pub. L. 98-169 provided that: "The Director of the Office of Management and Budget shall transfer to the Administrator of General Services such personnel, property, records, and unexpended balances of appropriations available in connection with any authorities and responsibilities so transferred, as the Director of the Office of Management and Budget determines are necessary to carry out the responsibilities transferred pursuant to this Act [enacting sections 6105 and 6106 of this title, amending sections 6101 to 6104 of this title and repealing section 6105 of this title]."

§ 6102. Program information requirements

(a) The Director shall collect and review information on domestic assistance programs and shall provide such information to the Administrator. The information on each domestic assistance program shall include the following:

(1) identification of the program by—

(A) title;

(B) authorizing law;

(C) administering office; and

(D) an identifying number assigned by the Director.

(2) a description of the—

(A) program;

(B) objectives of the program;

(C) types of activities financed under the program;

(D) eligibility requirements;

(E) types of assistance;

(F) uses, and restrictions on the use, of assistance; and

(G) duties of recipients under the program.

(3) a specification of each formula governing eligibility for assistance or the distribution of assistance under the program, which shall be described through the use of—

(A) the language used to specify each such formula in the law authorizing the program;

(B) the language used to specify each such formula in any Federal rule promulgated pursuant to the law authorizing the program; or

(C) a mathematical statement which is derived from the language referred to in subparagraphs (A) and (B) of this paragraph;

(4) a description of all data and statistical estimates used to carry out each formula specified pursuant to paragraph (3), and an identification of the sources of such data and estimates;

(5) financial information, including the—

(A) amounts appropriated for the current fiscal year or, if unavailable, the amounts requested by the President and the amounts obligated; and

(B) average amounts of awards made in past years.

(6) identification of information contacts, including the administering office and regional and local offices with their addresses and telephone numbers.

(7) a general description of—

(A) the application requirements and procedures; and

(B) to the extent practical, an estimate of the time required to process the application.

(b) On request of the Director, an agency shall give to the Director current information on all domestic assistance programs administered by the agency. The Director shall be responsible for ensuring that the Administrator incorporates all relevant information received on a regular basis.

(c) The Administrator—

(1) shall ensure that information and catalogs under this chapter are made available to the public at reasonable prices;

(2) may develop information services to assist State and local governments in identifying and obtaining sources of assistance;

(3) shall ensure that the information in the computerized system is made current on a regular basis and that the printed catalog and supplements thereto contain the most current data available at the time of printing; and

(4) shall transmit annually the information compiled under paragraphs (3) and (4) of subsection (a) to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate.

(As amended Pub. L. 98-169, §§ 1(2), 2, 3(b), (c), Nov. 29, 1983, 97 Stat. 1113, 1114.)

Amendments

1983—Subsec. (a). Pub. L. 98-169, § 2(1), substituted "collect and review information on domestic assistance programs and shall provide such information to the Administrator" for "prepare and maintain information on domestic assistance programs".

Pub. L. 98-169, § 1(2), substituted "Director" for "Director of the Office of Management and Budget".

Subsec. (a)(2)(E) to (H). Pub. L. 98-169, § 3(b)(1), struck out subpar. (E) relating to formulas governing distribution of amounts, and redesignated subpars. (F) to (H) as (E) to (G), respectively.

Subsec. (a)(3) to (7). Pub. L. 98-169, § 3(b)(2), (3), added pars. (3) and (4) and redesignated former pars. (3) to (5) as (5) to (7), respectively.

Subsec. (b). Pub. L. 98-169, § 2(2), substituted "The Director shall be responsible for ensuring that the Administrator incorporates all relevant information received on a regular basis" for "The Director shall incorporate on a regular basis all relevant information received".

Subsec. (c). Pub. L. 98-169, § 2(3), substituted "Administrator" for "Director".

Subsec. (c)(3). Pub. L. 98-169, § 2(4), added par. (3).

Subsec. (c)(4). Pub. L. 98-169, § 3(c), added par. (4).

§ 6102a. Assistance awards information system

(a) The Director shall—

[*See main edition for text of (1) and (2); (b)*]

(As amended Pub. L. 98-169, § 1(2), Nov. 29, 1983, 97 Stat. 1113.)

Amendments

1983—Subsec. (a). Pub. L. 98-169 substituted "Director" for "Director of the Office of Management and Budget".

§ 6103. Access to computer information system

(a) The Administrator shall maintain a computerized information system providing access to—

(1) the information described in paragraphs (1), (2), (5), (6), and (7) of section 6102(a) of this title; and

(2) such portions or summaries, as the Administrator considers appropriate, of the information described in paragraphs (3) and (4) of such section.

(b) To the greatest extent practicable, the Administrator shall provide for the widespread availability of the information by available computer terminals.

(c) When the Administrator decides the efficiency of the information system under subsection (a) of this section requires it, the Administrator may make contracts with private organizations to obtain computer time-sharing services, including—

(1) computer telecommunications networks;

(2) computer software; and

(3) associated services.

(As amended Pub. L. 98-169, §§ 1(2), 3(d), 4, Nov. 29, 1983, 97 Stat. 1113, 1114.)

Amendments

1983—Subsec. (a). Pub. L. 98-169, § 3(d), amended subsec. (a) generally, substituting provisions requiring the Administrator to maintain a computerized information system providing access to the information described in section 6102(a)(1), (2), (5), (6), and (7) of this title and such portions or summaries, as the Administrator considers appropriate, of the information described in section 6102(a)(3), (4) of this title for provisions requiring the Director to maintain a computerized information system providing access to the information described in section 6102 of this title.

Pub. L. 98-169, § 1(2), substituted "Director" for "Director of the Office of Management and Budget".

Subsecs. (b), (c). Pub. L. 98-169, § 4, substituted "Administrator" for "Director" wherever appearing.

§ 6104. Catalog of Federal domestic assistance programs

(a) The Administrator shall prepare and publish each year a catalog of domestic assistance programs.

(b) In a form selected by the Administrator, the catalog shall contain—

(1)(A) all substantive information on domestic assistance programs that, at the time the catalog is prepared, is in the system under paragraphs (1), (2), (5), (6), and (7) of section 6102(a) of this title; and

(B) such portions or summaries, as the Administrator considers appropriate, of the information on domestic assistance programs that, at the time the catalog is prepared, is in the system under paragraphs (3) and (4) of section 6102(a) of this title;

(2) information the Administrator decides may be helpful to a potential applicant for or beneficiary of assistance; and

(3) a detailed index.

(c) When the Administrator decides it is necessary, the Administrator shall prepare and publish—

(1) supplements to the catalog; and

(2) specialized compilations by function of information in the catalog.

(d) The Administrator may distribute a catalog without cost to each—

(1) member of Congress;

(2) department, agency, and instrumentality of the United States Government;

(3) State;

(4) general purpose unit of a local government;

(5) Indian tribe recognized by the United States Government;

(6) depository library of Government publications; and

(7) depository designated by the Administrator.

(As amended Pub. L. 98-169, § 1(2), 3(e), 4, Nov. 29, 1983, 97 Stat. 1113, 1114.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-169, § 4, substituted "Administrator" for "Director".

Pub. L. 98-169, § 1(2), substituted "Director" for "Director of the Office of Management and Budget".

Subsec. (b). Pub. L. 98-169, § 4, substituted "Administrator" for "Director" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-169, § 3(e), amended par. (1) generally, substituting provisions requiring that the catalog contain all substantive information on domestic assistance programs that is in the system under section 6102(a)(1), (2), and (5)-(7) of this title, and such portions or summaries, as the Administrator considers appropriate, of information in the system under section 6102(a)(3), (4) of this title, at the time the catalog is prepared, for provision requiring that the catalog contain all such information in the system under section 6102(a) of this title at the time the catalog was prepared.

Subsecs. (b)(2), (c), (d). Pub. L. 98-169, § 4, substituted "Administrator" for "Director" wherever appearing.

§ 6105. Oversight responsibility of Director

The Director shall have oversight responsibility for the exercise of all authorities and responsibilities in this chapter not specifically assigned to the Director.

(Added Pub. L. 98-169, § 5, Nov. 29, 1983, 97 Stat. 1115.)

PRIOR PROVISIONS

A prior section 6105, Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1002, relating to authorization of appropriations to carry out this chapter, was repealed by section 5 of Pub. L. 98-169. See section 6106 of this title.

§ 6106. Authorization of appropriations

After October 1, 1983, there may be appropriated to the Administrator such sums as may be necessary to carry out the responsibilities of this chapter.

(Added Pub. L. 98-169, § 5, Nov. 29, 1983, 97 Stat. 1115.)

CHAPTER 63—USING PROCUREMENT CONTRACTS AND GRANT AND COOPERATIVE AGREEMENTS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 7 sections 3318, 3319c; title 16 sections 670a, 670h; title 20 section 1221e; title 25 section 450e-1; title 30 section 1732; title 40 section 815.

§ 6302. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2411.

CHAPTER 65—INTERGOVERNMENTAL COOPERATION

§ 6501. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 653.

§ 6503. Transfer and deposit requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 300w-2, 300x-2, 300y-4, 703, 706, 1397a, 1397e, 8626, 9873, 9907.

§ 6506. Development assistance

EX. ORD. NO. 12372. INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

Ex. Ord. No. 12372, July 14, 1982, 47 F.R. 30959, as amended by Ex. Ord. No. 12416, Apr. 8, 1983, 48 F.R. 15587, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) [31 U.S.C. 6506(a) and (b)], Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

[*See main edition for text of Secs. 1 to 4*]

SEC. 5. [*See main edition for text of* (a)]

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective September 30, 1983.

[*See main edition for text of Secs. 6 and 7*]

SEC. 8. The Director of the Office of Management and Budget shall report to the President by September 30, 1984 on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 sections 460u-21, 1456; title 40 section 601a; title 42 sections 300*l*-2, 3151a; title 43 section 1721.

CHAPTER 67—REVENUE SHARING

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 7502 of this title; title 2 section 651; title 12 section 1715z-13; title 42 sections 1315, 1471, 5302, 5318, 6101, 6727.

§ 6701. Definitions and application

(a) In this chapter—

(1) "entitlement period" means each one-year period beginning on October 1 of 1982, 1983, 1984, and 1985.

[*See main edition for text of* (2) *to* (7)]

(8) "adjusted taxes of a unit of general local government" means the taxes imposed by the unit of general local government for public purposes (except employee and employer assessments and contributions to finance retirement and social insurance systems and other special assessments for capital outlay) determined by the Secretary of Commerce for general statistical purposes and adjusted (under regulations of the Secretary of the Treasury)

to exclude amounts properly allocated to education expenses.

(9) "urbanized population" has the meaning given to such term by the Secretary of Commerce for general statistical purposes.

[*See main edition for text of* (*b*)]

(c) When the entire geographic area of a unit of general local government is located in a larger entity, the unit of general local government is deemed to be located in the larger entity. When only part of the geographic area of a unit is located in a larger entity, each part is deemed to be located in the larger entity and to be a separate unit of general local government in determining allocations under this chapter. Except as provided in regulations prescribed by the Secretary of the Treasury, the Secretary shall make all data computations based on the ratio of the estimated population of the part to the population of the entire unit of general local government.

(d) When a boundary line change, a State statutory or constitutional change, annexation, a governmental reorganization, or other circumstance results in the application of subsections (a)(5) and (7), (b), and (c) of this section and sections 6708–6712 of this title in a way that does not carry out the purposes of this section and sections 6702, 6703, and 6705–6713(c)(1) of this title, the Secretary shall apply subsections (a)(5) and (7), (b), and (c) and sections 6708–6712 under regulations of the Secretary in a way that is consistent with those purposes.

(e) In this chapter, the District of Columbia is deemed to be—

(1) a State; and

(2) a county area and the sole unit of general local government in the area.

(As amended Pub. L. 98–185, §§ 2, 9(a), Nov. 30, 1983, 97 Stat. 1309, 1311.)

Amendments

1983—Subsec. (a)(1). Pub. L. 98–185, § 2, amended par. (1) generally, substituting "October 1 of 1982, 1983, 1984, and 1985" for "October 1, 1981, and October 1, 1982".

Subsec. (a)(8), (9). Pub. L. 98–185, § 9(a)(1), added pars. (8) and (9).

Subsec. (c). Pub. L. 98–185, § 9(a)(2), substituted "prescribed by the Secretary of the Treasury, the Secretary shall make all data computations" for "of the Secretary of the Treasury, the Secretary shall allocate amounts" and "the entire unit" for "the unit" in last sentence.

Subsec. (d). Pub. L. 98–185, § 9(a)(3), inserted "annexation," after "constitutional change,".

Subsec. (e)(2). Pub. L. 98–185, § 9(a)(4), substituted "and the sole unit of general local government in the area" for "having one unit of general local government".

Effective Date of 1983 Amendment

Section 12 of Pub. L. 98–185 provided that:

"(a) Except as provided in subsection (b), the amendments made by this Act [amending sections 6701, 6703, 6704, 6707, 6709, 6711, 6713, 6714, 6716, 6717, 6718, and 6723 of this title and enacting provisions set out as notes under this section] shall apply to entitlement periods (as such term is defined in section 6701(a)(1) of title 31, United States Code) beginning on or after October 1, 1983.

"(b) The amendments made by section 8 [amending section 6723 of this title] shall apply with respect to any fiscal year (or period) of any State government or unit of general local government beginning on or after October 1, 1983."

Short Title of 1983 Amendment

Section 1 of Pub. L. 98–185 provided that: "This Act [amending sections 6701, 6703, 6704, 6707, 6709, 6711, 6713, 6714, 6716, 6717, 6718, and 6723 of this title and enacting provisions set out as notes under this section] may be cited as the 'Local Government Fiscal Assistance Amendments of 1983'."

Study of Fiscal Relationships Among Federal, State, and Local Governments

Section 10 of Pub. L. 98–185 provided that:

"(a) The Secretary of the Treasury shall undertake a study of the following issues:

"(1) The various factors used in the current allocation formulas under chapter 67 of title 31, United States Code, and possible alternatives to such formulas and factors (such as State gross domestic product, the representative tax system, and the inclusion of user fees in factors based on tax collections), including an analysis of the strengths and weaknesses of such formulas and factors.

"(2) The long-term outlook for the fiscal condition and fiscal capacity of Federal, State, and local governments.

"(3) The concept of returning revenue sources to State and local governments along with responsibility for programs and activities for which financial assistance is now provided by the Federal Government.

"(4) The impacts of the cyclical nature of the economy and other factors, such as unemployment, on the expenditures, needs, and fiscal capacities of Federal, State, and local governments, and the responsiveness of the distribution of Federal financial assistance to the cyclical nature of the economy and such other factors.

"(5) The responsiveness of the distribution of Federal assistance to the fiscal capacities of State and local governments, and the responsiveness of the distribution of Federal assistance to the need for services of State and local governments and to cost-of-living and cost-of-government differentials.

"(6) The mathematical forms, data, and administration of Federal grant formulas, including the formulas examined under paragraph (1).

"(7) The impact on State and local governments of—

"(A) modification of the provisions of the Internal Revenue Code of 1954 [26 U.S.C. 1 et seq.] with respect to—

"(i) the deductibility of State and local government taxes, and

"(ii) the tax exempt status of State and local securities used for purposes other than the financing of public facilities and cash management, and

"(B) increases in allocations under chapter 67 of title 31, United States Code, made to compensate for the modifications described in clause (A).

"(b) The Secretary of the Treasury, in consultation with the Secretary of Commerce, the Comptroller General of the United States, the Advisory Commission on Intergovernmental Relations, and recognized organizations of elected officials of State and local governments, including regional organizations of such officials and officials of States that may receive substantially reduced funding under alternative methods of allocating Federal grants-in-aid, shall develop a plan for the completion of the study required by subsection (a). Such plan may provide for the participation of such individuals and organizations in the conduct of the study.

"(c) Upon completion of the study required by subsection (a), the Secretary shall solicit the views of the persons and organizations with whom he was required to consult by subsection (b) and shall append such views to a final report to the President and the Congress. Such report shall be submitted no later than June 30, 1985.

"(d) There are authorized to be appropriated for each of the fiscal years 1984 and 1985 such sums as may be necessary to carry out this section, not to exceed for each such fiscal year an amount equal to 3 percent of the cost of administering chapter 67 of title 31, United States Code, for the preceding fiscal year."

§ 6703. State and Local Government Fiscal Assistance Trust Fund

[*See main edition for text of* (*a*)]

(b) The Trust Fund consists of amounts appropriated to the Trust Fund. The following amounts may be appropriated to the Trust Fund:

(1) $2,300,000,000 for each entitlement period beginning before October 1, 1983, to pay amounts allocated to State governments for that period under section 6705 of this title.

[*See main edition for text of* (*2*)*;* (*c*)]

(As amended Pub. L. 98-185, § 3, Nov. 30, 1983, 97 Stat. 1309.)

AMENDMENTS

1983—Subsec. (b)(1). Pub. L. 98-185 inserted "beginning before October 1, 1983," after "each entitlement period".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-185 applicable to entitlement periods (as defined in section 6701(a)(1) of this title) beginning on or after Oct. 1, 1983, see section 12(a) of Pub. L. 98-185, set out as a note under section 6701 of this title.

§ 6704. Qualifications

(a) Under regulations of the Secretary of the Treasury, a State government or unit of general local government qualifies for payment under this chapter for an entitlement period only after establishing to the satisfaction of the Secretary that—

(1) the government will establish a trust fund in which the government will deposit all payments received under this chapter;

[*See main edition for text of* (*2*)]

(3) the government will expend the payments so received in accordance with laws and procedures applicable to the expenditure of revenues of the government;

[*See main edition for text of* (*4*)]

(5) if at least 25 percent of the costs of a construction project are paid out of the trust fund, laborers and mechanics employed by contractors or subcontractors on the project will receive pay at least equal to the prevailing rate of pay for similar construction in the locality as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a et seq.), and the Secretary of Labor shall act on labor standards under this clause in a way that is in accordance with Reorganization Plan No. 14 of 1950 (64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c);

[*See main edition for text of* (*6*)]

(7) after reasonable notice to the government, the government will make available to the Secretary of the Treasury and the Comptroller General, with the right to inspect, records the Secretary reasonably requires to review compliance with this chapter or the Comptroller General reasonably requires to review compliance and operations under section 6723(g) of this title;

(8) the government will make reports the Secretary of the Treasury reasonably requires, in addition to the annual reports required under section 6724(b) of this title; and

(9) the government will comply with the requirements of sections 6714 and 6723.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98-185, § 9(b), Nov. 30, 1983, 97 Stat. 1311.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-185, § 9(b)(1), inserted "under this chapter" after "received".

Subsec. (a)(3). Pub. L. 98-185, § 9(b)(2), substituted "so received in accordance with" for "received under".

Subsec. (a)(5). Pub. L. 98-185, § 9(b)(3), substituted "in accordance" for "consistent" before "with Reorganization Plan".

Subsec. (a)(7). Pub. L. 98-185, § 9(b)(4), substituted "section 6723(g)" for "section 6723(b)".

Subsec. (a)(9). Pub. L. 98-185, § 9(b)(5)-(7), added par. (9).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-185 applicable to entitlement periods (as defined in section 6701(a)(1) of this title) beginning on or after Oct. 1, 1983, see section 12(a) of Pub. L. 98-185, set out as a note under section 6701 of this title.

§ 6707. State allocations for units of general local government

[*See main edition for text of* (*a*) *and* (*b*)]

(c) The amount allocated to a State under this subsection for an entitlement period is the amount the State would receive if—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) $1,166,666,667 were allocated among the States on the basis of urbanized population by allocating to each State an amount bearing the same ratio to the total amount to be allocated as the urbanized population of the State bears to the urbanized population of all States.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-185, § 9(c), Nov. 30, 1983, 97 Stat. 1312.)

AMENDMENTS

1983—Subsec. (c)(5). Pub. L. 98-185 struck out provision defining "urbanized population".

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-185 applicable to entitlement periods (as defined in section 6701(a)(1) of this title) beginning on or after Oct. 1, 1983, see section 12(a) of Pub. L. 98-185, set out as a note under section 6701 of this title.

§ 6708. County area and county government allocations

Section Referred to in Other Sections

This section is referred to in sections 6701, 6703, 6707, 6709, 6711, 6713 of this title; title 42 section 6723.

§ 6709. Other local government allocations

(a) [*See main edition for text of (1)*]

(2) The general tax effort factor of a unit of general local government for an entitlement period is—

(A) the adjusted taxes of the unit of general local government, divided by

(B) the total income attributed to the unit of general local government.

[*See main edition for text of (3) to (5); (b) and (c)*]

(As amended Pub. L. 98-185, § 9(d), Nov. 30, 1983, 97 Stat. 1312.)

Amendments

1983—Subsec. (a)(2)(A). Pub. L. 98-185 substituted "the adjusted taxes of the unit of general local government, divided by" for "the taxes imposed by the unit of general local government for public purposes (except employee and employer assessments and contributions to finance retirement and social insurance systems and other special assessments for capital outlay) determined by the Secretary of Commerce for general statistical purposes and adjusted (under regulations of the Secretary of the Treasury) to exclude amounts properly allocated to education expenses; divided by".

Effective Date of 1983 Amendments

Amendment by Pub. L. 98-185 applicable to entitlement periods (as defined in section 6701(a)(1) of this title) beginning on or after Oct. 1, 1983, see section 12(a) of Pub. L. 98-185, set out as a note under section 6701 of this title.

Section Referred to in Other Sections

This section is referred to in sections 6701, 6703, 6707, 6711, 6713 of this title; title 42 section 6723.

§ 6711. State variation of local government allocations

(a) A State government may provide by law for the allocation of amounts among county areas or units of general local government (except county governments) in the State on the basis of population multiplied by the general tax effort factors or relative income factors of the county areas or units of general local government (determined under sections 6708(a) and 6709(a) and (b) of this title), or a combination of those factors. A State government providing for a variation on an allocation formula provided under section 6708(a) or 6709(a) or (b) shall notify the Secretary of the Treasury of the variation by the 30th day before the beginning of the first entitlement period in which the variation applies. A variation shall—

(1) provide for allocating the total amount allocated under section 6708(a) or 6709(a) or (b) of this title; and

(2) apply uniformly in the State.

[*See main edition for text of (b)*]

(As amended Pub. L. 98-185, § 4, Nov. 30, 1983, 97 Stat. 1309.)

Amendments

1983—Subsec. (a)(3). Pub. L. 98-185 struck out par. (3) which provided that a variation under this section would apply only to entitlement periods beginning before October 1, 1983.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-185 applicable to entitlement periods (as defined in section 6701(a)(1) of this title) beginning on or after Oct. 1, 1983, see section 12(a) of Pub. L. 98-185, set out as a note under section 6701 of this title.

§ 6712. Adjustments of local government allocations

Section Referred to in Other Sections

This section is referred to in sections 6701, 6713 of this title; title 42 section 6723.

§ 6713. Information used in allocation formulas

(a) Except as provided in this section, the Secretary of the Treasury shall use the most recent available information provided by the Secretary of Commerce before the beginning of the entitlement period to determine an allocation under this chapter. When the Secretary of the Treasury decides that the information is not current or complete enough to provide for a fair allocation, the Secretary of the Treasury may use additional information (including information based on estimates) as provided under regulations of the Secretary of the Treasury.

[*See main edition for text of (b)*]

(c) The Secretary of the Treasury may not—

(1) in determining an allocation for an entitlement period, use information on tax collections for years more recent than the years used by the Secretary of Commerce in the most recent Bureau of the Census general determination of State and local taxes made before the beginning of that period;

(2) consider a change in information used to determine an allocation for a period of 60 months when the change—

(A) results from a major disaster declared by the President under section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141); and

(B) reduces the amount of an allocation; and

(3) for purposes of intrastate allocations under sections 6708, 6709, and 6712, consider any reduction in the amount of adjusted taxes of any unit of general local government if such reduction—

(A) results from a specific economic dislocation which causes—

(i) the closing of places of employment,

(ii) declines in assessed values of, or receipt of taxes from, real property, or

(iii) declines in sales or income tax collections of such government, and

(B) would reduce the allocation of the unit of local government for an entitlement period by an amount equal to or greater than 20 percent of such allocation for the preceding entitlement period.

(As amended Pub. L. 98-185, §§ 5, 9(e), Nov. 30, 1983, 97 Stat. 1309, 1312.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-185, § 9(e), inserted "before the beginning of the entitlement period" after "Secretary of Commerce".

Subsec. (c)(3). Pub. L. 98-185, § 5, added par. (3).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-185 applicable to entitlement periods (as defined in section 6701(a)(1) of this title) beginning on or after Oct. 1, 1983, see section 12(a) of Pub. L. 98-185, set out as a note under section 6701 of this title.

§ 6714. Public hearings

(a)(1) A State government or unit of general local government expending payments under this chapter shall hold at least one public hearing on the proposed use of the payment in relation to its entire budget. At the hearing, persons shall be given an opportunity to provide written and oral views to the governmental authority responsible for enacting the budget and to ask questions about the entire budget and the relation of the payment to the entire budget. The government shall hold the hearing at a time and a place that allows and encourages public attendance and participation.

(2) A State government or unit of general local government holding a hearing required under this subsection or by the budget process of the government shall try to provide senior citizens and senior citizen organizations with an opportunity to present views at the hearing before the government makes a final decision on the use of the payment.

(b)(1) By the 10th day before a hearing required under subsection (a)(1) of this section is held, a State government or unit of general local government shall—

[*See main edition for text of* (*A*) *and* (*B*), (*2*)]

(c) Under regulations of the Secretary of the Treasury, a requirement—

(1) under subsection (a)(1) of this section may be waived if the budget process required under the applicable State or local law or charter provisions—

(A) ensures the opportunity for public attendance and participation contemplated by subsection (a) of this section; and

(B) includes a hearing on the proposed use of a payment received under this chapter in relation to the entire budget of the government; and

(2) under subsection (b)(1)(B) and (2)(B) of this section may be waived if the cost of publishing the information would be unreasonably burdensome in relation to the amount allocated to the government to amounts available for payment under this chapter, or when publication is otherwise impracticable.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Pub. L. 98-185, § 6, Nov. 30, 1983, 97 Stat. 1310.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-185, § 6(1), (2), struck out par. (1) and redesignated pars. (2) and (3) as (1) and (2), respectively. Former par. (1) had provided that a State government or unit of general local government expending payments received under this chapter was required to hold at least one public hearing for each fiscal period of the government at which persons were given an opportunity to present written and oral views on the possible uses of the payments, and that the government had to give adequate notice of the hearing and hold the hearing at least 7 calendar days before presenting its budget to the governmental authority responsible for enacting the budget.

Subsec. (b)(1). Pub. L. 98-185, § 6(3), substituted "subsection (a)(1)" for "subsection (a)(2)".

Subsec. (c). Pub. L. 98-185, § 6(4)-(6), struck out par. (1), redesignated pars. (2) and (3) as (1) and (2), respectively, and in par. (1), as so redesignated, substituted "subsection (a)(1)" for "subsection (a)(2)". Former par. (1) had provided that under regulations of the Secretary of the Treasury, a requirement under subsection (a)(1) of this section could be waived when the cost of the requirement would have been unreasonably burdensome in relation to the amount allocated to the State government or unit of general local government to amounts available for payment under this chapter.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-185 applicable to entitlement periods (as defined in section 6701(a)(1) of this title) beginning on or after Oct. 1, 1983, see section 12(a) of Pub. L. 98-185, set out as a note under section 6701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6704 of this title.

§ 6716. Prohibited discrimination

(a) No person in the United States shall be excluded from participating in, be denied the benefits of, or be subject to discrimination under, a program or activity of a State government or unit of general local government because of race, color, national origin, or sex if the government receives a payment under this chapter.

(b) The following prohibitions and exemptions also apply to a program or activity of a State government or unit of general local government if the government receives a payment under this chapter:

[*See main edition for text of* (*1*) *to* (*3*)]

(c)(1) Subsections (a) and (b) of this section do not apply when the government shows, by clear and convincing evidence, that a payment received under this chapter is not used to pay for any part of the program or activity with respect to which the allegation of discrimination is made.

[*See main edition for text of* (*2*); (*d*)]

(As amended Pub. L. 98-185, § 9(f), (g), Nov. 30, 1983, 97 Stat. 1312; Pub. L. 98-216, § 1(8), Feb. 14, 1984, 98 Stat. 4.)

HISTORICAL AND REVISION NOTES

1984 ACT

This is necessary to correct a mistake in section 6716(c)(1) as codified by section 1 of the Act of September 13, 1982 (Pub. L. 97-258, 96 Stat. 1025.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-216 substituted "Subsections" for "Subsection".

1983—Subsecs. (a), (b). Pub. L. 98-185, § 9(f), substituted "if the government" for "when the government".

Subsec. (c)(1). Pub. L. 98-185, § 9(g), added "with respect to which the allegation of discrimination is made" after "activity".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-185 applicable to entitlement periods (as defined in section 6701(a)(1) of this title) beginning on or after Oct. 1, 1983, see section 12(a) of Pub. L. 98-185, set out as a note under section 6701 of this title.

§ 6717. Discrimination proceedings

[See main edition for text of (a)]

(b) The State government or unit of general local government may present evidence informally to the Secretary within 30 days after the government receives a notice of noncompliance from the Secretary of the Treasury. Except as provided in subsection (e) of this section, the government may present evidence on whether—

[See main edition for text of (1) and (2)]

(3) any part of that program or activity has been paid for with a payment received under this chapter.

(c) By the end of the 30-day period under subsection (b) of this section, the Secretary shall decide whether the State government or unit of general local government has not complied with section 6716(a) or (b) of this title, unless the government has made a compliance agreement under section 6719 of this title. If the Secretary decides that the government has not complied, the Secretary shall notify the government of the decision and shall suspend payments to the government under this chapter unless, within 10 days after the government receives notice of the decision, the government—

[See main edition for text of (1) and (2); (d)]

(e) In a proceeding under subsections (b)-(d) of this section on a program or activity of a State government or unit of general local government about which a holding of discrimination has been made, the Secretary or administrative law judge may consider only whether a payment under this chapter was used to pay for any part of the program or activity. The holding of discrimination is conclusive. If the holding is reversed by an appellate court, the Secretary or judge shall end the proceeding.

(As amended Pub. L. 98-185, §§ 7, 9(h), Nov. 30, 1983, 97 Stat. 1310, 1312.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-185, § 7(1), substituted "after the government receives a notice of noncompliance from the Secretary of the Treasury" for "after the Secretary submits a notice of noncompliance to the government".

Subsec. (b)(3). Pub. L. 98-185, § 9(h)(1), substituted "any part" for "a part".

Subsec. (c). Pub. L. 98-185, §§ 7(2), 9(h)(2), (3), substituted "shall notify the government of the decision and shall suspend payments to the government under this chapter unless, within 10 days after the government receives notice of the decision," for "shall suspend payments to the government under this chapter unless by the 10th day after the decision", "unless the government" for "except when the government", and "If the Secretary" for "When the Secretary".

Subsec. (e). Pub. L. 98-185, § 9(h)(4), substituted "The holding of discrimination" for "The holding".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-185 applicable to entitlement periods (as defined in section 6701(a)(1) of this title) beginning on or after Oct. 1, 1983, see section 12(a) of Pub. L. 98-185, set out as a note under section 6701 of this title.

§ 6718. Suspension and termination of payments in discrimination proceedings

[See main edition for text of (a)]

(b) When a holding of discrimination is reversed by an appellate court, a suspension or termination of payments in a proceeding based on the holding shall be discontinued.

[See main edition for text of (c) to (e)]

(As amended Pub. L. 98-185, § 9(i), Nov. 30, 1983, 97 Stat. 1312.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-185 substituted "based on the holding" for "about the holding".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-185 applicable to entitlement periods (as defined in section 6701(a)(1) of this title) beginning on or after Oct. 1, 1983, see section 12(a) of Pub. L. 98-185, set out as a note under section 6701 of this title.

§ 6723. Audits, investigations, and reviews

(a)(1) Except as provided in this section, a State government or unit of general local government which receives a payment under this chapter shall have an independent audit made of the financial statements of the government at least as often as is required by paragraph (2) to determine compliance with this chapter. The audit shall be carried out under generally accepted government auditing standards issued by the Comptroller General of the United States.

(2) Paragraph (1) of this subsection does not apply to a government for a fiscal year in which the government receives less than $25,000 under this chapter. A government which receives at least $25,000 but not more than $100,000 under this chapter for a fiscal year shall have an audit made in accordance with paragraph (1) at least once every 3 years. A government which receives more than $100,000

under this chapter for a fiscal year shall have an audit made in accordance with paragraph (1) for such fiscal year, except that, if the government operates on a biennial fiscal period, such audit may be made biennially but shall cover the financial statement or statements for, and compliance with the requirements of this chapter during, both years within such period.

[*See main edition for text of* (*3*)]

(b)(1) A State government or unit of general local government may elect to waive application of subsection (a)(1) of this section when—

(A) the financial statements of the government are audited by independent auditors under State or local law at least as often as would be required by subsection (a)(2);

(B) the government certifies that the audit is carried out under generally accepted government auditing standards issued by the Comptroller General of the United States; and

(C) the auditing provisions of the State or local law are applicable to the entitlement period to which the waiver applies.

[*See main edition for text of* (*2*)]

(c) Under regulations of the Secretary of the Treasury, the Secretary may waive a requirement of subsections (a)(1) and (b) of this section for a State government or unit of general local government for a fiscal year when the Secretary decides that the financial statements of the government for the year—

(1) cannot be audited, and the government shows substantial progress in making the statements auditable; or

(2) have been audited by a State agency that does not follow generally accepted government auditing standards issued by the Comptroller General of the United States or that is not independent, and the State agency shows progress in meeting such auditing standards or in becoming independent.

[*See main edition for text of* (*d*)]

(e) An opinion on an audit carried out under this section shall be provided to the Secretary in the form and at times required by the Secretary. No later than 30 days following completion of the audit, the audit report shall be made available for public inspection by the State government or unit of local government.

[*See main edition for text of* (*f*) *and* (*g*)]

(As amended Pub. L. 98-185, § 8, Nov. 30, 1983, 97 Stat. 1310.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-185, § 8(a)(1), which directed the striking out of "expecting to receive" and "which receives", was executed by striking out "expecting to receive" and inserting in lieu thereof "which receives" to reflect the probable intent of Congress.

Pub. L. 98-185, § 8(a)(2), (3), substituted "at least as often as is required by paragraph (2)" for "at least once every 3 years" and "government auditing standards issued by the Comptroller General of the United States" for "auditing standards".

Subsec. (a)(2). Pub. L. 98-185, § 8(b), substituted provisions that a government which receives at least $25,000 but not more than $100,000 under this chapter for a fiscal year shall have an audit made in accordance with paragraph (1) at least once every 3 years, and that a government which receives more than $100,000 under this chapter for a fiscal year shall have an audit made in accordance with paragraph (1) for such fiscal year, except that, if the government operates on a biennial fiscal period, such audit may be made biennially but shall cover the financial statement or statements for, and compliance with the requirements of this chapter during both years within such period for provisions that an audit required under State or local law for financial statements of a government for a fiscal year in which the government received less than $25,000 under this chapter was deemed to be in compliance with par. (1).

Subsec. (b)(1)(A). Pub. L. 98-185, § 8(c)(1), substituted "at least as often as would be required by subsection (a)(2)" for "at least once every 3 years".

Subsec. (b)(1)(B). Pub. L. 98-185, § 8(c)(2), substituted "government auditing standards issued by the Comptroller General of the United States" for "auditing standards".

Subsec. (c)(2). Pub. L. 98-185, § 8(d)(1), (2), substituted "generally accepted government auditing standards issued by the Comptroller General of the United States" for "generally accepted auditing standards", and "meeting such auditing standards" for "meeting generally accepted auditing standards".

Subsec. (e). Pub. L. 98-185, § 8(e), added provisions that the audit report shall be made available for public inspection by the State government or unit of local government no later than 30 days following completion of the audit.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-185 applicable with respect to any fiscal year (or period) of any State government or unit of general local government beginning on or after Oct. 1, 1983, see section 12(b) of Pub. L. 98-185, set out as a note under section 6701 of this title.

CHAPTER 69—PAYMENT FOR ENTITLEMENT LAND

Sec.	
6907.	State legislation requiring reallocation or redistribution of payments to smaller units of general purpose government.[1]

§ 6901. Definitions

In this chapter—

[*See main edition for text of* (*1*)]

(2) "unit of general local government" means:

(A) a county (or parish), township, borough existing in Alaska on October 20, 1976, or city where the city is independent of any other unit of general local government, that: (i) is within the class or classes of such political subdivisions in a State that the Secretary of the Interior, in his discretion, determines to be the principal provider or providers of governmental services within the State; and (ii) is a unit of general government as determined by the Secretary of the Interior on the basis of the same principles as were used on January 1, 1983, by the Secretary of Commerce for general statistical purposes. The term "governmental services" includes, but is not limited to, those services that relate to public safety, environment, housing, social services, transportation, and governmental administration;

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[1] Editorially supplied. Section 6907 added by Pub. L. 98-63 without enactment of section catchline or amendment of chapter analysis.

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico;

(D) Guam; and

(E) the Virgin Islands.

(As amended Pub. L. 98-63, title I, § 101(1), July 30, 1983, 97 Stat. 323.)

AMENDMENTS

1983—Par. (2). Pub. L. 98-63 amended par. (2) generally, substituting in subpar. (A) "a county (or parish), township, borough existing in Alaska on October 20, 1976, or city where the city is independent of any other unit of general local government, that: (i) is within the class or classes of such political subdivisions in a State that the Secretary of the Interior, in his discretion, determines to be the principal provider or providers of governmental services within the State; and (ii) is a unit of general government as determined by the Secretary of the Interior on the basis of the same principles as were used on January 1, 1983, by the Secretary of Commerce for general statistical purposes. The term 'governmental services' includes, but is not limited to, those services that relate to public safety, environment, housing, social sevices, transportation, and governmental administration" for "a county, city, township, borough existing in Alaska on October 20, 1976, or other political subdivision of a State that the Secretary of the Interior, on the same basis that the Secretary of Commerce uses for general statistical purposes, decides is a general purpose political subdivision of a State"; including the District of Columbia in the definition; and excluding the Commonwealth of the Northern Mariana Islands from the definition.

§ 6903. Payments

(a) In this section—

[See main edition for text of (1) to (3)]

[(4) Repealed. Pub. L. 98-63, title I, § 101(2), July 30, 1983, 97 Stat. 324]

[See main edition for text of (b) and (c)]

(As amended Pub. L. 98-63, title I, § 101(2), July 30, 1983, 97 Stat. 324.)

AMENDMENTS

1983—Subsec. (a)(4). Pub. L. 98-63 struck out par. (4) which provided that if any part of a small unit was located within another unit, entitlement land within both units was deemed to be located within the smaller unit.

PAYMENTS MADE PRIOR TO JANUARY 1, 1983

Section 101(3) of Pub. L. 98-63 provided in part that: "The United States shall not be subject to any cause of action or any liability for distribution of payments made prior to January 1, 1983, under the Act of October 20, 1976 (90 Stat. 2662), as amended [Pub. L. 94-565, see 31 U.S.C. 6901 et seq.], or regulations pursuant thereto."

§ 6907. State legislation requiring reallocation or redistribution of payments to smaller units of general purpose government [2]

(a) Notwithstanding any other provision of this chapter, a State may enact legislation which requires that any payments which would be made to units of general local government pursuant to this chapter be reallocated and redistributed in whole or part to other smaller units of general purpose government which (1) are located within the boundaries of the larger unit of general local government, (2) provide general governmental services and (3) contain entitlement lands within their boundaries. Such reallocation or redistribution shall generally reflect the level of services provided by, and the number of entitlement acres within, the smaller unit of general local government.

(b) Upon enactment of legislation by a State, described in subsection (a), the Secretary shall make one payment to such State equaling the aggregate amount of payments which he otherwise would have made to units of general local government within such State pursuant to this chapter. It shall be the responsibility of such State to make any further distribution of the payment pursuant to subsection (a). Such redistribution shall be made within 30 days after receipt of such payment. No payment, or portion thereof, made by the Secretary shall be used by any State for the administration of this subsection or subsection (a).

(c) Appropriations made for payments in lieu of taxes for a fiscal year may be used to correct underpayments in the previous fiscal year to achieve equity among all qualified recipients.

(Added Pub. L. 98-63, title I, § 101(4), July 30, 1983, 97 Stat. 324.)

CHAPTER 73—ADMINISTERING BLOCK GRANTS

§ 7305. State auditing requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 3814.

CHAPTER 75—REQUIREMENTS FOR SINGLE AUDITS

Sec.

7501. Definitions.
7502. Audit requirements; exemptions.
7503. Relation to other audit requirements.
7504. Cognizant agency responsibilities.
7505. Regulations.
7506. Monitoring responsibilities of the Comptroller General.
7507. Effective date; report.

§ 7501. Definitions

As used in this chapter, the term—

(1) "cognizant agency" means a Federal agency which is assigned by the Director with the responsibility for implementing the requirements of this chapter with respect to a particular State or local government.

(2) "Comptroller General" means the Comptroller General of the United States.

(3) "Director" means the Director of the Office of Management and Budget.

(4) "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, or direct appropria-

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[2] Section catchline editorially supplied.

tions, but does not include direct Federal cash assistance to individuals.

(5) "Federal agency" has the same meaning as the term "agency" in section 551(1) of title 5, United States Code.

(6) "generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

(7) "generally accepted government auditing standards" means the standards for audit of governmental organizations, programs, activities, and functions, issued by the Comptroller General.

(8) "independent auditor" means—

(A) an external State or local government auditor who meets the independence standards included in generally accepted government auditing standards, or

(B) a public accountant who meets such independence standards.

(9) "internal controls" means the plan of organization and methods and procedures adopted by management to ensure that—

(A) resource use is consistent with laws, regulations, and policies;

(B) resources are safeguarded against waste, loss, and misuse; and

(C) reliable data are obtained, maintained, and fairly disclosed in reports.

(10) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) "local government" means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

(12) "major Federal assistance program" means any program for which total expenditures of Federal financial assistance by the State or local government during the applicable year exceed—

(A) $20,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $7,000,000,000;

(B) $19,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $6,000,000,000 but are less than or equal to $7,000,000,000;

(C) $16,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $5,000,000,000 but are less than or equal to $6,000,000,000;

(D) $13,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $4,000,000,000 but are less than or equal to $5,000,000,000;

(E) $10,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $3,000,000,000 but are less than or equal to $4,000,000,000;

(F) $7,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $2,000,000,000 but are less than or equal to $3,000,000,000;

(G) $4,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $1,000,000,000 but are less than or equal to $2,000,000,000;

(H) $3,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $100,000,000 but are less than or equal to $1,000,000,000; and

(I) the larger of (i) $300,000, or (ii) 3 percent of such total expenditures for all programs, in the case of a State or local government for which such total expenditures for all programs exceed $100,000 but are less than or equal to $100,000,000.

(13) "public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

(14) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe.

(15) "subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance through a State or local government, but does not include an individual that receives such assistance.

(Added Pub. L. 98-502, § 2(a), Oct. 19, 1984, 98 Stat. 2327.)

REFERENCES IN TEXT

The Alaskan Native Claims Settlement Act, referred to in par. (10), probably means the Alaska Native Claims Settlement Act, Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 98-502 provided that: "This Act [enacting this chapter] may be cited as the 'Single Audit Act of 1984'."

CONGRESSIONAL STATEMENT OF PURPOSE

Section 1(b) of Pub. L. 98-502 provided that: "It is the purpose of this Act [enacting this chapter]—

"(1) to improve the financial management of State and local governments with respect to Federal financial assistance programs;

"(2) to establish uniform requirements for audits of Federal financial assistance provided to State and local governments;

"(3) to promote the efficient and effective use of audit resources; and

"(4) to ensure that Federal departments and agencies, to the maximum extent practicable, rely upon and use audit work done pursuant to chapter 75 of title 31, United States Code (as added by this Act)."

TENNESSEE VALLEY AUTHORITY AUDITS UNAFFECTED BY SINGLE AUDIT REQUIREMENTS

Section 2(b) of Pub. L. 98-502 provided that: "The provisions of this Act [enacting this chapter] shall not diminish or otherwise affect the authority of the Tennessee Valley Authority to conduct its own audits of any matter involving funds disbursed by the Tennessee Valley Authority."

§ 7502. Audit requirements; exemptions

(a)(1)(A) Each State and local government which receives a total amount of Federal financial assistance equal to or in excess of $100,000 in any fiscal year of such government shall have an audit made for such fiscal year in accordance with the requirements of this chapter and the requirements of the regulations prescribed pursuant to section 7505 of this title.

(B) Each State and local government that receives a total amount of Federal financial assistance which is equal to or in excess of $25,000 but less than $100,000 in any fiscal year of such government shall—

(i) have an audit made for such fiscal year in accordance with the requirements of this chapter and the requirements of the regulations prescribed pursuant to section 7505 of this title; or

(ii) comply with any applicable requirements concerning financial or financial and compliance audits contained in Federal statutes and regulations governing programs under which such Federal financial assistance is provided to that government.

(C) Each State and local government that receives a total amount of Federal financial assistance which is less than $25,000 in any fiscal year of such government shall be exempt for such fiscal year from compliance with—

(i) the audit requirements of this chapter; and

(ii) any applicable requirements concerning financial or financial and compliance audits contained in Federal statutes and regulations governing programs under which such Federal financial assistance is provided to that government.

The provisions of clause (ii) of this subparagraph do not exempt a State or local government from compliance with any provision of a Federal statute or regulation that requires such government to maintain records concerning Federal financial assistance provided to such government or that permits a Federal agency or the Comptroller General access to such records.

(2) For purposes of this section, a State or local government shall be considered to receive Federal financial assistance whether such assistance is received directly from a Federal agency or indirectly through another State or local government.

(b)(1) Except as provided in paragraphs (2) and (3), audits conducted pursuant to this chapter shall be conducted annually.

(2) If a State or local government is required—

(A) by constitution or statute, as in effect on the date of enactment of this chapter, or

(B) by administrative rules, regulations, guidelines, standards, or policies, as in effect on such date,

to conduct its audits less frequently than annually, the cognizant agency for such government shall, upon request of such government, permit the government to conduct its audits pursuant to this chapter biennially, except as provided in paragraph (3). Such audits shall cover both years within the biennial period.

(3) Any State or local government that is permitted, under clause (B) of paragraph (2), to conduct its audits pursuant to this chapter biennially by reason of the requirements of a rule, regulation, guideline, standard, or policy, shall, for any of its fiscal years beginning after December 31, 1986, conduct such audits annually unless such State or local government codifies a requirement for biennial audits in its constitution or statutes by January 1, 1987. Audits conducted biennially under the provisions of this paragraph shall cover both years within the biennial period.

(c) Each audit conducted pursuant to subsection (a) shall be conducted by an independent auditor in accordance with generally accepted government auditing standards, except that, for the purposes of this chapter, such standards shall not be construed to require economy and efficiency audits, program results audits, or program evaluations.

(d)(1) Each audit conducted pursuant to subsection (a) for any fiscal year shall cover the entire State or local government's operations except that, at the option of such government—

(A) such audit may, except as provided in paragraph (5), cover only each department, agency, or establishment which received, expended, or otherwise administered Federal financial assistance during such fiscal year; and

(B) such audit may exclude public hospitals and public colleges and universities.

(2) Each such audit shall encompass the entirety of the financial operations of such government or of such department, agency, or establishment, whichever is applicable, and shall determine and report whether—

(A)(i) the financial statements of the government, department, agency, or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles; and

(ii) the government, department, agency, or establishment has complied with laws and regulations that may have a material effect upon the financial statements;

(B) the government, department, agency, or establishment has internal control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(C) the government, department, agency, or establishment has complied with laws and regulations that may have a material effect upon each major Federal assistance program.

In complying with the requirements of subparagraph (C), the independent auditor shall select and test a representative number of transactions from each major Federal assistance program.

(3) Transactions selected from Federal assistance programs, other than major Federal assistance programs, pursuant to the requirements of paragraphs (2)(A) and (2)(B) shall be tested for compliance with Federal laws and regulations that apply to such transactions. Any noncompliance found in such transactions by the independent auditor in making determinations required by this paragraph shall be reported.

(4) The number of transactions selected and tested under paragraphs (2) and (3), the selection and testing of such transactions, and the determinations required by such paragraphs shall be based on the professional judgment of the independent auditor.

(5) Each State or local government which, in any fiscal year of such government, receives directly from the Department of the Treasury a total of $25,000 or more under chapter 67 of this title (relating to general revenue sharing) and which is required to conduct an audit pursuant to this chapter for such fiscal year shall not have the option provided by paragraph (1)(A) for such fiscal year.

(6) A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered to be an audit for the purpose of this chapter.

(e)(1) Each State and local government subject to the audit requirements of this chapter, which receives Federal financial assistance and provides $25,000 or more of such assistance in any fiscal year to a subrecipient, shall—

(A) if the subrecipient conducts an audit in accordance with the requirements of this chapter, review such audit and ensure that prompt and appropriate corrective action is taken on instances of material noncompliance with applicable laws and regulations with respect to Federal financial assistance provided to the subrecipient by the State or local government; or

(B) if the subrecipient does not conduct an audit in accordance with the requirements of this chapter—

(i) determine whether the expenditures of Federal financial assistance provided to the subrecipient by the State or local government are in accordance with applicable laws and regulations; and

(ii) ensure that prompt and appropriate corrective action is taken on instances of material noncompliance with applicable laws and regulations with respect to Federal financial assistance provided to the subrecipient by the State or local government.

(2) Each such State and local government shall require each subrecipient of Federal assistance through such government to permit, as a condition of receiving funds from such assistance, the independent auditor of the State or local government to have such access to the subrecipient's records and financial statements as may be necessary for the State or local government to comply with this chapter.

(f) The report made on any audit conducted pursuant to this section shall, within thirty days after completion of such report, be transmitted to the appropriate Federal officials and made available by the State or local government for public inspection.

(g) If an audit conducted pursuant to this section finds any material noncompliance with applicable laws and regulations by, or material weakness in the internal controls of, the State or local government with respect to the matters described in subsection (d)(2), the State or local government shall submit to appropriate Federal officials a plan for corrective action to eliminate such material noncompliance or weakness or a statement describing the reasons that corrective action is not necessary. Such plan shall be consistent with the audit resolution standard promulgated by the Comptroller General (as part of the standards for internal controls in the Federal Government) pursuant to section 3512(b) of this title.

(Added Pub. L. 98-502, § 2(a), Oct. 19, 1984, 98 Stat. 2329.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (b)(2)(A) and (B), is the date of enactment of Pub. L. 98-502, which was approved Oct. 19, 1984.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7503, 7504 of this title.

§ 7503. Relation to other audit requirements

(a) An audit conducted in accordance with this chapter shall be in lieu of any financial or financial and compliance audit of an individual Federal assistance program which a State or local government is required to conduct under any other Federal law or regulation. To the extend[1] that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal law or regulation, a Federal agency shall rely upon and use that information and plan and conduct its own audits accordingly in order to avoid a duplication of effort.

(b) Notwithstanding subsection (a), a Federal agency shall conduct any additional audits which are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any State or local government (or subrecipient thereof) to constrain, in any manner, such agency from carrying out such additional audits.

(c) The provisions of this chapter do not limit the authority of Federal agencies to conduct, or enter into contracts for the conduct of, audits and evaluations of Federal financial assistance programs, nor limit the authority of any Federal agency Inspector General or other Federal audit official.

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[1] So in original. Probably should be "extent".

(d) Subsection (a) shall apply to a State or local government which conducts an audit in accordance with this chapter even though it is not required by section 7502(a) to conduct such audit.

(e) A Federal agency that performs or contracts for audits in addition to the audits conducted by recipients pursuant to this chapter shall, consistent with other applicable law, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

(Added Pub. L. 98-502, § 2(a), Oct. 19, 1984, 98 Stat. 2332.)

§ 7504. Cognizant agency responsibilities

(a) The Director shall designate cognizant agencies for audits conducted pursuant to this chapter.

(b) A cognizant agency shall—

(1) ensure that audits are made in a timely manner and in accordance with the requirements of this chapter;

(2) ensure that the audit reports and corrective action plans made pursuant to section 7502 of this title are transmitted to the appropriate Federal officials; and

(3)(A) coordinate, to the extent practicable, audits done by or under contract with Federal agencies that are in addition to the audits conducted pursuant to this chapter; and (B) ensure that such additional audits build upon the audits conducted pursuant to this chapter.

(Added Pub. L. 98-502, § 2(a), Oct. 19, 1984, 98 Stat. 2333.)

§ 7505. Regulations

(a) The Director, after consultation with the Comptroller General and appropriate Federal, State, and local government officials, shall prescribe policies, procedures, and guidelines to implement this chapter. Each Federal agency shall promulgate such amendments to its regulations as may be necessary to conform such regulations to the requirements of this chapter and of such policies, procedures, and guidelines.

(b)(1) The policies, procedures, and guidelines prescribed pursuant to subsection (a) shall include criteria for determining the appropriate charges to programs of Federal financial assistance for the cost of audits. Such criteria shall prohibit a State or local government which is required to conduct an audit pursuant to this chapter from charging to any such program (A) the cost of any financial or financial and compliance audit which is not conducted in accordance with this chapter, and (B) more than a reasonably proportionate share of the cost of any such audit that is conducted in accordance with this chapter.

(2) The criteria prescribed pursuant to paragraph (1) shall not, in the absence of documentation demonstrating a higher actual cost, permit (A) the ratio of (i) the total charges by a government to Federal financial assistance programs for the cost of audits performed pursuant to this chapter, to (ii) the total cost of such audits, to exceed (B) the ratio of (i) total Federal financial assistance expended by such government during the applicable fiscal year or years, to (ii) such government's total expenditures during such fiscal year or years.

(c) Such policies, procedures, and guidelines shall include such provisions as may be necessary to ensure that small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals will have the opportunity to participate in the performance of contracts awarded to fulfill the audit requirements of this chapter.

(Added Pub. L. 98-502, § 2(a), Oct. 19, 1984, 98 Stat. 2333.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7502 of this title.

§ 7506. Monitoring responsibilities of the Comptroller General

The Comptroller General shall review provisions requiring financial or financial and compliance audits of recipients of Federal assistance that are contained in bills and resolutions reported by the committees of the Senate and the House of Representatives. If the Comptroller General determines that a bill or resolution contains provisions that are inconsistent with the requirements of this chapter, the Comptroller General shall, at the earliest practicable date, notify in writing—

(1) the committee that reported such bill or resolution; and

(2)(A) the Committee on Governmental Affairs of the Senate (in the case of a bill or resolution reported by a committee of the Senate); or

(B) the Committee on Government Operations of the House of Representatives (in the case of a bill or resolution reported by a committee of the House of Representatives).

(Added Pub. L. 98-502, § 2(a), Oct. 19, 1984, 98 Stat. 2333.)

§ 7507. Effective date; report

(a) This chapter shall apply to any State or local government with respect to any of its fiscal years which begin after December 31, 1984.

(b) The Director, on or before May 1, 1987, and annually thereafter, shall submit to each House of Congress a report on operations under this chapter. Each such report shall specifically identify each Federal agency or State or local government which is failing to comply with this chapter.

(Added Pub. L. 98-502, § 2(a), Oct. 19, 1984, 98 Stat. 2334.)

SUBTITLE VI—MISCELLANEOUS

CHAPTER 91—GOVERNMENT CORPORATIONS

Chapter Referred to in Other Sections

This chapter is referred to in section 3501 of this title; title 2 section 651; title 5 sections 4101, 8147; title 7 section 943; title 12 sections 1438, 1723a, 1725, 1749a, 1789, 2293; title 15 sections 713a-4, 714c; title 16 section 838i; title 20 section 1082; title 22 sections 290f, 290h-6, 2199, 2395; title 38 section 4206; title 40 sections 474, 481, 483, 490, 491; title 41 section 403; title 42 sections 294h, 1437h, 4124, 8775; title 46 section 741; title 49 App. section 1537; title 50 App. section 1941g.

§ 9101. Definitions

Section Referred to in Other Sections

This section is referred to in section 1105 of this title; title 2 section 651; title 5 section 8147; title 7 section 943; title 12 sections 1757, 2293; title 16 section 838i; title 41 section 601.

§ 9106. Audit reports

Section Referred to in Other Sections

This section is referred to in title 16 sections 831n-4, 838i; title 22 section 2199; title 42 section 8777.

§ 9108. Obligations

Section Referred to in Other Sections

This section is referred to in title 12 section 1431.

CHAPTER 93—SURETIES AND SURETY BONDS

§ 9309. Priority of sureties

Section Referred to in Other Sections

This section is referred to in title 22 section 1631g; title 50 App. section 34.

CHAPTER 95—GOVERNMENT PENSION PLAN PROTECTION

Chapter Referred to in Other Sections

This chapter is referred to in title 10 sections 1464, 1465.

CHAPTER 97—MISCELLANEOUS

§ 9701. Fees and charges for Government services and things of value

Section Referred to in Other Sections

This section is referred to in title 7 section 2242a; title 8 section 1455; title 12 section 78n; title 16 section 222; title 28 section 1828; title 42 section 2201.

TITLE 32—NATIONAL GUARD

This title was enacted by act Aug. 10, 1956, ch. 1041, § 2, 70A Stat. 596

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 85-861; LEGISLATIVE PURPOSE; REPEAL OF INCONSISTENT PROVISIONS; CORRESPONDING PROVISIONS; SAVINGS AND SEPARABILITY PROVISIONS; STATUS; REPEALS

Section 35 of Pub. L. 85-861 provided that: "If on the effective date of this Act [Sept. 2, 1958] a provision of law that is restated in this Act and repealed by section 36 would have been in a suspended or temporarily superseded status but for its repeal, the provisions of this Act that restate that provision have the same suspended or temporarily superseded status."

Section 36 of Pub. L. 85-861 repealed certain laws except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun, before Sept. 2, 1958.

CHAPTER 1—ORGANIZATION

§ 101. Definitions

In addition to the definitions in sections 1-5 of title 1, the following definitions apply in this title:

[*See main edition for text of* (*1*) *to* (*11*)]

(12) "Active duty" means full-time duty in the active military service of the United States. It includes such Federal duty as full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It does not include full-time National Guard duty.

[*See main edition for text of* (*13*) *to* (*18*)]

(19) "Full-time National Guard duty" means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of this title for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(As amended Oct. 19, 1984, Pub. L. 98-525, title IV, § 414(b)(1), 98 Stat. 2519.)

AMENDMENTS

1984—Cl. (12). Pub. L. 98-525, § 414(b)(1)(A), added: "It does not include full-time National Guard duty."

Cl. (19). Pub. L. 98-525, § 414(b)(1)(B), added cl. (19).

CHAPTER 3—PERSONNEL

Sec.
[334, 335. Repealed.]

AMENDMENTS

1984—Pub. L. 98-525, title IV, § 414(b)(2)(B), Oct. 19, 1984, 98 Stat. 2519, struck out item 335 "Status of certain members performing full-time duty."

1983—Pub. L. 98-94, title V, § 504(b)(2), Sept. 24, 1983, 97 Stat. 632, added item 335.

1981—Pub. L. 97-124, § 3, Dec. 29, 1981, 95 Stat. 1666, struck out item 334 "Payment of malpractice liability of National Guard Medical personnel".

§ 316. Detail of members of Army National Guard for rifle instruction of civilians

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 320, 321, 715 of this title; title 10 sections 101, 701, 1089, 1332, 1333; title 28 section 2671; title 38 sections 101, 765, 2024.

[§ 335. Repealed. Pub. L. 98-525, title IV, § 414(b)(2)(A), Oct. 19, 1984, 98 Stat. 2519]

Section, added Pub. L. 98-94, title V, § 504(b)(1), Sept. 24, 1983, 97 Stat. 632, related to status of certain members of the National Guard performing full-time duty.

CHAPTER 5—TRAINING

§ 502. Required drills and field exercises

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 318, 320, 321, 715 of this title; title 5 sections 3551, 5517, 6323; title 10 sections 101, 268, 517, 524, 701, 1089, 1208, 1332, 1333; title 28 section 2671; title 37 section 204; title 38 sections 101, 765, 2024, title 50 App. section 456.

§ 503. Participation in field exercises

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 318, 319, 320, 321, 715 of this title; title 5 sections 3551, 6323; title 10 sections 101, 524, 701, 1089, 1208, 1332, 1333; title 28 section 2671; title 37 section 204; title 38 sections 101, 765, 2024.

§ 504. National Guard schools and small arms competitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 318, 319, 320, 321, 715 of this title; title 5 sections 3551, 6323; title 10 sections 101, 701, 1089, 1208, 1332, 1333; title 28 section 2671; title 37 section 204; title 38 sections 101, 765, 2024.

§ 505. Army and Air Force schools and field exercises

Section Referred to in Other Sections

This section is referred to in sections 101, 318, 319, 320, 321, 715 of this title; title 5 sections 3551, 6323; title 10 sections 101, 701, 1089, 1208, 1332, 1333, 8616; title 28 section 2671; title 37 section 204; title 38 sections 101, 765, 2024.

CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

Sec.	
716.	Claims for overpayment of pay and allowances, and travel and transportation allowances.

Amendments

1985—Pub. L. 99-224, § 3(b), Dec. 28, 1985, 99 Stat. 1742, substituted "and travel" for "other than travel" in item 716.

§ 709. Technicians: employment, use, status

References in Text

Sections 7511 and 7512 of title 5, referred to in subsec. (f), which related to adverse actions against preference eligible employees and comprised subchapter II of chapter 75 of Title 5, Government Organization and Employees, were repealed by Pub. L. 95-454 and replaced by a new subchapter II (§§ 7511-7514) of chapter 75 relating to removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

§ 715. Property loss; personal injury or death: activities under certain sections of this title

(a) Under such regulations as the Secretary of the Army or Secretary of the Air Force may prescribe, he or, subject to appeal to him, the Judge Advocate General of the armed force under his jurisdiction, if designated by him, may settle and pay in an amount not more than $100,000 a claim against the United States for—

[*See main edition for text of* (*1*) *to* (*3*); (*b*) *and* (*c*)]

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Comptroller General for payment under section 1304 of title 31.

[*See main edition for text of* (*e*)]

(f) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed $25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

[*See main edition for text of* (*g*) *and* (*h*)]

(As amended Pub. L. 98-564, § 4, Oct. 30, 1984, 98 Stat. 2919.)

Amendments

1984—Subsec. (a). Pub. L. 98-564, § 4(1), substituted "$100,000" for "$25,000".

Subsec. (d). Pub. L. 98-564, § 4(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "If the Secretary of the military department concerned considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by this section, he may pay the claimant $25,000 and report the excess to Congress for its consideration".

Subsec. (f). Pub. L. 98-564, § 4(3), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "In any case where the amount to be paid is not more than $5,000, the authority contained in subsection (a) may be delegated to any officer of the Army or the Air Force, as the case may be, who has been delegated authority under section 2733(g) of title 10, to settle similar claims, subject to appeal to the Secretary concerned, or his designee for that purpose".

§ 716. Claims for overpayment of pay and allowances, and travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the National Guard, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

[*See main edition for text of* (*1*) *and* (*2*)]

(b) The Comptroller General or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

[*See main edition for text of* (*1*)]

(2) if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment was discovered.

[*See main edition for text of* (c) *to* (*f*)]

(As amended Pub. L. 99-224, § 3(a), Dec. 28, 1985, 99 Stat. 1742.)

Amendments

1985—Pub. L. 99-224, § 3(a)(1), substituted "and travel" for "other than travel" in section catchline.

Subsec. (a). Pub. L. 99-224, § 3(a)(2), substituted "made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances" for ", other than travel and transportation allowances, made before or after October 2, 1972".

Subsec. (b)(2). Pub. L. 99-224, § 3(a)(3), struck out "of pay or allowances, other than travel and transportation allowances," before "was discovered".

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-224 applicable to any claim arising out of an erroneous payment of travel and transportation allowances made on or after Dec. 28, 1985, see section 4 of Pub. L. 99-224, set out as a note under section 5584 of Title 5, Government Organization and Employees.

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chap.		Sec.
18.	**Longshore and Harbor Workers' Compensation**	901
35.	**Artificial Reefs**	2101

CHAPTER 3—NAVIGATION RULES FOR HARBORS, RIVERS, AND INLAND WATERS GENERALLY

SUBCHAPTER I—PRELIMINARY

§ 151. High seas and inland waters demarcation lines

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 152, 1203 of this title; title 46 section 2101; title 46 App. section 88.

§ 153. Penalty for use of unlawful towline

CROSS REFERENCES

Suspension or revocation of master's license, see section 7703 of Title 46, Shipping.

CHAPTER 6—GENERAL DUTIES OF SHIP OFFICERS AND OWNERS AFTER COLLISION OR OTHER ACCIDENT

§§ 361 to 368. Repealed. Pub. L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 599

Section 361, act June 20, 1874, ch. 344, § 10, 18 Stat. 128; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, required the filing of reports to the Coast Guard on accidents involving United States vessels and provided penalty for failure to comply. See sections 6101, 6103 of Title 46, Shipping.

Section 362, act June 20, 1874, ch. 344, § 11, 18 Stat. 128; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, required the reporting of the probable loss of vessels and provided penalty for failure to comply. See sections 6101, 6103 of Title 46.

Section 363, acts June 20, 1874, ch. 344, § 12, 18 Stat. 128; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to the transmission of reports by Coast Guard officials to the Commandant of the Coast Guard.

Section 364, acts June 20, 1874, ch. 344, § 13, 18 Stat. 128; Mar. 3, 1897, ch. 389, § 11, 29 Stat. 689; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to the remission and recovery of penalties. See section 2107 of Title 46.

Section 365, act Mar. 4, 1915, ch. 153, § 15, 38 Stat. 1184; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, related to reports by owners of barges in tow. See section 6101 of Title 46.

Section 366, act Mar. 4, 1915, ch. 153, § 15, 38 Stat. 1184; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, required the Commandant of the Coast Guard to transmit annually to Congress a summary of the reports transmitted to him by Coast Guard officials as required under sections 361 to 365 of this title. See section 6307 of Title 46.

Section 367, act Sept. 4, 1890, ch. 875, § 1, 26 Stat. 425, related to the duty of the master of a vessel in collision to give aid, and to give the name of his vessel together with other information about his vessel. See sections 2303, 2304 of Title 46.

Section 368, act Sept. 4, 1890, ch. 875, § 2, 26 Stat. 425, set out the penalties for failure to give aid as required by section 367 of this title. See sections 2303, 2304 of Title 46.

Act Sept. 4, 1890, ch. 875, § 3, 26 Stat. 425, which provided that sections 367 and 368 of this title were to take effect at a time to be fixed by the President by proclamation (effective Dec. 15, 1890, by Presidential Proclamation of Nov. 18, 1890, 26 Stat. 1561) was repealed by Pub. L. 98-89, § 4(b), 97 Stat. 599.

CHAPTER 8—SUMMARY TRIALS FOR CERTAIN OFFENSES AGAINST NAVIGATION LAWS

§ 396. Recovery of penalties and forfeitures generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 47 section 31.

CHAPTER 9—PROTECTION OF NAVIGABLE WATERS AND OF HARBOR AND RIVER IMPROVEMENTS GENERALLY

SUBCHAPTER I—IN GENERAL

§ 403. Obstruction of navigable waters generally; wharves; piers, etc.; excavations and filling in

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27, 406, 412, 413, 418, 465, 1371, 1503, 2104 of this title.

§ 408. Taking possession of, use of, or injury to harbor or river improvements

It shall not be lawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works: *Pro-*

vided, That the Secretary of the Army may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest: *Provided further*, That the Secretary may, on the recommendation of the Chief of Engineers, grant permission for the alteration or permanent occupation or use of any of the aforementioned public works when in the judgment of the Secretary such occupation or use will not be injurious to the public interest and will not impair the usefulness of such work.

(As amended Aug. 15, 1985, Pub. L. 99-88, title I, § 100, 99 Stat. 315.)

AMENDMENTS

1985—Pub. L. 99-88 added a further proviso empowering the Secretary, on the recommendation of the Chief of Engineers, to grant permission for the alteration or permanent occupation or use of any of the public works mentioned in this section when in the judgment of the Secretary such occupation or use will not be injurious to the public interest and will not impair the usefulness of such work.

CHAPTER 11—BRIDGES OVER NAVIGABLE WATERS

SUBCHAPTER I—GENERAL PROVISIONS

§ 491. Approval of and deviation from plans; exemptions

When, after March 23, 1906, authority is granted by Congress to any persons to construct and maintain a bridge across or over any of the navigable waters of the United States, such bridge shall not be built or commenced until the plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of Transportation for the Secretary's approval, nor until the Secretary shall have approved such plans and specifications and the location of such bridge and accessory works; and when the plans for any bridge to be constructed under the provisions of sections 491 to 498 of this title, have been approved by the Secretary it shall not be lawful to deviate from such plans, either before or after completion of the structure, unless the modification of such plans has previously been submitted to and received the approval of the Secretary. This section shall not apply to any bridge over waters which are not subject to the ebb and flow of the tide and which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce

(As amended Oct. 30, 1984, Pub. L. 98-557, § 17(g)(1), 98 Stat. 2869.)

AMENDMENTS

1984—Pub. L. 98-557 substituted "for the Secretary's approval, nor until the Secretary" for "and Chief of Engineers for their approval, nor until they" and struck out "by the Chief of Engineers and" after "have been approved", "of the Chief of Engineers and" after "received the approval", and "of Transportation" after "by the Secretary" and after "of the Secretary".

SUBCHAPTER III—GENERAL BRIDGE AUTHORITY

§ 525. Construction and operation of bridges

[*See main edition for text of* (*a*)]

(b) Approval of plans

The location and plans for such bridges shall be approved by the Secretary of Transportation before construction is commenced, and, in approving the location and plans of any bridge, the Secretary may impose any specific conditions relating to the maintenance and operation of the structure which the Secretary may deem necessary in the interest of public navigation, and the conditions so imposed shall have the force of law. This subsection shall not apply to any bridge over waters which are not subject to the ebb and flow of the tide and which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce.

[*See main edition for text of* (*c*)]

(As amended Oct. 30, 1984, Pub. L. 98-557, § 17(g)(2), 98 Stat. 2869.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-557 struck out "the Chief of Engineers and" before "the Secretary of Transportation" and substituted "the Secretary" for "they" wherever appearing.

CHAPTER 12—RIVER AND HARBOR IMPROVEMENTS GENERALLY

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
569b. Contracts; architect and engineering services; surveying and mapping services.
569c. Services of volunteers.

SUBCHAPTER I—GENERAL PROVISIONS

§ 569b. Contracts; architect and engineering services; surveying and mapping services

Contracts for architect and engineering services, and surveying and mapping services, shall be awarded by the Chief of Engineers in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.).

(Pub. L. 98-63, title I, § 101, July 30, 1983, 97 Stat. 311.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title IX of the Federal Property and Administrative Services Act is classified generally to subchapter VI (§ 541 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

§ 569c. Services of volunteers

The United States Army Chief of Engineers may accept the services of volunteers and provide for their incidental expenses to carry out any activity of the Army Corps of Engineers except policy-making or law or regulatory enforcement. Such volunteers shall not be employees of the United States Government except for the purposes of (1) chapter 171 of title 28, relating to tort claims, and (2) chapter 81 of title 5, relating to compensation for work injuries.

(Pub. L. 98-63, title I, § 101, July 30, 1983, 97 Stat. 312.)

SUBCHAPTER IV—PARTICULAR WORK OR IMPROVEMENTS

§ 610. Control of aquatic plant growths

[*See main edition for text of* (*a*)]

(b) There are authorized to be appropriated such amounts, not in excess of $10,000,000 annually, as may be necessary to carry out the provisions of this section. Any such funds employed for control operations shall be allocated by the Chief of Engineers on a priority basis, based upon the urgency and need of each area, and the availability of local funds.

(As amended Pub. L. 98-63, title I, § 101, July 30, 1983, 97 Stat. 313.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-63 substituted "$10,000,000" for "$5,000,000".

CHAPTER 16—LIGHTHOUSES

§ 771. Benefits for surviving spouses of Lighthouse Service employees; death of employee during retirement; amount of payment

Where—

(1) any former employee of the Lighthouse Service has died or shall hereafter die at a time when that employee was receiving or was entitled to receive retirement pay under section 763 of this title, as amended and supplemented, and

(2) the surviving spouse of the former employee was married to the former employee prior to the retirement of the former employee from the Lighthouse Service and has not remarried—

the surviving spouse, so long as the surviving spouse does not remarry, shall be paid $100 per month by the Secretary of Transportation.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(b)(1), 98 Stat. 2866.)

AMENDMENTS

1984—Pub. L. 98-557 substituted references to surviving spouse for references to widow.

§ 772. Death of employee due to non-service-connected causes after 15 years' service; amount of payment

Where—

(1) any employee of the Lighthouse Service has died or shall hereafter die from non-service-connected causes after fifteen or more years of employment in such service, and

(2) the survivng spouse of the employee has not since remarried,

the surviving spouse, so long as the surviving spouse does not marry, shall be paid $100 per month by the Secretary of Transportation.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(b)(2), 98 Stat. 2866.)

AMENDMENTS

1984—Pub. L. 98-557 substituted references to surviving spouse for references to widow.

CHAPTER 17—NATIONAL OCEAN SURVEY

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
853g. Retirement or separation of officers.
    (a) Transfer of officers to retired list; separation from service.
    (b) Computations.
    (c) Effective date of retirements and separations.
853h. Separation pay of officers.
    (a) Authorization of payment.
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853u. Positions of importance and responsibility.
    (a) Designation; grades; appointment.
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SUBCHAPTER I—GENERAL PROVISIONS

§ 851. Commissioned officers; authorized number

[*See main edition for text*]

(Dec. 13, 1985, Pub. L. 99-180, title I, § 100, 99 Stat. 1138.)

CODIFICATION

Section is from the appropriation act cited as the credit to this section.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Aug. 30, 1984, Pub. L. 98-411, title I, § 100, 98 Stat. 1548.

Nov. 28, 1983, Pub. L. 98-166, title I, § 101, 97 Stat. 1074.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(d), 96 Stat. 1867, 1869.

§ 853. Power to settle claims

The Secretary of Commerce is authorized to consider, ascertain, adjust, and determine all claims for damages, where the amount of the claim does not exceed $2,500, occasioned, subsequent to June 5, 1920, by acts for which the National Oceanic and Atmospheric Administration is responsible.

(June 5, 1920, ch. 256, 41 Stat. 1054; Jan. 2, 1975, Pub. L. 93-608, § 1(4), 88 Stat. 1967; Nov. 29, 1983, Pub. L. 98-176, 97 Stat. 1124.)

AMENDMENTS

1983—Pub. L. 98-176 amended section generally, substituting "The Secretary of Commerce is" for "The Superintendent of the Coast and Geodetic Survey, subject to the approval of the Secretary of Commerce, is hereby", "$2,500" for "$500", and "the National Oceanic and Atmospheric Administration is responsible" for "the Coast and Geodetic Survey shall be found to be responsible".

§ 853g. Retirement or separation of officers

(a) Transfer of officers to retired list; separation from service

As recommended by the personnel board—

(1) an officer in the permanent grade of captain or commander may be transferred to the retired list; and

(2) an officer in the permanent grade of lieutenant commander, lieutenant, or lieutenant (junior grade) who is not qualified for retirement may be separated from the service.

(b) Computations

In any fiscal year, the total number of officers selected for retirement or separation under subsection (a) of this section plus the number of officers retired for age may not exceed the whole number nearest four percent of the total number of officers authorized to be on the active list, except as otherwise provided by law.

(c) Effective date of retirements and separations

Any retirement or separation under subsection (a) of this section shall take effect on the first day of the sixth month beginning after the date on which the Secretary of Commerce approves the retirement or separation, except that if the officer concerned requests earlier retirement or separation, the date shall be as determined by the Secretary.

(As amended Oct. 19, 1984, Pub. L. 98-498, title III, § 320(a)(1), 98 Stat. 2307.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-498 designated provisions preceding first proviso as subsec. (a), and in subsec. (a) as so designated, added par. designations, deleted lieutenant commander from those eligible to be transferred to the retired list and added it to those who may be separated from the service and added "who is not qualified for retirement" after "(junior grade)" in par. (2) as so designated.

Subsec. (b). Pub. L. 98-498 designated provisions in first proviso as subsec. (b), and in subsec. (b) as so designated, substituted "may not exceed the whole number nearest four percent of the total number of officers authorized to be on the active list," for "shall not exceed the whole number nearest 4 per centum of the total authorized number of commissioned officers on the active list,".

Subsec. (c). Pub. L. 98-498 designated provisions in second proviso as subsec. (c), and in subsec. (c) as so designated, substituted "Any retirement or separation under subsection (a) of this section shall take effect on the first day of the sixth month beginning after the date on which the Secretary of Commerce approves the retirement or separation, except that if the officer concerned requests earlier retirement or separation, the date shall be as determined by the Secretary" for "That all retirements and separations pursuant to this section shall become effective on the first day of the sixth month following the date of approval of the retirement or separation by the Secretary of Commerce, unless the officer concerned requests earlier retirement or separation, in which case the date shall be as determined by the Secretary of Commerce".

§ 853h. Separation pay of officers

(a) Authorization of payment

An officer who is separated under section 853g of this title and who has completed more than three years of continuous active service immediately before that separation is entitled to separation pay computed under subsection (b) of this section unless the Secretary of Commerce determines that the conditions under which the officer is separated do not warrant payment of that pay.

(b) Amount of pay; five or more years; three to five years

(1) In the case of an officer who has completed five or more years of continuous active service immediately before that separation, the amount of separation pay which may be paid to the officer under this section is 10 percent of the product of (A) the years of active service creditable to the officer, and (B) twelve times the monthly basic pay to which the officer was entitled at the time of separation, or $30,000, whichever is less.

(2) In the case of an officer who has completed three but fewer than five years of continuous active service immediately before that separation, the amount of separation pay which may be paid to the officer under this section is one-half of the amount computed under paragraph (1), but in no event more than $15,000.

(c) Determination of officer's years of service

In determining an officer's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(d) Previously received pay excluded from determination of years of creditable service; limitation on total payment

(1) A period for which an officer has previously received separation pay, severance pay, or readjustment pay under any other provision of law based on service in a uniformed service may not be included in determining the years of creditable service that may be counted in computing the separation pay of the officer under this section.

(2) The total amount that an officer may receive in separation pay under this section and separation pay, severance pay, and readjustment pay under any other provision of law based on service in a uniformed service may not exceed $30,000.

(e) Deductions from retired pay of amount of prior payments; deduction from disability compensation of amount of separation pay; exception

(1) An officer who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in a uniformed service and who later qualifies for retired pay under this Act shall have deducted from each payment of retired pay so much of that pay as is based on the service for which the officer received that separation pay, severance pay, or readjustment pay until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

(2) An officer who has received separation pay under this section may not be deprived, by reason of receipt of that pay, of any disability compensation to which the officer is entitled under the laws administered by the Veterans' Administration, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay received. Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of separation pay received because of an earlier discharge, separation, or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(As amended Oct. 19, 1984, Pub. L. 98-498, title III, § 320(a)(1), 98 Stat. 2307.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e)(1), means act June 3, 1948, ch. 390, 62 Stat. 297, as amended, known as the "Coast and Geodetic Survey Commissioned Officers' Act of 1948", which enacted sections 853a to 853*o* and 853p to 853t of this title, amended sections 852a and 852b of this title, and repealed sections 854b and 854c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 853a of this title and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-498 designated existing provisions as subsec. (a) and in subsec. (a) as so designated substituted "An officer" for "Any officer in the grade of lieutenant or lieutenant (junior grade)" and further substituted provisions setting forth the method of computation for former provisions which also set forth the basis for computation.

Subsecs. (b) to (e). Pub. L. 98-498 added subsecs. (b) to (e).

§ 853j-1. Temporary appointments and promotions made by President

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Any one grade

When determined by the Secretary of Commerce to be in the best interest of the service, officers in any permanent grade may be temporarily promoted one grade by the President alone. Any such temporary promotion terminates upon the transfer of the officer to a new assignment.

(As amended Oct. 19, 1984, Pub. L. 98-498, title III, § 320(b), 98 Stat. 2308.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-498 substituted "determined" for "deemed necessary or desirable", "alone. Any" for "alone provided", and "terminates" for "will terminate", and struck out qualification to the President's authority to temporarily promote officers that the number of officers holding temporary promotions not exceed the whole number nearest 1½ per centum of the total number of officers authorized to be on active duty.

§ 853*o*. Computation of pay upon retirement

(a) Each commissioned officer on the retired list shall receive retired pay—

[*See main edition for text of* (*1*) *and* (*2*)]

multiplied by the number of years of service that may be credited to him under section 1405 of title 10, as if his service were service as a member of the Armed Forces, but the retired pay so computed may not exceed 75 percent of the basic pay of the rank with which retired or 75 percent of the monthly retired pay base, as the case may be. Retired pay, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(b) In computing the number of years of service of an officer for the purposes of subsection (a) of this section, each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, §§ 922(c), 923(e), 97 Stat. 642, 643.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94, § 922(c), added "Retired pay, if not a multiple of $1, shall be rounded to the next lower multiple of $1."

Subsec. (b). Pub. L. 98-94, § 923(e), substituted "In computing the number of years of service of an officer for the purposes of subsection (a) of this section, each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded" for "A fractional part of a year of six months or more shall be considered a full year in computing the number of years of service for the purposes of subsection (a) of this section".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of Title 10, Armed Forces.

Amendment by section 923(e) of Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of Title 10.

§ 853u. Positions of importance and responsibility

(a) Designation; grades; appointment

The Secretary may designate positions in the Administration as being positions of importance and responsibility for which it is appropriate that commissioned officers of the Administration, if serving in those positions, serve in the grade of vice admiral, rear admiral, or rear admiral (lower half) as designated by the

Secretary for each position, and may assign officers to those positions. An officer assigned to any position under this section has the grade designated for that position if appointed to that grade by the President, by and with the advice and consent of the Senate.

(b) Number of officers appointed

The number of officers serving on active duty under appointments under this section may not exceed—

(1) one in the grade of vice admiral;

(2) three in the grade of rear admiral; and

(3) three in the grade of rear admiral (lower half).

(c) Pay and allowances

An officer appointed to a grade under this section, while serving in that grade, shall have the pay and allowances of the grade to which appointed.

(d) Effect of appointment

An appointment of an officer under this section—

(1) does not vacate the permanent grade held by the officer; and

(2) creates a vacancy on the active list.

(e) Retirement rank, pay, and allowances

The provisions of section 2(g) of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090, 5 U.S.C. App.) apply to an officer who serves in a grade above captain under an appointment under this section in the same manner as if the officer served in that grade under section 2(d) or 2(f) of that Reorganization Plan.

(June 3, 1948, ch. 390, § 24, as added Oct. 19, 1984, Pub. L. 98-498, title III, § 320(c)(1), 98 Stat. 2308, and amended Nov. 8, 1985, Pub. L. 99-145, title V, § 514(a)(3), 99 Stat. 628.)

REFERENCES IN TEXT

Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090, 5 U.S.C. App.), referred to in subsec. (e), is set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1511 of Title 15, Commerce and Trade.

AMENDMENTS

1985—Subsecs. (a), (b)(3). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

APPOINTMENT OF COMMISSIONED OFFICERS

Section 320(c)(2) of Pub. L. 98-498 provided that: "After the date of the enactment of this Act [Oct. 19, 1984], no appointment of a commissioned officer may be made under section 2(d) or 2(f) of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090, 5 U.S.C. App.)."

TRANSITIONAL PROVISIONS

Section 320(c)(4) of Pub. L. 98-498 provided that:

"(A) An officer of the commissioned corps of the National Oceanic and Atmospheric Administration who on the day before the date of the enactment of this Act [Oct. 19, 1984] was carried on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the upper half shall after that date be serving in the grade of rear admiral.

"(B) An officer who on the day before the date of the enactment of this Act was serving on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the lower half shall after that date be serving in the grade of commodore, but shall (while serving in that grade) retain the title of rear admiral and be entitled to wear the uniform and insignia of a rear admiral.

"(C) An officer who on the date before the date of the enactment of this Act held the grade of rear admiral on the retired list retains the grade of rear admiral and is entitled to wear the uniform and insignia of a rear admiral."

§ 855. Cooperation with and transfer to military departments

The President is authorized, whenever in his judgment a sufficient national emergency exists, to transfer to the service and jurisdiction of a military department such vessels, equipment, stations, and commissioned officers of the National Oceanic and Atmospheric Administration as he may deem to the best interest of the country, and after such transfer all expenses connected therewith shall be defrayed out of the appropriations for the department to which transfer is made: *Provided*, That such vessels, equipment, stations, and commissioned officers shall be returned to the National Oceanic and Atmospheric Administration when such national emergency ceases, in the opinion of the President, and nothing in this section shall be construed as transferring the National Oceanic and Atmospheric Administration or any of its functions from the Department of Commerce except in time of national emergency and to the extent herein provided: *Provided further*, That any of the commissioned officers of the National Oceanic and Atmospheric Administration who may be transferred as provided in this section, shall, while under the jurisdiction of a military department, have proper military status and shall be subject to the laws, regulations, and orders for the government of the Army, Navy, or Air Force, as the case may be, insofar as the same may be applicable to persons whose retention permanently in the military service of the United States is not contemplated by law.

(May 22, 1917, ch. 20, § 16, 40 Stat. 87; Oct. 14, 1966, Pub. L. 89-657, § 1(1), 80 Stat. 907; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Oct. 14, 1966, Pub. L. 89-657, § 1(1), 80 Stat. 907; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

CODIFICATION

Section is set out in this supplement to correct typographical error appearing in the main edition.

§ 857-3. Service for purposes of certain rights, privileges, immunities, and benefits; exercise of authority by Secretary of Commerce

(a) Active service of officers of the Administration shall be deemed to be active military service in the armed forces of the United States for the purposes of all rights, privileges, immunities, and benefits now or hereafter provided by—

(1) laws administered by the Veterans' Administration;

(2) laws administered by the Interstate Commerce Commission; and

(3) the Soldiers' and Sailors' Civil Relief Act of 1940, as amended [50 App. U.S.C. 501 et seq.].

In the administration of these laws and regulations, with respect to the National Oceanic and Atmospheric Administration, the authority vested in the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force and their respective departments shall be exercised by the Secretary of Commerce.

(b) The Secretary may provide medical and dental care, including care in private facilities, for personnel of the Administration entitled to that care by law or regulation.

(As amended Pub. L. 98-498, title III, § 310(a), Oct. 19, 1984, 98 Stat. 2306.)

REFERENCES IN TEXT

The Soldiers' and Sailors' Civil Relief Act of 1940, as amended, referred to in subsec. (a)(3), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see section 501 of the Appendix to Title 50 and Tables.

AMENDMENTS

1984—Pub. L. 98-498 designated existing provisions as subsec. (a) and added subsec. (b).

§ 857a. Rights, benefits, privileges, and immunities; exercise of authority by Secretary of Commerce or designee

(a) The rules of law that apply to the Armed Forces under the following provisions of title 10, including changes in those rules made after August 10, 1956, apply also to the commissioned officers of the National Oceanic and Atmospheric Administration:

[*See main edition for text of* (*1*) *to* (*12*)]

(13) Section 716, Commissioned officers: transfers among the Armed Forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.

[*See main edition for text of* (*14*); (*b*)]

(As amended Sept. 24, 1983, Pub. L. 98-94, title X, § 1007(d), 97 Stat. 662.)

AMENDMENTS

1983—Subsec. (a)(13). Pub. L. 98-94 substituted "transfers among the Armed Forces, the National Oceanic and Atmospheric Administration, and the Public Health Service" for "transfers between armed forces and to and from National Oceanic and Atmospheric Administration".

CHAPTER 18—LONGSHORE AND HARBOR WORKERS' COMPENSATION

Sec.
942. Annual report.
945 to 947. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 8171; title 30 sections 931, 932; title 42 sections 251, 1651, 1653, 1702, 8775; title 43 section 1333.

§ 901. Short title

This chapter may be cited as "Longshore and Harbor Workers' Compensation Act.".

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(d)(1), 98 Stat. 1654.)

AMENDMENTS

1984—Pub. L. 98-426 substituted "Longshore" for "Longshoremen's".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 28(a)-(g) of Pub. L. 98-426 provided that:

"(a) Except as otherwise provided in this section, the amendments made by this Act [enacting section 942 of this title, amending sections 901 to 910, 912 to 914, 917 to 919, 921 to 923, 928 to 935, 938 to 940, 944, and 948a of this title and section 932 of Title 30, Mineral Lands and Mining, repealing sections 945 to 947 of this title, and enacting provisions set out as notes under sections 901 to 907 of this title] shall be effective on the date of enactment of this Act [Sept. 28, 1984] and shall apply both with respect to claims filed after such date and to claims pending on such date.

"(b) The amendments made by sections 7(a), 7(e), 8(f), 11(b), 11(c), and 13 [amending sections 907, 908, 912, and 914 of this title] shall be effective 90 days after the date of enactment of this Act [Sept. 28, 1984] and shall apply both with respect to claims filed after such 90th day and to claims pending on such 90th day.

"(c) The amendments made by sections 2(a), 3(a), 5, and 8(b) [amending sections 902, 903, 905, and 908 of this title] shall apply with respect to any injury after the date of enactment of this Act [Sept. 28, 1984].

"(d) The amendments made by sections 6(a), 8(d), and 9 [amending sections 906, 908, and 909 of this title] shall apply with respect to any death after the date of enactment of this Act [Sept. 28, 1984].

"(e)(1) The amendments made by sections 2(c), 8(c)(1), 8(e)(4), 8(e)(5), 8(g), 10(b), 15 through 20, and 22 through 27 [enacting section 942 of this title, amending sections 901, 902, 908 to 910, 914, 918, 919, 921 to 923, 928 to 932, 934, 935, 938 to 940, 944, and 948a of this title, repealing sections 945 to 947, and enacting provisions set out as a note under section 901 of this title] shall be effective on the date of enactment of this Act [Sept. 24, 1984].

"(2) The amendments made by sections 7(b), 7(c), 7(d), and 8(h) [amending sections 907 and 908 of this title] shall be effective 90 days after the date of enactment of this Act [Sept. 28, 1984].

"(f) The amendments made by section 6(b) [amending section 906 of this title] shall apply with respect to any injury, disability, or death after the date of enactment of this Act [Sept. 28, 1984].

"(g) For the purpose of this section—

"(1) in the case of an occupational disease which does not immediately result in a disability or death, an injury shall be deemed to arise on the date on which the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the disease; and

"(2) the term 'disability' has the meaning given such term by section 2(10) of the Act [section 902(10) of this title] as amended by this Act."

SHORT TITLE OF 1984 AMENDMENT

Section 1(a) of Pub. L. 98-426 provided that: "this Act [enacting section 942 of this title, amending sections 901 to 910, 912 to 914, 917 to 919, 921 to 923, 928 to 935, 938 to 940, 944, and 948a of this title and section 932 of Title 30, Mineral Lands and Mining, repealing sections 945 to 947 of this title, and enacting provisions set out as notes under sections 901 and 907 of this title] may be cited as the 'Longshore and Harbor Workers' Compensation Act Amendments of 1984'."

REFERENCES TO LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

Section 27(d)(2) of Pub. L. 98-426 provided that: "Reference in any other statute, regulation, order, or other document to the Longshoremen's and Harbor Workers' Compensation Act shall be deemed to refer to the Longshore and Harbor Workers' Compensation Act."

§ 902. Definitions

When used in this chapter—

[See main edition for text of (1) and (2)]

(3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include—

(A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;

(B) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;

(C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);

(D) individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an employer described in paragraph (4), and (iii) are not engaged in work normally performed by employees of that employer under this chapter;

(E) aquaculture workers;

(F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;

(G) a master or member of a crew of any vessel; or

(H) any person engaged by a master to load or unload or repair any small vessel under eighteen tons net;

if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law.

[See main edition for text of (4) and (5)]

(6) The term "Secretary" means the Secretary of Labor.

[See main edition for text of (7) to (9)]

(10) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment; but such term shall mean permanent impairment, determined (to the extent covered thereby) under the guides to the evaluation of permanent impairment promulgated and modified from time to time by the American Medical Association, in the case of an individual whose claim is described in section 910(d)(2) of this title.

[See main edition for text of (11) and (12)]

(13) The term "wages" means the money rate at which the service rendered by an employee is compensated by an employer under the contract of hiring in force at the time of the injury, including the reasonable value of any advantage which is received from the employer and included for purposes of any withholding of tax under subtitle C of title 26 (relating to employment taxes). The term wages does not include fringe benefits, including (but not limited to) employer payments for or contributions to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit plan for the employee's or dependent's benefit, or any other employee's dependent entitlement.

[See main edition for text of (14) to (20)]

(21) Unless the context requires otherwise, the term "vessel" means any vessel upon which or in connection with which any person entitled to benefits under this chapter suffers injury or death arising out of or in the course of his employment, and said vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member.

[See main edition for text of (22)]

(As amended Sept. 28, 1984, Pub. L. 98-426, §§ 2, 5(a)(2), 27(a)(1), 98 Stat. 1639, 1641, 1654.)

AMENDMENTS

1984—Par. (3). Pub. L. 98-426, § 2(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net."

Par. (6). Pub. L. 98-426, § 27(a)(1), substituted "The term 'Secretary' means the Secretary of Labor" for "The term 'commission' means the United States Employees' Compensation Commission".

Par. (10). Pub. L. 98-426, § 2(b), inserted "; but such term shall mean permanent impairment, determined (to the extent covered thereby) under the guides to the evaluation of permanent impairment promulgated and modified from time to time by the American Medical Association, in the case of an individual whose claim is described in section 910(d)(2) of this title".

Par. (13). Pub. L. 98-426, § 2(c), amended par. (13) generally. Prior to amendment, par. (13) read as follows: "'Wages' means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer".

Par. (21). Pub. L. 98-426, § 5(a)(2), substituted "Unless the context requires otherwise, the" for "The".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of pars. (3) and (21) by sections 2(a), 5(a)(2) of Pub. L. 98-426 applicable with respect to any injury after Sept. 28, 1984, see section 28(c) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment of par. (10) by section 2(b) of Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending as of such date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment of pars. (6) and (13) by sections 2(c), 27(a)(1) of Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

TRANSFER OF FUNCTIONS

Prior to the amendment of this chapter by Pub. L. 98-426 the word "Secretary" meaning the Secretary of Labor had been substituted for the word "commission" meaning the United States Employees' Compensation Commission throughout this chapter even when not expressly so directed by statute in view of the transfer of the functions of the commission first to the Federal Security Administrator by Reorg. Plan No. 2 of 1946, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, and later to the Secretary of Labor by Reorg. Plan No. 19 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271. Where such substitution had thus been made the statutory substitution of terms by Pub. L. 98-426 required no change in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 908 of this title; title 5 sections 8171, 8172, 8173; title 30 section 932; title 42 section 8775.

§ 903. Coverage

(a) Disability or death; injuries occurring upon navigable waters of United States

Except as otherwise provided in this section, compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

(b) Governmental officers and employees

No compensation shall be payable in respect of the disability or death of an officer or employee of the United States, or any agency thereof, or of any State or foreign government, or any subdivision thereof.

(c) Intoxication; willful intention to kill

No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

(d) Small vessels

(1) No compensation shall be payable to an employee employed at a facility of an employer if, as certified by the Secretary, the facility is engaged in the business of building, repairing, or dismantling exclusively small vessels (as defined in paragraph (3) of this subsection), unless the injury occurs while upon the navigable waters of the United States or while upon any adjoining pier, wharf, dock, facility over land for launching vessels, or facility over land for hauling, lifting, or drydocking vessels.

(2) Notwithstanding paragraph (1), compensation shall be payable to an employee—

(A) who is employed at a facility which is used in the business of building, repairing, or dismantling small vessels if such facility receives Federal maritime subsidies; or

(B) if the employee is not subject to coverage under a State workers' compensation law.

(3) For purposes of this subsection, a small vessel means—

(A) a commercial barge which is under 900 lightship displacement tons; or

(B) a commercial tugboat, towboat, crew boat, supply boat, fishing vessel, or other work vessel which is under 1,600 tons gross.

(e) Credit for benefits paid under other laws

Notwithstanding any other provision of law, any amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under this chapter pursuant to any other workers' compensation law or section 688 of title 46, Appendix (relating to recovery for injury to or death of seamen), shall be credited against any liability imposed by this chapter.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 3, 98 Stat. 1640.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-426, § 3(a), inserted introductory language relating to exceptions provided for elsewhere in this section, redesignated existing par. (1) as subsec. (b), and struck out existing par. (2) which had excepted from coverage masters and crew members or persons engaged by such masters or crew members to load, unload, or repair vessels under 18 tons net.

Subsec. (b). Pub. L. 98-426, § 3(a), redesignated as subsec. (b) provisions formerly set out in subsec. (a)(2). Former subsec. (b) redesignated (c).

Subsecs. (c) to (e). Pub. L. 98-426, § 3(a), (b), redesignated former subsec. (b) as (c) and added subsecs. (d) and (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsecs. (a) to (d) by section 3(a) of Pub. L. 98-426 applicable with respect to any injury after Sept. 28, 1984, see section 28(c) of Pub. L. 98-426, set out as a note under section 901 of this title.

Enactment of subsec. (e) by section 3(b) of Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after Sept. 28, 1984, and to claims pending on that date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 904. Liability for compensation

(a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 907, 908, and 909 of this title. In the case of an employer who is a subcontractor, only if such subcontractor fails to secure the payment of compensation shall the contractor be liable for and be required to secure the payment of compensation. A subcontractor shall not be deemed to have failed to secure the payment of compensation if the contractor has provided insurance for such compensation for the benefit of the subcontractor.

(b) Compensation shall be payable irrespective of fault as a cause for the injury.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 4(a), 98 Stat. 1641.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-426 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 907, 908, and 909 of this title. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsec. (a) by Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after Sept. 28, 1984, and to claims pending on that date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 905. Exclusiveness of liability

(a) Employer liability; failure of employer to secure payment of compensation

The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee. For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 904 of this title.

(b) Negligence of vessel

In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter.

(c) Outer Continental Shelf

In the event that the negligence of a vessel causes injury to a person entitled to receive benefits under this Act by virtue of section 1333 of title 43, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel in accordance with the provisions of subsection (b) of this section. Nothing contained in subsection (b) of this section shall preclude the enforcement according to its terms of any reciprocal indemnity provision whereby the employer of a person entitled to receive benefits under this chapter by virtue of section 1333 of title 43 and the vessel agree to defend and indemnify the other for cost of defense and loss or liability for damages arising out of or resulting from death or bodily injury to their employees.

(As amended Sept. 28, 1984, Pub. L. 98-426, §§ 4(b), 5(a)(1), (b), 98 Stat. 1641.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-426, § 4(b), added: "For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 904 of this title."

Subsec. (b). Pub. L. 98-426, § 5(a)(1), substituted "If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer" for "If such person was employed by the vessel to provide ship building or repair services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing ship building or repair services to the vessel".

Subsec. (c). Pub. L. 98-426, § 5(b), added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsec. (b) by section 4(b) of Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after Sept. 28, 1984, and to claims pending on that date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment of subsecs. (b) and (c) by section 5(a)(1), (b) of Pub. L. 98-426 applicable with respect to any injury after Sept. 28, 1984, see section 28(c) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 906. Compensation

[*See main edition for text of* (a)]

(b) Maximum rate of compensation

(1) Compensation for disability or death (other than compensation for death required by this chapter to be paid in a lump sum) shall not exceed an amount equal to 200 per centum of the applicable national average weekly wage, as determined by the Secretary under paragraph (3).

[*See main edition for text of* (2) *and* (3)]

(c) Applicability of determinations

Determinations under subsection (b)(3) of this section with respect to a period shall apply to employees or survivors currently receiving compensation for permanent total disability or death benefits during such period, as well as those newly awarded compensation during such period.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 6, 98 Stat. 1641.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-426, § 6(a), substituted provisions setting a maximum compensation for disability on death of 200 per centum of the applicable national average weekly wage as determined by the Secretary for former provisions which had set out a schedule of progressive percentages of 125 per centum or $167, whichever is greater, during the period ending September 30, 1973, 150 per centum during the period beginning October 1, 1973, and ending September 30, 1974, 175 per centum during the period beginning October 1, 1974, and ending September 30, 1975, and 200 per centum beginning October 1, 1975.

Subsecs. (c), (d). Pub. L. 98-426, § 6(b), redesignated subsec. (d) as (c) and, in subsec. (c) as redesignated, substituted "under subsection (b)(3) of this section" for "under this subsection". Former subsec. (c), which had directed that the maximum rate of compensation for a nonappropriated fund instrumentality employee be equal to 66⅔ per centum of the maximum rate of basic pay established for a Federal employee in grade GS-12 by section 5332 of Title 5 and the minimum rate of compensation for such an employee be equal to 66⅔ per centum of the minimum rate of basic pay established for a Federal employee in grade GS-2 by such section, was struck out.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsec. (b)(1) by section 6(a) of Pub. L. 98-426 applicable with respect to any death after Sept. 28, 1984, see section 28(d) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment of subsecs. (c) and (d) by section 6(b) of Pub. L. 98-426 applicable with respect to any injury, disability, or death after Sept. 28, 1984, see section 28(f) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 907. Medical services and supplies

[*See main edition for text of* (*a*)]

(b) Physician selection; administrative supervision; change of physicians and hospitals

The employee shall have the right to choose an attending physician authorized by the Secretary to provide medical care under this chapter as hereinafter provided. If, due to the nature of the injury, the employee is unable to select his physician and the nature of the injury requires immediate medical treatment and care, the employer shall select a physician for him. The Secretary shall actively supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may, on his own initiative or at the request of the employer, order a change of physicians or hospitals when in his judgment such change is desirable or necessary in the interest of the employee or where the charges exceed those prevailing within the community for the same or similar services or exceed the provider's customary charges. Change of physicians at the request of employees shall be permitted in accordance with regulations of the Secretary.

(c) Physicians and health care providers not authorized to render medical care or provide medical services

(1)(A) The Secretary shall annually prepare a list of physicians and health care providers in each compensation district who are not authorized to render medical care or provide medical services under this chapter. The names of physicians and health care providers contained on the list required under this subparagraph shall be made available to employees and employers in each compensation district through posting and in such other forms as the Secretary may prescribe.

(B) Physicians and health care providers shall be included on the list of those not authorized to provide medical care and medical services pursuant to subparagraph (A) when the Secretary determines under this section, in accordance with the procedures provided in subsection (j) of this section, that such physician or health care provider—

(i) has knowingly and willfully made, or caused to be made, any false statement or misrepresentation of a material fact for use in a claim for compensation or claim for reimbursement of medical expenses under this chapter;

(ii) has knowingly and willfully submitted, or caused to be submitted, a bill or request for payment under this chapter containing a charge which the Secretary finds to be substantially in excess of the charge for the service, appliance, or supply prevailing within the community or in excess of the provider's customary charges, unless the Secretary finds there is good cause for the bill or request containing the charge;

(iii) has knowingly and willfully furnished a service, appliance, or supply which is determined by the Secretary to be substantially in excess of the need of the recipient thereof or to be of a quality which substantially fails to meet professionally recognized standards;

(iv) has been convicted under any criminal statute (without regard to pending appeal thereof) for fraudulent activities in connection with any Federal or State program for which payments are made to physicians or providers of similar services, appliances, or supplies; or

(v) has otherwise been excluded from participation in such program.

(C) Medical services provided by physicians or health care providers who are named on the list published by the Secretary pursuant to subparagraph (A) of this section shall not be reimbursable under this chapter; except that the Secretary shall direct the reimbursement of medical claims for services rendered by such physicians or health care providers in cases where the services were rendered in an emergency.

(D) A determination under subparagraph (B) shall remain in effect for a period of not less than three years and until the Secretary finds and gives notice to the public that there is reasonable assurance that the basis for the determination will not reoccur.

(E) A provider of a service, appliance, or supply shall provide to the Secretary such information and certification as the Secretary may require to assure that this subsection is enforced.

(2) Whenever the employer or carrier acquires knowledge of the employee's injury, through written notice or otherwise as prescribed by the chapter, the employer or carrier shall forthwith authorize medical treatment and care from a physician selected by an employee pursuant to subsection (b) of this section. An employee may not select a physician who is on the list required by paragraph (1) of this subsection. An employee may not change physicians after his initial choice unless the employer, carrier, or deputy commissioner has given prior consent for such change. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease. In all other cases, consent may be given upon a showing of good cause for change.

(d) Request of treatment or services prerequisite to recovery of expenses; formal report of injury and treatment; suspension of compensation for refusal of treatment or examination; justification

(1) An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless—

(A) the employer shall have refused or neglected a request to furnish such services and the employee has complied with subsections (b) and (c) of this section and the applicable regulations; or

(B) the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize same.

(2) No claim for medical or surgical treatment shall be valid and enforceable against such employer unless, within ten days following the first treatment, the physician giving such treatment furnishes to the employer and the deputy commissioner a report of such injury or treatment, on a form prescribed by the Secretary. The Secretary may excuse the failure to furnish such report within the ten-day period whenever he finds it to be in the interest of justice to do so.

(3) The Secretary may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee.

(4) If at any time the employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the Secretary or administrative law judge may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.

[*See main edition for text of* (e) *to* (i)]

(j) Procedure; judicial review

(1) The Secretary shall have the authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this chapter, which are necessary or appropriate to carry out the provisions of subsection (c) of this section, including the nature and extent of the proof and evidence necessary for actions under this section and the methods of taking and furnishing such proof and evidence.

(2) Any decision to take action with respect to a physician or health care provider under this section shall be based on specific findings of fact by the Secretary. The Secretary shall provide notice of these findings and an opportunity for a hearing pursuant to section 556 of title 5 for a provider who would be affected by a decision under this section. A request for a hearing must be filed with the Secretary within thirty days after notice of the findings is received by the provider making such request. If a hearing is held, the Secretary shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the findings of fact and proposed action under this section.

(3) For the purpose of any hearing, investigation, or other proceeding authorized or directed under this section, the provisions of section[1] 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, papers, and documents) shall apply to the jurisdiction, powers, and duties of the Secretary or any officer designated by him.

(4) Any physician or health care provider, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision, but the pendency of such review shall not operate as a stay upon the effect of such decision. Such action shall be brought in the court of appeals of the United States for the judicial circuit in which the plaintiff resides or has his principal place of business, or the Court of Appeals for the District of Columbia. As part of his answer, the Secretary shall file a certified copy of the transcript of the record of the hearing, including all evidence submitted in connection therewith. The findings of fact of the Secretary, if based on substantial evidence in the record as a whole, shall be conclusive.

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[1] So in original. Probably should be "sections".

(k) Refusal of treatment on religious grounds

(1) Nothing in this chapter prevents an employee whose injury or disability has been established under this chapter from relying in good faith on treatment by prayer or spiritual means alone, in accordance with the tenets and practice of a recognized church or religious denomination, by an accredited practitioner of such recognized church or religious denomination, and on nursing services rendered in accordance with such tenets and practice, without suffering loss or diminution of the compensation or benefits under this chapter. Nothing in this subsection shall be construed to except an employee from all physical examinations required by this chapter.

(2) If an employee refuses to submit to medical or surgical services solely because, in adherence to the tenets and practice of a recognized church or religious denomination, the employee relies upon prayer or spiritual means alone for healing, such employee shall not be considered to have unreasonably refused medical or surgical treatment under subsection (d) of this section.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 7, 98 Stat. 1642.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-426, § 7(a), inserted "or where the charges exceed those prevailing within the community for the same or similar services or exceed the provider's customary charges".

Subsec. (c). Pub. L. 98-426, § 7(b), substituted provisions respecting physicians and health care providers not authorized to render medical care or services under this chapter for former provision respecting physicians designated by the Secretary as authorized to render such care and whose names shall be available to employees through posting or in such other form as the Secretary may prescribe.

Subsec. (d). Pub. L. 98-426, § 7(c), substituted provisions for the recovery by the employee of amounts spent on medical services which the employer failed to provide; for the procedure to be followed for recovery; and for suspension of any payments made if the employee unreasonably refuses to submit to treatment or examination for former provisions which required a request for treatment or services and the filing of a physician's report for recovery, and permitted the Secretary to excuse a failure to file a report when justified and to suspend payment if the employee unreasonably refuses treatment or examination.

Subsec. (j). Pub. L. 98-426, § 7(d), added subsec. (j).

Subsec. (k). Pub. L. 98-426, § 7(e), added subsec. (k).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsec. (b) and enactment of subsec. (k) by section 7(a), (e) of Pub. L. 98-426 effective 90 days after Sept. 28, 1984, and applicable both with respect to claims filed after such 90th day and to claims pending on such 90th day, see section 28(b) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment of subsecs. (c) and (d) and enactment of subsec. (j) by section 7(b)-(d) of Pub. L. 98-426 effective 90 days after Sept. 28, 1984, see section 28(e)(2) of Pub. L. 98-426, set out as a note under section 901 of this title.

CLAIMS FILED UNDER BLACK LUNG BENEFITS ACT

Section 28(h)(1) of Pub. L. 98-426 provided that: "The amendments made by section 7 of this Act [amending this section] shall not apply to claims filed under the Black Lung Benefits Act (30 U.S.C. 901 et seq.)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 904, 906, 928, 931, 933, 944 of this title; title 30 section 932.

§ 908. Compensation for disability

Compensation for disability shall be paid to the employee as follows:

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 66⅔ per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subsection (b) or subsection (e) of this section, respectively, and shall be paid to the employee, as follows:

[*See main edition for text of* (*1*) *to* (*12*)]

(13) Loss of hearing:

(A) Compensation for loss of hearing in one ear, fifty-two weeks.

(B) Compensation for loss of hearing in both ears, two-hundred weeks.

(C) An audiogram shall be presumptive evidence of the amount of hearing loss sustained as of the date thereof, only if (i) such audiogram was administered by a licensed or certified audiologist or a physician who is certified in otolaryngology, (ii) such audiogram, with the report thereon, was provided to the employee at the time it was administered, and (iii) no contrary audiogram made at that time is produced.

(D) The time for filing a notice of injury, under section 912 of this title, or a claim for compensation, under section 913 of this title, shall not begin to run in connection with any claim for loss of hearing under this section, until the employee has received an audiogram, with the accompanying report thereon, which indicates that the employee has suffered a loss of hearing.

(E) Determinations of loss of hearing shall be made in accordance with the guides for the evaluation of permanent impairment as promulgated and modified from time to time by the American Medical Association.

[*See main edition for text of* (*14*) *to* (*19*)]

(20) Disfigurement: Proper and equitable compensation not to exceed $7,500 shall be awarded for serious disfigurement of the face, head, or neck or of other normally exposed areas likely to handicap the employee in securing or maintaining employment.

(21) Other cases: In all other cases in the class of disability, the compensation shall be 66⅔ per centum of the difference between the average weekly wages of the employee and the employee's wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of partial disability.

[*See main edition for text of* (*22*)]

(23) Notwithstanding paragraphs (1) through (22), with respect to a claim for permanent partial disability for which the average weekly wages are determined under section 910(d)(2) of this title, the compensation shall be 66⅔ per centum of such average weekly wages multiplied by the percentage of permanent impairment, as determined under the guides referred to in section 902(10) of this title, payable during the continuance of such impairment.

(d) [*See main edition for text of (1) and (2)*]

(3) An award for disability may be made after the death of the injured employee. Except where compensation is payable under subsection (c)(21) of this section if there be no survivors as prescribed in this section, then the compensation payable under this subsection shall be paid to the special fund established under section 944(a) of this title.

[*See main edition for text of (e)*]

(f) Injury increasing disability:

(1) In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide compensation for such disability as is found to be attributable to that injury based upon the average weekly wages of the employee at the time of the injury. If following an injury falling within the provisions of subsection (c)(1)-(20) of this section, the employee is totally and permanently disabled, and the disability is found not to be due solely to that injury, the employer shall provide compensation for the applicable prescribed period of weeks provided for in that section for the subsequent injury, or for one hundred and four weeks, whichever is the greater, except that, in the case of an injury falling within the provisions of subsection (c)(13) of this section, the employer shall provide compensation for the lesser of such periods. In all other cases of total permanent disability or of death, found not to be due solely to that injury, of an employee having an existing permanent partial disability, the employer shall provide in addition to compensation under subsections (b) and (e) of this section, compensation payments or death benefits for one hundred and four weeks only. If following an injury falling within the provisions of subsection (c)(1)-(20) of this section, the employee has a permanent partial disability and the disability is found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide compensation for the applicable period of weeks provided for in that section for the subsequent injury, or for one hundred and four weeks, whichever is the greater, except that, in the case of an injury falling within the provisions of subsection (c)(13) of this section, the employer shall provide compensation for the lesser of such periods.

In all other cases in which the employee has a permanent partial disability, found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide in addition to compensation under subsections (b) and (e) of this section, compensation for one hundred and four weeks only.

(2)(A) After cessation of the payments for the period of weeks provided for herein, the employee or his survivor entitled to benefits shall be paid the remainder of the compensation that would be due out of the special fund established in section 944 of this title, except that the special fund shall not assume responsibility with respect to such benefits (and such payments shall not be subject to cessation) in the case of any employer who fails to comply with section 932(a) of this title.

(B) After cessation of payments for the period of weeks provided for in this subsection, the employer or carrier responsible for payment of compensation shall remain a party to the claim, retain access to all records relating to the claim, and in all other respects retain all rights granted under this chapter prior to cessation of such payments.

(3) Any request, filed after September 28, 1984, for apportionment of liability to the special fund established under section 944 of this title for the payment of compensation benefits, and a statement of the grounds therefore, shall be presented to the deputy commissioner prior to the consideration of the claim by the deputy commissioner. Failure to present such request prior to such consideration shall be an absolute defense to the special fund's liability for the payment of any benefits in connection with such claim, unless the employer could not have reasonably anticipated the liability of the special fund prior to the issuance of a compensation order.

[*See main edition for text of (g) and (h)*]

(i)(1) Whenever the parties to any claim for compensation under this chapter, including survivors benefits, agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

(2) If the deputy commissioner disapproves an application for settlement under paragraph (1), the deputy commissioner shall issue a written statement within thirty days containing the reasons for disapproval. Any party to the settlement may request a hearing before an administrative law judge in the manner prescribed by this chapter. Following such hearing, the administrative law judge shall enter an order approving or rejecting the settlement.

(3) A settlement approved under this section shall discharge the liability of the employer or carrier, or both. Settlements may be agreed upon at any stage of the proceeding including after entry of a final compensation order.

(4) The special fund shall not be liable for reimbursement of any sums paid or payable to an employee or any beneficiary under such settlement, or otherwise voluntarily paid prior to such settlement by the employer or carrier, or both.

(j)(1) The employer may inform a disabled employee of his obligation to report to the employer not less than semiannually any earnings from employment or self-employment, on such forms as the Secretary shall specify in regulations.

(2) An employee who—

(A) fails to report the employee's earnings under paragraph (1) when requested, or

(B) knowingly and willfully omits or understates any part of such earnings,

and who is determined by the deputy commissioner to have violated clause (A) or (B) of this paragraph, forfeits his right to compensation with respect to any period during which the employee was required to file such report.

(3) Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee in any amount and on such schedule as determined by the deputy commissioner.

(As amended Sept. 28, 1984, Pub. L. 98-426, §§ 8, 27(a)(2), 98 Stat. 1644, 1654.)

AMENDMENTS

1984—Subsec. (c)(13). Pub. L. 98-426, § 8(a), redesignated compensation for loss of hearing in one ear as subpar. (A) and for loss in both ears as subpar. (B) and added subpars. (C), (D), and (E) respecting establishing proof of hearing loss.

Subsec. (c)(20). Pub. L. 98-426, § 8(b), substituted "$7,500" for "$3,500".

Subsec. (c)(21). Pub. L. 98-426, § 8(c)(1), substituted "the average weekly wages of the employee and the employee's" for "his average weekly wages and his"; and struck out ", but subject to reconsideration of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest".

Subsec. (c)(23). Pub. L. 98-426, § 8(c)(2), added par. (23).

Subsec. (d)(3), (4). Pub. L. 98-426, § 8(d), redesignated par. (4) as par. (3). Former par. (3), which provided that if an employee who was receiving compensation for permanent partial disability pursuant to subsection (c)(21) of this section died from causes other than the injury, his survivors would receive death benefits as provided in section 909(b)-(g) of this title, except that the percentage figures therein would be applied to the weekly compensation payable to the employee at the time of his death multiplied by 1.5, rather than to his average weekly wages, was struck out.

Subsec. (f)(1). Pub. L. 98-426, § 8(e)(1), inserted at end of second and fourth sentences the following: ", except that, in the case of an injury falling within the provisions of section 908(c)(3) of this title, the employer shall provide compensation for the lesser of such periods".

Subsec. (f)(2)(A). Pub. L. 98-426, § 8(e)(2), designated existing provisions of par. (2) as subpar. (A) thereof.

Pub. L. 98-426, § 8(e)(3), inserted ", except that the special fund shall not assume responsibility with respect to such benefits (and such payments shall not be subject to cessation) in the case of any employer who fails to comply with section 932(a) of this title".

Subsec. (f)(2)(B). Pub. L. 98-426, § 8(e)(4), added subpar. (B).

Subsec. (f)(3). Pub. L. 98-426, § 8(e)(5), added par. (3).

Subsec. (g). Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Subsec. (i)(1) to (3). Pub. L. 98-426, § 8(f), substituted pars. (1) to (3) respecting the procedures for the approval of a settlement by the deputy commissioner or administrative law judge for former pars. (A) and (B) respecting settlements approved by the deputy commissioner or Secretary.

Subsec. (i)(4). Pub. L. 98-426, § 8(g), added par. (4).

Subsec. (j). Pub. L. 98-426, § 8(h), added subsec. (j).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsecs. (c)(13), (f)(1), and (f)(2)(A) and enactment of subsec. (c)(23) by Pub. L. 98-426, effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending on such date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment of subsec. (c)(20) by section 8(b) of Pub. L. 98-426 applicable with respect to any injury after Sept. 28, 1984, see section 28(c) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment of subsecs. (c)(21) and (g), and enactment of subsecs. (f)(2)(B), (3), and (i)(4), by sections 8(c)(1), (e)(4), (5), (g), and 27(a)(2) of Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment of subsec. (d)(3), (4), by section 8(d) of Pub. L. 98-426 applicable with respect to any death after Sept. 28, 1984, see section 28(d) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment of subsec. (i)(1) to (3) by section 8(f) of Pub. L. 98-426 effective 90 days after Sept. 28, 1984, and applicable both with respect to claims filed after such 90th day and to claims pending on such 90th day, see section 28(b) of Pub. L. 98-426, set out as a note under section 901 of this title.

Enactment of subsec. (j) by section 8(h) of Pub. L. 98-426 effective 90 days after Sept. 28, 1984, see section 28(e)(2) of Pub. L. 98-426, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 904, 922, 944 of this title; title 30 section 932; title 42 sections 1652, 1702.

§ 909. Compensation for death

If the injury causes death, the compensation therefore shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) Reasonable funeral expenses not exceeding $3,000.

[See main edition for text of (b) to (d)]

(e) In computing death benefits, the average weekly wages of the deceased shall not be less than the national average weekly wage as prescribed in section 906(b) of this title, but—

(1) the total weekly benefits shall not exceed the lesser of the average weekly wages of the deceased or the benefit which the deceased employee would have been eligible to receive under section 906(b)(1) of this title; and

(2) in the case of a claim based on death due to an occupational disease for which the

time of injury (as determined under section 910(i) of this title) occurs after the employee has retired, the total weekly benefits shall not exceed one fifty-second part of the employee's average annual earnings during the 52-week period preceding retirement.

[*See main edition for text of* (*f*) *and* (*g*)]

(As amended Sept. 28, 1984, Pub. L. 98-426, §§ 9, 27(a)(2), 98 Stat. 1647, 1654.)

AMENDMENTS

1984—Pub. L. 98-426, § 9(a), amended generally provision preceding subsec. (a), striking out "or if the employee who sustains permanent total disability due to the injury thereafter dies from causes other than the injury," after "injury causes death".

Subsec. (a). Pub. L. 98-426, § 9(b), substituted "$3,000" for "$1,000".

Subsec. (e). Pub. L. 98-426, § 9(c), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "In computing death benefits the average weekly wages of the deceased shall be considered to have been not less than the applicable national average weekly wage as prescribed in section 906(b) of this title but the total weekly benefits shall not exceed the average weekly wages of the deceased".

Subsec. (g). Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 9 of Pub. L. 98-426 applicable with respect to any death after Sept. 28, 1984, see section 28(d) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment by section 27(a)(2) of Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 904, 908, 931 of this title; title 30 section 932; title 42 sections 1652, 1701, 1702.

§ 910. Determination of pay

[*See main edition for text of* (*a*) *to* (*c*)]

(d)(1) The average weekly wages of an employee shall be one fifty-second part of his average annual earnings.

(2) Notwithstanding paragraph (1), with respect to any claim based on a death or disability due to an occupational disease for which the time of injury (as determined under subsection (i) of this section) occurs—

(A) within the first year after the employee has retired, the average weekly wages shall be one fifty-second part of his average annual earnings during the 52-week period preceding retirement; or

(B) more than one year after the employee has retired, the average weekly wage shall be deemed to be the national average weekly wage (as determined by the Secretary pursuant to section 906(b) of this title) applicable at the time of the injury.

[*See main edition for text of* (*e*)]

(f) Effective October 1 of each year, the compensation or death benefits payable for permanent total disability or death arising out of injuries subject to this chapter shall be increased by the lesser of—

(1) a percentage equal to the percentage (if any) by which the applicable national weekly wage for the period beginning on such October 1, as determined under section 906(b) of this title, exceeds the applicable national average weekly wage, as so determined, for the period beginning with the preceding October 1; or

(2) 5 per centum.

[*See main edition for text of* (*g*) *and* (*h*)]

(i) For purposes of this section with respect to a claim for compensation for death or disability due to an occupational disease which does not immediately result in death or disability, the time of injury shall be deemed to be the date on which the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 10, 98 Stat. 1647.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-426, § 10(a)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (f). Pub. L. 98-426, § 10(b), substituted "subject to this chapter" for "sustained after October 27, 1972," and inserted "the lesser of—" after "by" in introductory language, designated balance of existing provisions as par. (1), substituted "; or" for a period at end of par. (1) as so designated, and added par. (2).

Subsec. (i). Pub. L. 98-426, § 10(a)(2), added subsec. (i).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsec. (d)(1) and enactment of subsecs. (d)(2) and (i) by section 10(a) of Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending on such date, see section 28(a) of Pub. L. 98-426 set out as a note under section 901 of this title.

Amendment of subsec. (f) by section 10(b) of Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 902, 906, 908, 909, 944 of this title; title 30 section 932; title 42 section 1702.

§ 912. Notice of injury or death

(a) Time limitation

Notice of an injury or death in respect of which compensation is payable under this chapter shall be given within thirty days after the date of such injury or death, or thirty days after the employee or beneficiary is aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of a relationship between the injury or death and the employment, except that in the case of an occupational disease which does not immediately result in a disability or death, such notice shall be given within one year after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability. Notice shall be given (1) to the deputy commissioner in the compensation district in which the injury or death occurred, and (2) to the employer.

[See main edition for text of (b)]

(c) Delivery requirements

Notice shall be given to the deputy commissioner by delivering it to him or sending it by mail addressed to his office, and to the employer by delivering it to him or by sending it by mail addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred. Each employer shall designate those agents or other responsible officials to receive such notice, except that the employer shall designate as its representatives individuals among first line supervisors, local plant management, and personnel office officials. Such designations shall be made in accordance with regulations prescribed by the Secretary and the employer shall notify his employees and the Secretary of such designation in a manner prescribed by the Secretary in regulations.

(d) Failure to give notice

Failure to give such notice shall not bar any claim under this chapter (1) if the employer (or his agent or agents or other responsible official or officials designated by the employer pursuant to subsection (c) of this section) or the carrier had knowledge of the injury or death, (2) the deputy commissioner determines that the employer or carrier has not been prejudiced by failure to give such notice, or (3) if the deputy commissioner excuses such failure on the ground that (i) notice, while not given to a responsible official designated by the employer pursuant to subsection (c) of this section, was given to an official of the employer or the employer's insurance carrier, and that the employer or carrier was not prejudiced due to the failure to provide notice to a responsible official designated by the employer pursuant to subsection (c) of this section, or (ii) for some satisfactory reason such notice could not be given; nor unless objection to such failure is raised before the deputy commissioner at the first hearing of a claim for compensation in respect of such injury or death.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 11, 98 Stat. 1648.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-426, § 11(a), inserted a comma after "aware" and "only by reason of medical advice" after "diligence" and added "except that in the case of an occupational disease which does not immediately result in a disability or death, such notice shall be given within one year after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability" in first sentence.

Subsec. (c). Pub. L. 98-426, § 11(b), added "Each employer shall designate those agents or other responsible officials to receive such notice, except that the employer shall designate as its representatives individuals among first line supervisors, local plant management, and personnel office officials. Such designations shall be made in accordance with regulations prescribed by the Secretary and the employer shall notify his employees and the Secretary of such designation in a manner prescribed by the Secretary in regulations."

Subsec. (d)(1). Pub. L. 98-426, § 11(c), substituted "(or his agent or agents or other responsible official or officials designated by the employer pursuant to subsection (c) of this section)" for "(or his agent in charge of the business in the place where the injury occurred)", substituted "injury or death, (2)" for "injury or death and", and substituted "or (3)" for "or (2)".

Pub. L. 98-426, § 11(c)(4), inserted "(i) notice, while not given to a responsible official designated by the employer pursuant to subsection (c) of this section, was given to an official of the employer or the employer's insurance carrier, and that the employer or carrier was not prejudiced due to the failure to provide notice to a responsible official designated by the employer pursuant to subsection (c) of this title, or (ii)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsec. (a) by section 11(a) of Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending on such date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment of subsecs. (c) and (d) by section 11(b), (c) of Pub. L. 98-426 effective 90 days after Sept. 28, 1984, and applicable both with respect to claims filed after such 90th day and to claims pending on such 90th day, see section 28(b) of Pub. L. 98-426, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 908, 914, 936 of this title; title 30 section 932.

§ 913. Filing of claims

[See main edition for text of (a)]

(b) Failure to file

(1) Notwithstanding the provisions of subsection (a) of this section failure to file a claim within the period prescribed in such subsection shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(2) Notwithstanding the provisions of subsection (a) of this section, a claim for compensation for death or disability due to an occupational disease which does not immediately result in such death or disability shall be timely if filed within two years after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability, or within one year of the date of the last payment of compensation, whichever is later.

[See main edition for text of (c) and (d)]

(As amended Sept. 28, 1984, Pub. L. 98-426, § 12, 98 Stat. 1649.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-426 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsec. (b) by Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending on such date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 908, 919 of this title; title 30 section 932.

§ 914. Payment of compensation

[*See main edition for text of* (a)]

(b) Period of installment payments

The first installment of compensation shall become due on the fourteenth day after the employer has been notified pursuant to section 912 of this title, or the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments, semimonthly, except where the deputy commissioner determines that payment in installments should be made monthly or at some other period.

(c) Notification of commencement or suspension of payment

Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the deputy commissioner, in accordance with a form prescribed by the Secretary, that payment of compensation has begun or has been suspended, as the case may be.

(d) Right to compensation controverted

If the employer controverts the right to compensation he shall file with the deputy commissioner on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

[*See main edition for text of* (e) *and* (*f*)]

(g) Notice of payment; penalty

Within sixteen days after final payment of compensation has been made, the employer shall send to the deputy commissioner a notice, in accordance with a form prescribed by the Secretary, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the deputy commissioner within such time the Secretary shall assess against such employer a civil penalty in the amount of $100.

[*See main edition for text of* (h) *and* (i)]

(j) Reimbursement for advance payments

If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(k) Receipt for payment

An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the deputy commissioner, whenever required.

(As amended Sept. 28, 1984, Pub. L. 98-426, §§ 13, 27(a)(2), 98 Stat. 1649, 1654.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-426, § 13(a), substituted "employer has been notified pursuant to section 912 of this title, or the empoyer," for "employer".

Subsecs. (c), (d), (g). Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Subsecs. (j) to (*l*). Pub. L. 98-426, § 13(b), redesignated subsecs. (k) and (*l*) as (j) and (k), respectively, and struck out former subsec. (j) which provided that whenever the deputy commissioner determines that it was in the interest of justice, the liability of the employer for compensation, or any part thereof as determined by the deputy commissioner with the approval of the Secretary, could be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at 4 per centum true discount compounded annually, that the probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which he was entitled to compensation would be determined in accordance with the American Experience Table of Mortality, and the probability of the remarriage of the surviving wife would be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution, and that the probability of the happening of any other contingency affecting the amount or duration of the compensation would be disregarded, was struck out.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsecs. (b) and (j) to (*l*) by section 13 of Pub. L. 98-426 effective 90 days after Sept. 28, 1984, and applicable both with respect to claims filed after such 90th day and to claims pending on such 90th day, see section 28(b) of Pub. L. 98-426, set out as a note under section 901 of this title.

Amendment of subsecs. (c), (d), and (g) by section 27(a)(2) of Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 917. Lien against compensation

Where a trust fund which complies with section 186(c) of title 29 established pursuant to a collective-bargaining agreement in effect between an employer and an employee covered under this chapter has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this chapter or under a settlement, the Secretary shall authorize a lien on such compensation in favor of the trust fund for the amount of such payments.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 14, 98 Stat. 1649.)

AMENDMENTS

1984—Pub. L. 98-426 struck out "(b)" before "Where a trust fund which complies", substituted "covered under this chapter" for "entitled to compensation under this chapter", and substituted "this chapter or under a settlement, the Secretary shall authorize" for "this chapter, the Secretary may authorize".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending on such date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 933 of this title.

§ 918. Collection of defaulted payments; special fund

[*See main edition for text of* (*a*)]

(b) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Secretary of Labor may, in his discretion and to the extent he shall determine advisable after consideration of current commitments payable from the special fund established in section 944 of this title, make payment from such fund upon any award made under this chapter, and in addition, provide any necessary medical, surgical, and other treatment required by section 907 of this title in any case of disability where there has been a default in furnishing medical treatment by reason of the insolvency of the employer. Such an employer shall be liable for payment into such fund of the amounts paid therefrom by the Secretary of Labor under this subsection; and for the purpose of enforcing this liability, the Secretary of Labor for the benefit of the fund shall be subrogated to all the rights of the person receiving such payment or benefits as against the employer and may by a proceeding in the name of the Secretary of Labor under this section or under subsection (c) of section 921 of this title, or both, seek to recover the amount of the default or so much thereof as in the judgment of the Secretary is possible, or the Secretary may settle and compromise any such claim.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(b), 98 Stat. 1654.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-426 struck out ", including the right of lien and priority provided for by section 917 of this title," after "shall be subrogated to all the rights of the person receiving such payment or benefits".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 919. Procedure in respect of claims

(a) Filing of claim

Subject to the provisions of section 913 of this title a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed by the Secretary at any time after the first seven days of disability following any injury, or at any time after death, and the deputy commissioner shall have full power and authority to hear and determine all questions in respect of such claim.

(b) Notice of claim

Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the Secretary, shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered mail.

[*See main edition for text of* (*c*) *to* (*f*)]

(g) Transfer of case

At any time after a claim has been filed with him, the deputy commissioner may, with the approval of the Secretary, transfer such case to any other deputy commissioner for the purpose of making investigation, taking testimony, making physical examinations or taking such other necessary action therein as may be directed.

(h) Physical examination of injured employee

An injured employee claiming or entitled to compensation shall submit to such physical examination by a medical officer of the United States or by a duly qualified physician designated or approved by the Secretary as the deputy commissioner may require. The place or places shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer, or carrier may select and pay for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation be payable for any period during which the employee may refuse to submit to examination.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(a)(2), 98 Stat. 1654.)

AMENDMENTS

1984—Subsecs. (a), (b), (g), (h). Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note under section 902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 921. Review of compensation orders

[*See main edition for text of* (*a*)]

(b) Benefits Review Board; establishment; members; chairman; quorum; voting; questions reviewable; record; conclusiveness of findings; stay of payments; remand

(1) There is hereby established a Benefits Review Board which shall be composed of five members appointed by the Secretary from

among individuals who are especially qualified to serve on such Board. The Secretary shall designate one of the members of the Board to serve as chairman. The Chairman shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board.

(2) For the purpose of carrying out its functions under this chapter, three members of the Board shall constitute a quorum and official action can be taken only on the affirmative vote of at least three members.

[*See main edition for text of* (3) *and* (4)]

(5) Notwithstanding paragraphs (1) through (4), upon application of the Chairman of the Board, the Secretary may designate up to four Department of Labor administrative law judges to serve on the Board temporarily, for not more than one year. The Board is authorized to delegate to panels of three members any or all of the powers which the Board may exercise. Each such panel shall have no more than one temporary member. Two members shall constitute a quorum of a panel. Official adjudicative action may be taken only on the affirmative vote of at least two members of a panel. Any party aggrieved by a decision of a panel of the Board may, within thirty days after the date of entry of the decision, petition the entire permanent Board for review of the panel's decision. Upon affirmative vote of the majority of the permanent members of the Board, the petition shall be granted. The Board shall amend its Rules of Practice to conform with this paragraph. Temporary members, while serving as members of the Board, shall be compensated at the same rate of compensation as regular members.

[*See main edition for text of* (c) *to* (e)]

(As amended Sept. 28, 1984, Pub. L. 98-426, § 15, 98 Stat. 1649.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-426, § 15(1), (2), substituted "five" for "three", and added "The Chairman shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board."

Subsec. (b)(2). Pub. L. 98-426, § 15(3), substituted "three" for "two" wherever appearing.

Subsec. (b)(5). Pub. L. 98-426, § 15(4), added par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 922. Modification of awards

Upon his own initiative, or upon the application of any party in interest (including an employer or carrier which has been granted relief under section 908(f) of this title), on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case (including a case under which payments are made pursuant to section 944(i) of this title) in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Secretary. This section does not authorize the modification of settlements.

(As amended Sept. 28, 1984, Pub. L. 98-426, §§ 16, 27(a)(2), 98 Stat. 1650, 1654.)

AMENDMENTS

1984—Pub. L. 98-426, § 16, inserted "(including an employer or carrier which has been granted relief under section 908(f) of this title)" after "party in interest" and "(including a case under which payments are made pursuant to section 941(i) of this title)" after "review a compensation case" and added "This section does not authorize the modification of settlements."

Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 923. Procedure before deputy commissioner or Board

[*See main edition for text of* (a)]

(b) Hearings before a deputy commissioner or Board shall be open to the public and shall be stenographically reported, and the deputy commissioners or Board, subject to the approval of the Secretary, are authorized to contract for the reporting of such hearings. The Secretary shall by regulation provide for the preparation of a record of the hearings and other proceedings before the deputy commissioners or Board.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(a)(2), 98 Stat. 1654.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-426 substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 928. Fees for services

[*See main edition for text of* (a) *to* (d)]

(e) Unapproved fees; solicitation; penalty

A person who receives a fee, gratuity, or other consideration on account of services rendered as a representative of a claimant, unless the consideration is approved by the deputy commissioner, administrative law judge, Board, or court, or who makes it a business to solicit employment for a lawyer, or for himself, with respect to a claim or award for compensation under this chapter, shall, upon conviction thereof, for each offense be punished by a fine of not more than $1,000 or be imprisoned for not more than one year, or both.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 17, 98 Stat. 1650.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-426 substituted "a fee, gratuity, or other consideration" for "any fees, other consideration, or any gratuity"; "with respect to" for "in respect of"; and "both" for "by both such fine and imprisonment"; and inserted "under this chapter," after "compensation".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 931 of this title.

§ 929. Record of injury or death

Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disease, other disability, or death in respect of such injury as the Secretary may by regulation require, and shall be available to inspection by the Secretary or by any State authority at such times and under such conditions as the Secretary may by regulation prescribe.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(a)(2), 98 Stat. 1654.)

AMENDMENTS

1984—Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 930. Reports to Secretary

(a) Time for sending; contents; copy to deputy commissioner

Within ten days from the date of any injury, which causes loss of one or more shifts of work, or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Secretary a report setting forth (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the Secretary may require. A copy of such report shall be sent at the same time to the deputy commissioner in the compensation district in which the injury occurred. Notwithstanding the requirements of this subsection, each employer shall keep a record of each and every injury regardless of whether such injury results in the loss of one or more shifts of work.

(b) Additional reports

Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the Secretary and to such deputy commissioner at such times and in such manner as the Secretary may prescribe.

[*See main edition for text of* (c)]

(d) Compliance by mailing

The mailing of any such report and copy in a stamped envelope, within the time prescribed in subsections (a) or (b) of this section, to the Secretary and deputy commissioner, respectively, shall be a compliance with this section.

(e) Penalty for failure or refusal to send report

Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by this section or knowingly or willfully makes a false statement or misrepresentation in any such report shall be subject to a civil penalty not to exceed $10,000 for each such failure, refusal, false statement, or misrepresentation.

[*See main edition for text of* (*f*)]

(As amended Sept. 28, 1984, Pub. L. 98-426, §§ 18, 27(a)(2), 98 Stat. 1650, 1654.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-426, § 18(a)(1), inserted ", which causes loss of one or more shifts of work," after "Within ten days from the date of any injury".

Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Pub. L. 98-426, § 18(a)(2), added: "Notwithstanding the requirements of this subsection, each employer shall keep a record of each and every injury regardless of whether such injury results in the loss of one or more shifts of work."

Subsecs. (b), (d). Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Subsec. (e). Pub. L. 98-426, § 18(b), substituted "Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by this section or knowingly or willfully makes a false statement or misrepresentation in any such report shall be subject to a civil penalty not to exceed $10,000 for each such failure, refusal, false statement, or misrepresentation" for "Any employer who fails or refuses to send any report required of him by this section shall be subject to a civil penalty not to exceed $500 for each such failure or refusal".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 931. Penalty for misrepresentation

(a) Felony; fine; imprisonment

(1) Any claimant or representative of a claimant who knowingly and willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under this chapter shall be guilty of a felony, and on conviction thereof shall be punished by a fine not to exceed $10,000, by imprisonment not to exceed five years, or by both.

(2) The United States attorney for the district in which the injury is alleged to have occurred shall make every reasonable effort to promptly investigate each complaint made under this subsection.

(b) List of persons disqualified from representing claimants

(1) No representation fee of a claimant's representative shall be approved by the deputy commissioner, an administrative law judge, the Board, or a court pursuant to section 928 of this title, if the claimant's representative is on the list of individuals who are disqualified from representing claimants under this chapter maintained by the Secretary pursuant to paragraph (2) of this subsection.

(2)(A) The Secretary shall annually prepare a list of those individuals in each compensation district who have represented claimants for a fee in cases under this chapter and who are not authorized to represent claimants. The names of individuals contained on the list required under this subparagraph shall be made available to employees and employers in each compensation district through posting and in such other forms as the Secretary may prescribe.

(B) Individuals shall be included on the list of those not authorized to represent claimants under this chapter if the Secretary determines under this section, in accordance with the procedure provided in subsection (j) of section 907 of this title, that such individual—

(i) has been convicted (without regard to pending appeal) of any crime in connection with the representation of a claimant under this chapter or any workers' compensation statute;

(ii) has engaged in fraud in connection with the presentation of a claim under this or any workers' compensation statute, including, but not limited to, knowingly making false representations, concealing or attempting to conceal material facts with respect to a claim, or soliciting or otherwise procuring false testimony;

(iii) has been prohibited from representing claimants before any other workers' compensation agency for reasons of professional misconduct which are similar in nature to those which would be grounds for disqualification under this paragraph; or

(iv) has accepted fees for representing claimants under this chapter which were not approved, or which were in excess of the amount approved pursuant to section 928 of this title.

(C) Notwithstanding subparagraph (B), no individual who is on the list required to be maintained by the Secretary pursuant to this section shall be prohibited from presenting his or her own claim or from representing without fee, a claimant who is a spouse, mother, father, sister, brother, or child of such individual.

(D) A determination under subparagraph (A) shall remain in effect for a period of not less than three years and until the Secretary finds and gives notice to the public that there is reasonable assurance that the basis for the determination will not reoccur.

(3) No employee shall be liable to pay a representation fee to any representative whose fee has been disallowed by reason of the operation of this paragraph.

(4) The Secretary shall issue such rules and regulations as are necessary to carry out this section.

(c) False statements or representation to reduce, deny, or terminate benefits

A person including, but not limited to, an employer, his duly authorized agent, or an employee of an insurance carrier who knowingly and willfully makes a false statement or representation for the purpose of reducing, denying, or terminating benefits to an injured employee, or his dependents pursuant to section 909 of this title if the injury results in death, shall be punished by a fine not to exceed $10,000, by imprisonment not to exceed five years, or by both.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 19, 98 Stat. 1650.)

AMENDMENTS

1984—Pub. L. 98-426 designated existing provisions as subsec. (a)(1), in subsec. (a)(1) as so designated substituted "Any claimant or representative of a claimant who knowingly and willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under this chapter shall be guilty of a felony, and on conviction thereof shall be punished by a fine not to exceed $10,000, by imprisonment not to exceed five years, or by both" for "Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this chapter shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed $1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment", and added subsecs. (a)(2), (b), and (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 932. Security for compensation

(a) Every employer shall secure the payment of compensation under this chapter—

(1) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any other person or fund, while such person or fund is authorized (A) under the laws of the United States or of any State, to insure workmen's compensation, and (B) by the Secretary, to insure payment of compensation under this chapter; or

(2) By furnishing satisfactory proof to the Secretary of his financial ability to pay such compensation and receiving an authorization

from the Secretary to pay such compensation directly. The Secretary may, as a condition to such authorization, require such employer to deposit in a depository designated by the Secretary either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the Secretary, based on the employer's financial condition, the employer's previous record of payments, and other relevant factors, and subject to such conditions as the Secretary may prescribe, which shall include authorization to the Secretary in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer.

(b) In granting authorization to any carrier to insure payment of compensation under this chapter the Secretary may take into consideration the recommendation of any State authority having supervision over carriers or over workmen's compensation, and may authorize any carrier to insure the payment of compensation under this chapter in a limited territory. Any marine protection and indemnity mutual insurance corporation or association, authorized to write insurance against liability for loss or damage from personal injury and death, and for other losses and damages, incidental to or in respect of the ownership, operation, or chartering of vessels on a mutual assessment plan, shall be deemed a qualified carrier to insure compensation under this chapter. The Secretary may suspend or revoke any such authorization for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

(As amended Sept. 28, 1984, Pub. L. 98-426, §§ 20, 27(a)(2), 98 Stat. 1652, 1654.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Subsec. (a)(2). Pub. L. 98-426, § 20, added "based on the employer's financial condition, the employer's previous record of payments, and other relevant factors," after "in an amount determined by the commission,".

Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Subsec. (b). Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 908 of this title.

§ 933. Compensation for injuries where third persons are liable

[*See main edition for text of* (*a*)]

(b) Acceptance of compensation operating as assignment

Acceptance of compensation under an award in a compensation order filed by the deputy commissioner, an administrative law judge, or the Board shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such acceptance. If the employer fails to commence an action against such third person within ninety days after the cause of action is assigned under this section, the right to bring such action shall revert to the person entitled to compensation. For the purpose of this subsection, the term "award" with respect to a compensation order means a formal order issued by the deputy commissioner, an administrative law judge, or Board.

[*See main edition for text of* (*c*) *and* (*d*)]

(e) Recoveries by assignee

Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

[*See main edition for text of* (*1*)]

(2) The employer shall pay any excess to the person entitled to compensation or to the representative.

(f) Institution of proceedings by person entitled to compensation

If the person entitled to compensation institutes proceedings within the period prescribed in subsection (b) of this section the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury or death over the net amount recovered against such third person. Such net amount shall be equal to the actual amount recovered less the expenses reasonably incurred by such person in respect to such proceedings (including reasonable attorneys' fees).

(g) Compromise obtained by person entitled to compensation

(1) If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) of this section for an amount less than the compensation to which the person (or the person's representative) would be entitled under this chapter, the employer shall be liable for compensation as determined under subsection (f) of this section only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation (or the person's representative). The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within thirty days after the settlement is entered into.

(2) If no written approval of the settlement is obtained and filed as required by paragraph (1), or if the employee fails to notify the employer of any settlement obtained from or judgment rendered against a third person, all rights to compensation and medical benefits under this chapter shall be terminated, regardless of whether the employer or the employer's insurer has made payments or acknowledged entitlement to benefits under this chapter.

(3) Any payments by the special fund established under section 944 of this title shall be a lien upon the proceeds of any settlement obtained from or judgment rendered against a third person referred to under subsection (a) of this section. Notwithstanding any other provision of law, such lien shall be enforceable against such proceeds, regardless of whether the Secretary on behalf of the special fund has agreed to or has received actual notice of the settlement or judgment.

(4) Any payments by a trust fund described in section 917 of this title shall be a lien upon the proceeds of any settlement obtained from or judgment recorded against a third person referred to under subsection (a) of this section. Such lien shall have priority over a lien under paragraph (3) of this subsection.

[*See main edition for text of* (*h*) *and* (*i*)]

(As amended Sept. 28, 1984, Pub. L. 98-426, § 21, 98 Stat. 1652.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-426, § 21(a), substituted "Acceptance of compensation under an award in a compensation order filed by the deputy commissioner, an administrative law judge, or the Board shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such acceptance" for "Acceptance of such compensation under an award in a compensation order filed by the deputy commissioner or Board shall operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such award" and added: "If the employer fails to commence an action against such third person within ninety days after the cause of action is assigned under this section, the right to bring such action shall revert to the person entitled to compensation. For the purpose of this subsection, the term 'award' with respect to a compensation order means a formal order issued by the deputy commissioner, an administrative law judge, or Board."

Subsec. (e)(2). Pub. L. 98-426, § 21(b), struck out ", less one-fifth of such excess which shall belong to the employer" after "or to the representative".

Subsec. (f). Pub. L. 98-426, § 21(c)(1), inserted "net" before "amount recovered".

Pub. L. 98-426, § 21(c)(2), added: "Such net amount shall be equal to the actual amount recovered less the expenses reasonably incurred by such person in respect to such proceedings (including reasonable attorneys' fees)."

Subsec. (g). Pub. L. 98-426, § 21(d), designated existing provisions as par. (1), in par. (1) as so designated substituted "If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) of this section for an amount less than the compensation to which the person (or the person's representative) would be entitled under this chapter, the employer shall be liable for compensation as determined under subsection (f) of this section only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation (or the person's representative)" for "If compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled to under this chapter the employer shall be liable for compensation as determined in subsection (f) of this section only if the written approval of such compromise is obtained from the employer and its insurance carrier by the person entitled to compensation or such representative at the time of or prior to such compromise on a form provided by the Secretary and filed in the office of the deputy commissioner having jurisdiction of such injury or death within thirty days after such compromise is made", added "The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within thirty days after the settlement is entered into.", and added pars. (2) to (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending on such date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 934. Compensation notice

Every employer who has secured compensation under the provisions of this chapter shall keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices, in accordance with a form prescribed by the Secretary, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(a)(2), 98 Stat. 1654.)

AMENDMENTS

1984—Pub. L. 98-426 substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 935. Substitution of carrier for employer

In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer, and in order that the administration of this chapter in respect of such liability may be facilitated, the Secretary shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect to such liability, imposed by this chapter upon the employer, as it considers proper in order to effectuate the provisions of this chapter. For such purposes (1) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier, (2) jurisdiction of the employer by a deputy commissioner, the Board, or the Secretary, or any court under this chapter shall be jurisdiction of the carrier, and (3) any requirement by a deputy commissioner, the Board, or the Secretary, or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(a)(2), 98 Stat. 1654.)

AMENDMENTS

1984—Pub. L. 98-426 substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 938. Penalties

(a) Failure to secure payment of compensation

Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under the said chapter in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by section 932 of this title.

(b) Avoiding payment of compensation

Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this chapter, and with intent to avoid the payment of compensation under this chapter to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

[*See main edition for text of* (c)]

(As amended Sept. 28, 1984, Pub. L. 98-426, § 22, 98 Stat. 1653.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-426 substituted "$10,000" for "$1,000" each place it appears.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 939. Administration by Secretary

(a) Prescribing rules and regulations; appointing and fixing compensation of employees; making expenditures

Except as otherwise specifically provided, the Secretary shall administer the provisions of this chapter, and for such purpose the Secretary is authorized (1) to make such rules and regulations; (2) to appoint and fix the compensation of such temporary technical assistants and medical advisers, and, subject to the provisions of the civil service laws, to appoint, and, in accordance with chapter 51 and subchapter III of chapter 53 of title 5, to fix the compensation of such deputy commissioners (except deputy commissioners appointed under subsection (a) of section 940 of this title) and other officers and employees; and (3) to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, and for printing and binding) as may be necessary in the administration of this chapter. All expenditures of the Secretary in the administration of this chapter shall be allowed and paid as provided in section 945 [5] of this title upon the presentation of itemized vouchers therefor approved by the Secretary.

(b) Establishing compensation districts

The Secretary shall establish compensation districts, to include the high seas and the areas within the United States to which this chapter applies, and shall assign to each such district one or more deputy commissioners, as the Secretary deems advisable. Judicial proceedings under sections 918 and 921 of this title in respect of any injury or death occurring on the high seas shall be instituted in the district court within whose territorial jurisdiction is located the office of the deputy commissioner having jurisdiction in respect of such injury or death (or in the United States District Court for the District of Columbia if such office is located in such District).

(c) Furnishing information and assistance; directing vocational rehabilitation

[*See main edition for text of* (1)]

(2) The Secretary shall direct the vocational rehabilitation of permanently disabled employees and shall arrange with the appropriate public or private agencies in States or Territories, possessions, or the District of Columbia for such rehabilitation. The Secretary may in his discretion furnish such prosthetic appliances or other apparatus made necessary by an injury upon which an award has been made under this

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[5] See References in Text note below.

chapter to render a disabled employee fit to engage in a remunerative occupation. Where necessary rehabilitation services are not available otherwise, the Secretary of Labor may, in his discretion, use the fund provided for in section 944 of this title in such amounts as may be necessary to procure such services, including necessary prosthetic appliance or other apparatus. This fund shall also be available in such amounts as may be authorized in annual appropriations for the Department of Labor for the costs of administering this subsection.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(a)(2), (c), 98 Stat. 1654.)

REFERENCES IN TEXT

Section 945 of this title, referred to in subsec. (a), was repealed by Pub. L. 98-426, § 25, Sept. 28, 1984, 98 Stat. 1654. See section 944 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-426, § 27(c), substituted "Secretary" for "United States Employees' Compensation Commission". See Transfer of Functions note set out under section 902 of this title.

Subsecs. (b), (c)(2). Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 940. Deputy commissioners

(a) Appointment; use of personnel and facilities of boards, commissions, or other agencies; expenses and salaries

The Secretary may appoint as deputy commissioners any member of any board, commission, or other agency of a State to act as deputy commissioner for any compensation district or part thereof in such State, and may make arrangements with such board, commission, or other agency for the use of the personnel and facilities thereof in the administration of this chapter. The Secretary may make such arrangements as may be deemed advisable by him for the payment of expenses of such board, commission, or other agency, incurred in the administration of this chapter pursuant to this section, and for the payment of salaries to such board, commission, or other agency, or the members thereof, and may pay any amounts agreed upon to the proper officers of the State, upon vouchers approved by the Secretary.

(b) Appointment in Territories and District of Columbia; compensation

In any Territory of the United States or in the District of Columbia a person holding an office under the United States may be appointed deputy commissioner and for services rendered as deputy commissioner may be paid compensation, in addition to that he is receiving from the United States, in an amount fixed by the Secretary in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(c) Transfers to other districts; temporary details

Deputy commissioners (except deputy commissioners appointed under subsection (a) of this section) may be transferred from one compensation district to another and may be temporarily detailed from one compensation district for service in another in the discretion of the Secretary.

(d) Maintaining offices

Each deputy commissioner shall maintain and keep open during reasonable business hours an office, at a place designated by the Secretary, for the transaction of business under this chapter, at which office he shall keep his official records and papers. Such office shall be furnished and equipped by the Secretary, who shall also furnish the deputy commissioner with all necessary clerical and other assistants, records, books, blanks, and supplies. Wherever practicable such office shall be located in a building owned or leased by the United States; otherwise the Secretary shall rent suitable quarters.

(e) Records and papers

If any deputy commissioner is removed from office, or for any reason ceases to act as such deputy commissioner, all of his official records and papers and office equipment shall be transferred to his successor in office or, if there be no successor, then to the Secretary or to a deputy commissioner designated by the Secretary.

[*See main edition for text of* (*f*)]

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(a)(2), 98 Stat. 1654.)

AMENDMENTS

1984—Subsecs. (a) to (e). Pub. L. 98-426 substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 941. Safety rules and regulations

REFERENCES IN TEXT

Title 52 of the Revised Statutes, referred to in subsec. (a), consisted of R.S. §§ 4399 to 4500, which were classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of former Title 46, Shipping. For complete classification of R.S. §§ 4399 to 4500 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, see Table at beginning of Title 46.

§ 942. Annual report

The Secretary shall make to Congress at the beginning of each regular session, commencing at the beginning of the second regular session after September 28, 1984, a report of the administration of this chapter for the preceding fiscal year, including a detailed statement of receipts of and expenditures from the fund established in section 944 of this title, together with such recommendations as the Secretary deems advisable.

(Mar. 4, 1927, ch. 509, § 42, as added Sept. 28, 1984, Pub. L. 98-426, § 23, 98 Stat. 1653.)

PRIOR PROVISIONS

A prior section 942, act Mar. 4, 1927, ch. 509, § 42, 44 Stat. 1444, related to travel and subsistence expenses. See section 5701 et seq. of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as an Effective Date of 1984 Amendment note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 944 of this title.

§ 944. Special fund

(a) Establishment; administration; custody, trust

There is established in the Treasury of the United States a special fund. Such fund shall be administered by the Secretary. The Treasurer of the United States shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be money or property of the United States.

(b) Disbursements; bond of custodian

The Treasurer is authorized to disburse moneys from such fund only upon order of the Secretary. He shall be required to give bond in an amount to be fixed and with securities to be approved by the Secretary of the Treasury and the Comptroller General of the United States conditioned upon the faithful performance of his duty as custodian of such fund.

(c) Payments into fund

Payments into such fund shall be made as follows:

[*See main edition for text of* (*1*)]

(2) At the beginning of each calendar year the Secretary shall estimate the probable expenses of the fund during that calendar year and the amount of payments required (and the schedule therefor) to maintain adequate reserves in the fund. Each carrier and self-insurer shall make payments into the fund on a prorated assessment by the Secretary determined by—

(A) computing the ratio (expressed as a percent) of (i) the carrier's or self-insured's workers' compensation payments under this chapter during the preceding calendar year, to (ii) the total of such payments by all carriers and self-insureds under this chapter during such year;

(B) computing the ratio (expressed as a percent) of (i) the payments under section 908(f) of this title during the preceding calendar year which are attributable to the carrier or self-insured, to (ii) the total of such payments during such year attributable to all carriers and self-insureds;

(C) dividing the sum of the percentages computed under subparagraphs (A) and (B) for the carrier or self-insured by two; and

(D) multiplying the percent computed under subparagraph (C) by such probable expenses of the fund (as determined under the first sentence of this paragraph).

[*See main edition for text of* (*3*); (*d*)]

(e) Depositories; investments

The Treasurer of the United States shall deposit any moneys paid into such fund into such depository banks as the Secretary may designate and may invest any portion of the funds which, in the opinion of the Secretary, is not needed for current requirements, in bonds or notes of the United States or of any Federal land bank.

(f) Limitation of liability

Neither the United States nor the Secretary shall be liable in respect of payments authorized under section 908 of this title in an amount greater than the money or property deposited in or belonging to such fund.

(g) Audit by Comptroller General; finality of payment determinations; credits of disbursing officers

The Comptroller General of the United States shall audit the account for such fund, but the action of the Secretary in making payments from such fund shall be final and not subject to review, and the Comptroller General is authorized and directed to allow credit in the accounts of any disbursing officer of the Secretary for payments made from such fund authorized by the Secretary.

(h) Civil actions for civil penalties and unpaid assessments

All civil penalties and unpaid assessments provided for in this chapter shall be collected by civil suit brought by the Secretary.

(i) Proceeds available for certain payments

The proceeds of this fund shall be available for payments:

(1) Pursuant to sections [6] 910 of this title with respect to certain initial and subsequent annual adjustments in compensation for total permanent disability or death.

(2) Under section 908(f) and (g), under section 918(b), and under section 939(c) of this title.

(3) To repay the sums deposited in the fund pursuant to subsection (d) of this section.

(4) To defray the expense of making examinations as provided in section 907(e) of this title.

(j) Audit to Congress

The fund shall be audited annually and the results of such audit shall be included in the annual report required by section 942 of this title.

(As amended Sept. 28, 1984, Pub. L. 98-426, §§ 24, 27(a)(2), 98 Stat. 1653, 1654.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

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[6] So in original. Probably should be "section".

Subsec. (c)(2). Pub. L. 98-426, § 24(a), substituted provisions requiring that, at the beginning of each calendar year the Secretary estimate the probable expenses of the fund during that calendar year and the amount of payments required (and the schedule therefor) to maintain adequate reserves in the fund and that each carrier and self-insurer make payments into the fund on a prorated assessment by the Secretary determined by (A) computing the ratio (expressed as a percent) of (i) the carrier's or self-insured's workers' compensation payments under this chapter during the preceding calendar year, to (ii) the total of such payments by all carriers and self-insurerds under this chapter during such year; (B) computing the ratio (expressed as a percent) of (i) the payments under section 908(f) of this title during the preceding calendar year which are attributable to the carrier or self-insured, to (ii) the total of such payments during such year attributable to all carriers and self-insureds; (C) dividing the sum of the percentages computed under (A) and (B) for the carrier or self-insured by two; and (D) multiplying the percent computed under (C) by such probable expenses of the fund (as determined under the first sentence of this paragraph) for provisions which had formerly required that at the beginning of each calendar year the Secretary estimate the probable expenses of the fund during that calendar year and each carrier or self-insurer make payments into the fund on a prorated assessment by the Secretary in the proportion that the total compensation and medical payments made on risks covered by this chapter by each carrier and self-insurer bore to the total of such payments made by all carriers and self-insurers under the chapter in the prior calendar year in accordance with a formula and schedule to be determined from time to time by the Secretary to maintain adequate reserves in the fund.

Subsec. (e). Pub. L. 98-426, § 24(b), redesignated subsec. (f) as (e). Former subsec. (e), which had authorized the appropriation to the Secretary of the sum of $2,000,000 which the Secretary was required to deposit into the fund and had directed that, upon deposit in the fund such moneys would be treated as the property of such fund, that the sum, without additional payments for interest, would be repaid from the money or property belonging to the fund on a schedule of repayment set by the Secretary, that full repayment had to be made no later than five years from the date of deposit into the fund, and that each such repayment, as made, would be covered into the Treasury of the United States as miscellaneous receipts, was struck out.

Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Subsec. (f). Pub. L. 98-426, § 24(b), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Subsec. (g). Pub. L. 98-426, § 24(b), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Subsec. (h). Pub. L. 98-426, § 24(b), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Pub. L. 98-426, § 24(c), inserted "and unpaid assessments" after "civil penalties".

Pub. L. 98-426, § 27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Subsec. (i). Pub. L. 98-426, § 24(b), redesignated subsec. (j) as (i). Former subsec. (i) redesignated (h).

Subsec. (i)(1). Pub. L. 98-426, § 24(d)(1), struck out "and 911" after "sections 910", inserted "certain" before "intial", and struck out "which occurred prior to the effective date of this subsection" after "disability or death".

Subsec. (i)(4). Pub. L. 98-426, § 24(d)(2), inserted "(e)" after "section 907".

Subsec. (j). Pub. L. 98-426, § 24(b), redesignated (k) as (j). Former subsec. (j) redesignated (i).

Pub. L. 98-426, § 24(e), substituted "The fund shall be audited annually and the results of such audit shall be included in the annual report required by section 942 of this title" for "At the close of each fiscal year the Secretary shall submit to the Congress a complete audit of the fund".

Subsec. (k). Pub. L. 98-426, § 24(b), redesignated subsec. (k) as (j).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 907, 908, 910, 918, 922, 933, 939, 942, 948a of this title; title 30 section 932.

§§ 945 to 947. Repealed. Pub. L. 98-426, § 25, Sept. 28, 1984, 98 Stat. 1654

Section 945, act Mar. 4, 1927, ch. 509, § 45, 44 Stat. 1445, provided for the creation of a fund to provide for the payment of all expenses connected with the administration of this chapter. See section 944 of this title.

Section 946, act Mar. 4, 1927, ch. 509, § 46, 44 Stat. 1445, appropriated $250,000 to be available for expenses of administration of this chapter for fiscal years ending June 30, 1927, and June 30, 1928.

Section 947, act Mar. 4, 1927, ch. 509, § 47, 44 Stat. 1445, provided for the availability of appropriations for salaries and contingent expenses in the administration of this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective on Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as an Effective Date of 1984 Amendment note under section 901 of this title.

§ 948. Laws inapplicable

Nothing in sections 183, 184 to 186, 188, or 189 of title 46, Appendix, shall be held to limit the amount for which recovery may be had (1) in any suit at law or in admiralty where an employer has failed to secure compensation as required by this chapter, or (2) in any proceeding for compensation, any addition to compensation, or any civil penalty.

(Mar. 4, 1927, ch. 509, § 48, 44 Stat. 1446.)

CODIFICATION

Section is set out in this supplement to reflect the transfer of the section of title 46, referred to in text, to title 46, Appendix.

§ 948a. Discrimination against employees who bring proceedings; penalties; deposit of payments in special fund; civil actions; entitlement to restoration of employment and compensation, qualifications requirement; liability of employer for penalties and payments; insurance policy exemption from liability

It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this chapter. The discharge or refusal to employ a person who has been adjudicated to have filed a fraudulent claim for compensation is not a violation of this section. Any employer who violates this section shall be liable to a penalty of not less than $1,000 or more than $5,000, as may be determined by the deputy commissioner. All such penalties shall be paid to the deputy commissioner for deposit in the special fund as described in section 944 of this title, and if not paid may be recovered in a civil action brought in the appropriate United States district court. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination: *Provided*, That if such employee shall cease to be qualified to perform the duties of his employment, he shall not be entitled to such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from the liability for such penalties and payments shall be void.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 26, 98 Stat. 1654.)

AMENDMENTS

1984—Pub. L. 98-426 added "The discharge or refusal to employ a person who has been adjudicated to have filed a fraudulent claim for compensation is not a violation of this section.", substituted "$1,000" for "$100", and substituted "$5,000" for "$1,000".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

CHAPTER 20—POLLUTION OF THE SEA BY OIL

§§ 1001 to 1011. Repealed. Pub. L. 96-478, § 12, Oct. 21, 1980, 94 Stat. 2303

Section 1001, Pub. L. 87-167, § 2, Aug. 30, 1961, 75 Stat. 402; Pub. L. 89-551, § 1(2), Sept. 1, 1966, 80 Stat. 372; Pub. L. 89-670, § 6(g)(5), Oct. 15, 1966, 80 Stat. 941; Pub. L. 93-119, § 2(1), Oct. 4, 1973, 87 Stat. 424; Pub. L. 97-449, § 2(e)(1), Jan. 12, 1983, 96 Stat. 2440, defined terms used in this chapter.

Section 1002, Pub. L. 87-167, § 3, Aug. 30, 1961, 75 Stat. 402; Pub. L. 89-551, § 1(3), Sept. 1, 1966, 80 Stat. 373; Pub. L. 93-119, § 2(2), Oct. 4, 1973, 87 Stat. 425, prohibited discharge of oil or oily mixtures, but included certain permissible discharges.

Section 1003, Pub. L. 87-167, § 4, Aug. 30, 1961, 75 Stat. 402; Pub. L. 89-551, § 1(4), Sept. 1, 1966, 80 Stat. 373; Pub. L. 93-119, § 2(3), Oct. 4, 1973, 87 Stat. 425, excepted from the prohibition of section 1002 of this title discharges relating to securing safety of ship, prevention of damage to ship or cargo, saving life, and resulting from a damaged ship or unavoidable leakage.

Section 1004, Pub. L. 87-167, § 5, Aug. 30, 1961, 75 Stat. 403; Pub. L. 89-551, § 1(5), Sept. 1, 1966, 80 Stat. 374; Pub. L. 93-119, § 2(4), Oct. 4, 1973, 87 Stat. 425, excepted from the prohibition of section 1002 of this title discharges relating to tanker ballast from cargo tank.

Section 1004a, Pub. L. 87-167, § 6, as added Pub. L. 93-119, § 2(5), Oct. 4, 1973, 87 Stat. 425, provided construction standards for United States tankers, the subsections relating to following subject matter: subsec. (a) tank arrangement and tank size limitation pursuant to provisions of annex C to convention and building contracts placed on or after effective date; subsec. (b) building contracts placed or keel laid before effective date; subsec. (c) domestic tankers without certificate of compliance or exemption prohibited from engaging in domestic or foreign trade; subsec. (d) foreign tankers with foreign registry but without certificate of compliance, consultation with foreign government, and denial of access; subsec. (e) foreign tankers without foreign registry and denial of access.

Section 1005, Pub. L. 87-167, § 7, formerly § 6, Aug. 30, 1961, 75 Stat. 403, renumbered and amended Pub. L. 93-119, § 2(6), Oct. 4, 1973, 87 Stat. 426, related to penalties for violations, the subsections providing for following subject matter: subsec. (a) criminal penalties for willful violations and separate violations; subsec. (b) civil penalties for willful or negligent and other violations and separate violations; subsec. (c) liability of vessel and venue; and subsec. (d) administrative proceedings, assessment of civil penalties, remission, mitigation, or compromise of any penalty, notice and hearing, judicial proceedings, civil actions by Attorney General for collection of penalties, and trial de novo.

Section 1006, Pub. L. 87-167, § 8, formerly § 7, Aug. 30, 1961, 75 Stat. 403, renumbered Pub. L. 93-119, § 2(7), Oct. 4, 1973, 87 Stat. 427, provided for suspension or revocation of license of officers of offending vessels.

Section 1007, Pub. L. 87-167, § 9, formerly § 8, Aug. 30, 1961, 75 Stat. 403; Pub. L. 90-578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118, renumbered and amended Pub. L. 93-119, § 2(8), Oct. 4, 1973, 87 Stat. 427, related to personnel for enforcement of provisions, arrest of offenders and procedure, and ship fittings and equipment.

Section 1008, Pub. L. 87-167, § 10, formerly § 9, Aug. 30, 1961, 75 Stat. 404; Pub. L. 89-551, § 1(6), Sept. 1, 1966, 80 Stat. 374, renumbered and amended Pub. L. 93-119, § 2(9), Oct. 4, 1973, 87 Stat. 427, provided for oil record books, the subsections relating to following subject matter: subsec. (a) printing and regulations of the Secretary; subsec. (b) supplying the books without charge and their inspection and surrender; subsec. (c) operations requiring recordation; subsec. (d) entries and signatures; and subsec. (e) rules and regulations.

Section 1009, Pub. L. 87-167, § 11, formerly § 10, Aug. 30, 1961, 75 Stat. 404; Pub. L. 89-551, § 1(7), Sept. 1, 1966, 80 Stat. 375, renumbered and amended Pub. L. 93-119, § 2(10), Oct. 4, 1973, 87 Stat. 428, authorized the Secretary to promulgate regulations for the administration of specific sections of this chapter.

Section 1010, Pub. L. 87-167, § 12, formerly § 11, Aug. 30, 1961, 75 Stat. 404, renumbered and amended Pub. L. 93-119, § 2(11), Oct. 4, 1973, 87 Stat. 428, related to boarding of ships, production of records, and evidence of violations by foreign ships.

Section 1011, Pub. L. 87-167, § 12, Aug. 30, 1961, 75 Stat. 404; Pub. L. 89-551, § 1(8), Sept. 1, 1966, 80 Stat. 375, specified prohibited zones and provided for reduction or extension of such zones.

EFFECTIVE DATE OF REPEAL

Sections 1001 to 1011 repealed effective Oct. 2, 1983, see section 14(a) of Pub. L. 96-478, set out as an Effective Date note under section 1901 of this title.

SHORT TITLE

Pub. L. 87-167, § 1, Aug. 30, 1961, 75 Stat. 402, as amended by Pub. L. 89-551, § 1(1), Sept. 1, 1966, 80 Stat. 372, which provided that Pub. L. 87-167 could be cited as the "Oil Pollution Act, 1961, as amended", was repealed by Pub. L. 96-478, § 12, Oct. 21, 1980, 94 Stat. 2303.

Pub. L. 93-119, § 1, Oct. 4, 1973, 87 Stat. 424, which provided that Pub. L. 93-119 could be cited as the "Oil

Pollution Act Amendments of 1973" was repealed by Pub. L. 96-478, § 12, Oct. 21, 1980, 94 Stat. 2303.

Separability

Pub. L. 87-167, § 14, formerly § 15, Aug. 30, 1961, 75 Stat. 407, renumbered by Pub. L. 93-119, § 2(13), Oct. 4, 1973, 87 Stat. 428, which provided for the separability of the provisions of Pub. L. 87-167, was repealed by Pub. L. 96-478, § 12, Oct. 21, 1980, 94 Stat. 2303.

Savings Provision

Section 12(a) of Pub. L. 96-478 provided in part that any criminal or civil penalty proceeding under this chapter for a violation occurring prior to Oct. 2, 1983, may be initiated or continued to conclusion as though this chapter had not been repealed.

Any rights or liabilities existing on Oct. 2, 1983, not to be affected and any regulations or procedures promulgated or effected pursuant to this chapter to remain in effect until modified or superseded, see section 14(c) of Pub. L. 96-478, set out as a note under section 1901 of this title.

§§ 1013 to 1016. Repealed. Pub. L. 96-478, § 12, Oct. 21, 1980, 94 Stat. 2303

Section 1013, Pub. L. 87-167, § 13, formerly § 14, Aug. 30, 1961, 75 Stat. 407, renumbered Pub. L. 93-119, § 2(13), Oct. 4, 1973, 87 Stat. 428, authorized appropriations to carry out this chapter.

Section 1014, Pub. L. 87-167, § 15, formerly § 16, Aug. 30, 1961, 75 Stat. 407, renumbered and amended Pub. L. 93-119, § 2(14), Oct. 4, 1973, 87 Stat. 428, related to effect of this chapter on section 1321 of this title and section 89 of Title 14, Coast Guard.

Section 1015, Pub. L. 87-167, § 17, Aug. 30, 1961, 75 Stat. 407; Pub. L. 89-551, § 1(10), Sept. 1, 1966, 80 Stat. 375, specified the effective date of this chapter and provided savings provision for rights, liabilities, procedures, or regulations existing on the effective date of this chapter. Pub. L. 93-119, § 2(15), Oct. 4, 1973, 87 Stat. 428, which provided for the repeal of this section was repealed by section 12 of Pub. L. 96-478.

Section 1016, Pub. L. 93-119, § 3, Oct. 4, 1973, 87 Stat. 428, provided effective date of 1973 amendments to this chapter by Pub. L. 93-119, the subsections covering the following subject matter: subsec. (a) general effective date; subsec. (b) savings provision; and subsec. (c) effective date of section 1004(d) and (e) of this title.

Effective Date of Repeal

Sections 1013 to 1016 repealed effective Oct. 2, 1983, see section 14(a) of Pub. L. 96-478, set out as an Effective Date note under section 1901 of this title.

CHAPTER 22—SEA GRANT COLLEGES AND MARINE SCIENCE DEVELOPMENT

SUBCHAPTER II—NATIONAL SEA GRANT COLLEGE PROGRAM

§ 1124a. Sea grant international program

[*See main edition for text of* (a) *and* (b)]

(c) Authorization of appropriations

There are authorized to be appropriated for purposes of carrying out this section not to exceed the following amounts:

[*See main edition for text of* (1) *to* (3)]

(4) For fiscal years 1985, 1986, and 1987, not to exceed $1,000,000, appropriated in each fiscal year pursuant to section 1131 of this title, may be available to carry out this section.

Such sums as may be appropriated under this section shall remain available until expended.

(As amended Pub. L. 98-623, title V, § 501(b), Nov. 8, 1984, 98 Stat. 3410.)

Amendments

1984—Subsec. (c)(4). Pub. L. 98-623 added par. (4).

§ 1131. Authorization of appropriations

There are authorized to be appropriated for purposes of carrying out the provisions of this subchapter (other than section 1125 of this title) not to exceed the following amounts:

[*See main edition for text of* (1) *to* (3)]

(4) Not to exceed $39,000,000 for fiscal year 1985, not to exceed $42,000,000 for fiscal year 1986, and not to exceed $44,000,000 for fiscal year 1987.

Such sums as may be appropriated under this section shall remain available until expended.

(As amended Pub. L. 98-623, title V, § 501(a), Nov. 8, 1984, 98 Stat. 3410.)

Amendments

1984—Par. (4). Pub. L. 98-623 added par. (4).

Section Referred to in Other Sections

This section is referred to in sections 1124, 1124a, 1125, 1127 of this title.

CHAPTER 25—PORTS AND WATERWAYS SAFETY PROGRAM

§ 1225. Waterfront safety

(a) In general

The Secretary may take such action as is necessary to—

[*See main edition for text of* (1)]

(2) protect the navigable waters and the resources therein from harm resulting from vessel or structure damage, destruction, or loss. Such action may include, but need not be limited to—

(A) establishing procedures, measures, and standards for the handling, loading, unloading, storage, stowage, and movement on the structure (including the emergency removal, control, and disposition) of explosives or other dangerous articles and substances, including oil or hazardous material as those terms are defined in section 2101 of title 46;

[*See main edition for text of* (B) *to* (D); (b); *credits*]

Codification

In subsec. (a)(2)(A), "section 2101 of title 46" was substituted for "section 4417a of the Revised Statutes [46 U.S.C. 391a]" on authority of Pub. L. 98-89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

§ 1226. Repealed. Pub. L. 98-557, § 29(g), Oct. 30, 1984, 98 Stat. 2875

Section, Pub. L. 92-340, § 7, formerly title I, § 106, July 10, 1972, 86 Stat. 427, renumbered and amended Pub. L. 95-474, § 2, Oct. 17, 1978, 92 Stat. 1475, related to requirement respecting federally licensed pilots on any foreign or domestic self-propelled vessel engaged in the foreign trade when operating in the navigable waters of the United States in areas, etc., where a pilot is not otherwise required by State law.

§ 1228. Conditions for entry to ports in the United States

(a) In general

No vessel, subject to the provisions of chapter 37 of title 46, shall operate in the navigable waters of the United States or transfer cargo or residue in any port or place under the jurisdiction of the United States, if such vessel—

[*See main edition for text of* (*1*)]

(2) fails to comply with any applicable regulation issued under this chapter, chapter 37 of title 46, or under any other applicable law or treaty; or

[*See main edition for text of* (*3*) *and* (*4*)]

(5) is manned by one or more officers who are licensed by a certificating state which the Secretary has determined, pursuant to section 9101 of title 46, does not have standards for licensing and certification of seafarers which are comparable to or more stringent than United States standards or international standards which are accepted by the United States; or

[*See main edition for text of* (*6*) *and* (*7*); (*b*); *credits*]

Codification

In subsec. (a), "chapter 37 of title 46" and "section 9101 of title 46" were substituted for "section 4417a of the Revised Statutes, as amended [46 U.S.C. 391a]" and "section 4417a(11) of the Revised Statutes, as amended [46 U.S.C. 391a(11)]", respectively, on authority of Pub. L. 98-89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

§ 1229. Applicability

This chapter shall not apply to the Panama Canal. The authority granted to the Secretary under sections 1223, 1224, and 1225 of this title shall not be delegated with respect to the Saint Lawrence Seaway to any agency other than the Saint Lawrence Seaway Development Corporation. Any other authority granted the Secretary under this chapter shall be delegated to the Saint Lawrence Seaway Development Corporation to the extent he determines such delegation is necessary for the proper operation of the Saint Lawrence Seaway.

(As amended Pub. L. 98-557, § 29(h), Oct. 30, 1984, 98 Stat. 2875.)

Amendments

1984—Pub. L. 98-557 struck out reference to section 1226 of this title.

§ 1231a. Towing Safety Advisory Committee

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Termination

Unless extended by subsequent Act of Congress, the Committee shall terminate on September 30, 1990.

(As amended Pub. L. 98-557, § 16(a), Oct. 30, 1984, 98 Stat. 2866.)

Amendments

1984—Subsec. (e). Pub. L. 98-557 substituted "on September 30, 1990" for "five years from the date of enactment of this Act".

§ 1232. Enforcement provisions

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Withholding of clearance

The Secretary of the Treasury shall withhold or revoke, at the request of the Secretary, the clearance, required by section 91 of title 46, Appendix, of any vessel, the owner or operator of which is subject to any of the penalties in this section. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

[*See main edition for credits*]

Codification

Subsec. (f) is set out in this supplement to reflect the transfer of section 91 of title 46, referred to in text, to title 46, Appendix.

CHAPTER 26—WATER POLLUTION PREVENTION AND CONTROL

Chapter Referred to in Other Sections

This chapter is referred to in sections 1293a, 1402, 1502, 1503 of this title; title 16 sections 471i, 1456; title 26 section 169; title 30 sections 201, 1242, 1251, 1253, 1292, 1303, 1419; title 40 App. sections 212, 214; title 42 sections 2022, 4363a, 4365, 4905, 6901, 6905, 6907, 6949, 8302, 8744, 9603; title 43 sections 421h, 1577, 1595, 1597; title 49 App. section 1604.

SUBCHAPTER II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

§ 1281a. Total treatment system funding

References in Text

Section 3102 of title 42, referred to in par. (2), was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated the authority to make grants or loans under that section after Jan. 1, 1975.

§ 1285. Allotment of grant funds

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Reservation of funds; State management assistance

[*See main edition for text of* (*1*)]

(2) The Administrator is authorized to grant to any State from amounts reserved to such State under this subsection, the reasonable costs of administering any aspects of sections 1281, 1283, 1284, and 1292 of this title the responsibility for administration of which the Administrator has delegated to such State. The Administrator may increase such grant to take

into account the reasonable costs of administering an approved program under section 1342 or 1344 of this title, administering a state-wide waste treatment management planning program under section 1288(b)(4) of this title, and managing waste treatment construction grants for small communities.

[*See main edition for text of* (*h*) *to* (*k*); *credits*]

CODIFICATION

Subsec. (g)(2) of this section is set out in this supplement to correct typographical error appearing in the main edition.

§ 1292. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1281, 1285, 1317, 1342, 1345, 1375 of this title; title 26 section 7701.

SUBCHAPTER III—STANDARDS AND ENFORCEMENT

§ 1311. Effluent limitations

DISCHARGES FROM POINT SOURCES IN UNITED STATES VIRGIN ISLANDS ATTRIBUTABLE TO MANUFACTURE OF RUM; EXEMPTION FROM FEDERAL WATER POLLUTION CONTROL REQUIREMENTS; CONDITIONS

Pub. L. 98-67, title II, § 214(g), Aug. 5, 1983, 97 Stat. 393, provided that: "Any discharge from a point source in the United States Virgin Islands in existence on the date of the enactment of this subsection [Aug. 5, 1983] which discharge is attributable to the manufacture of rum (as defined in paragraphs (3) of section 7652(c) of the Internal Revenue Code of 1954) [26 U.S.C. 7652(c)(3)] shall not be subject to the requirements of section 301 (other than toxic pollutant discharges), section 306 or section 403 of the Federal Water Pollution Control Act [33 U.S.C. 1311, 1316, 1343] if—

"(1) such discharge occurs at least one thousand five hundred feet into the territorial sea from the line of ordinary low water from that portion of the coast which is in direct contact with the sea, and

"(2) the Governor of the United States Virgin Islands determines that such discharge will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1255, 1292, 1297, 1312, 1313, 1314, 1317, 1319, 1325, 1326, 1341, 1342, 1344, 1365, 1367, 1369 of this title; title 42 section 6925.

§ 1314. Information and guidelines

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1255, 1281, 1284, 1288, 1292, 1311, 1313, 1315, 1317, 1322, 1323, 1342, 1344, 1369, 1376 of this title; title 42 section 6925.

§ 1316. National standards of performance

DISCHARGES FROM POINT SOURCES IN UNITED STATES VIRGIN ISLANDS ATTRIBUTABLE TO MANUFACTURE OF RUM; EXEMPTION; CONDITIONS

Discharges from point sources in the United States Virgin Islands in existence on Aug. 5, 1983, attributable to the manufacture of rum not to be subject to the requirements of this section under certain conditions, see section 214(g) of Pub. L. 98-67, set out as a note under section 1311 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1313, 1314, 1317, 1319, 1323, 1326, 1341, 1342, 1365, 1367, 1369, 1371, 1374 of this title; title 42 section 6925.

§ 1317. Toxic and pretreatment effluent standards

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1288, 1311, 1313, 1314, 1319, 1323, 1341, 1342, 1344, 1365, 1367, 1369, 1374 of this title; title 42 sections 6925, 6939, 9601.

§ 1321. Oil and hazardous substance liability

[*See main edition for text of* (*a*)]

(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions: penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs and alternative remedies

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act), where permitted under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

[*See main edition for text of* (4) *and* (5)]

(6)(A) Any owner, operator, or person in charge of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. Any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States at the time of the discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 91 of title 46, Appendix, of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

[*See main edition for text of* (*B*) *to* (*E*);
(*c*) *to* (*o*)]

(p) Financial responsibility

[*See main edition for text of* (*1*) *to* (*4*)]

(5) The Secretary of the Treasury may refuse the clearance required by section 91 of title 46, Appendix, to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

[*See main edition for text of* (*6*); (*q*) *and* (*r*)]

(June 30, 1948, ch. 758, title III, § 311, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 862, and amended Dec. 28, 1973, Pub. L. 93-207, § 1(4), 87 Stat. 906; Dec. 27, 1977, Pub. L. 95-217, §§ 57, 58(a)-(g), (i), (k)-(m), 91 Stat. 1593-1596; Nov. 2, 1978, Pub. L. 95-576, § 1(b), 92 Stat. 2467; Oct. 21, 1980, Pub. L. 96-478, § 13(b), 94 Stat. 2303; Oct. 21, 1980, Pub. L. 96-483, § 8, 94 Stat. 2362; Dec. 22, 1980, Pub. L. 96-561, title II, § 238(b), 94 Stat. 3300; Apr. 2, 1982, Pub. L. 97-164, title I, § 161(5), 96 Stat. 49.)

CODIFICATION

Subsecs. (b)(6)(A) and (p)(5) are set out in this supplement to reflect the transfer of section 91 of title 46, referred to in text, to title 46, Appendix.

AMENDMENTS

1982—Subsec. (i)(1), (3). Pub. L. 97-164 substituted "Claims Court" for "Court of Claims".

1980—Subsec. (b)(1), (2)(A), (3). Pub. L. 96-561 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

Subsec. (b)(3)(A). Pub. L. 96-478 struck out "of oil" after "in the case of such discharges" and substituted "Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973" for "International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended".

Subsec. (c)(1). Pub. L. 96-561 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

Subsec. (k). Pub. L. 96-483 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-561 effective 15 days after Dec. 22, 1980, see section 238 of Pub. L. 96-561, set out as a Short Title of 1980 Amendment note under section 1801 of Title 16, Conservation.

Amendment by Pub. L. 96-478 effective Oct. 2, 1983, see section 14(a) of Pub. L. 96-478, set out as an Effective Date note under section 1901 of this title.

EX. ORD. NO. 11735. ASSIGNMENT OF PRESIDENTIAL FUNCTIONS

Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, as amended by Ex. Ord. No. 12418, May 5, 1983, 48 F.R. 20891, provided:

[*See main edition for text of first par. and Sec. 1*]

SEC. 2. *Secretary of Department in which the Coast Guard is Operating.* The Secretary of the Department in which the Coast Guard is operating is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

[*See main edition for text of* (*1*) *to* (*5*)]

(6) the authority of the President under subsection (p)(1) of section 311 of the act [subsec. (p)(1) of this section], relating to the issuance of regulations governing evidence of financial responsibility for vessels to meet liability to the United States; and

(7) the authority under subsection (p)(2) of section 311 of the act [subsec. (p)(2) of this section], relating to the administration of subsection (p) [subsec. (p) of this section].

SEC. 3. *Reserved.*

[*See main edition for text of Sec. 4*]

SEC. 5. *Other Assignments.*

(a) The head of each Federal department and agency having responsibilities under the National Contingency Plan (40 C.F.R. Part 300), as now or hereafter amended, is designated and empowered to exercise, without the approval, ratification, or other action of the President, in accordance with that Plan, the authority under Section 311(c)(1) of the Act (33 U.S.C. 1321(c)(1)), relating to the removal of oil and hazardous substances that have been discharged, or for which there is a substantial threat of discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976 [16 U.S.C. 1801 et seq.].

[*See main edition for text of* (b) *and* (c); *Secs. 6 to 8*]

Ex. Ord. No. 12418. Transfer of Functions Relating to Financial Responsibility of Vessels for Pollution Liability

Ex. Ord. No. 12418, May 5, 1983, 48 F.R. 20891, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, in order to transfer certain functions relating to the financial responsibility of vessels for water pollution and establish the authority of Federal agencies to respond to discharges or substantial threats of discharges of oil and hazardous substances, it is hereby ordered as follows:

Section 1. Executive Order No. 11735 of August 3, 1973 [set out above], is amended as follows:

(a) The heading of Section 3 is amended to read "Reserved".

(b) Subsections 3(1) and 3(2) are redesignated subsections 2(6) and 2(7) respectively.

(c) Section 5(a) is amended to provide as follows:

"(a) The head of each Federal department and agency having responsibilities under the National Contingency Plan (40 C.F.R. Part 300), as now or hereafter amended, is designated and empowered to exercise, without the approval, ratification, or other action of the President, in accordance with that Plan, the authority under Section 311(c)(1) of the Act (33 U.S.C. 1321(c)(1)), relating to the removal of oil and hazardous substances that have been discharged, or for which there is a substantial threat of discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).".

Sec. 2. Section 1-2 of Executive Order No. 12123 of February 26, 1979 [43 U.S.C. 1811 note], is amended to provide as follows:

"1-2. *Determination of Financial Responsibility and the Assessment and Compromise of Penalties.*

"The Secretary of the Department in which the Coast Guard is operating is hereby delegated the following authorities:

"1-201. The authority vested in the President by Section 305(a)(1) of the Act (92 Stat. 677, 43 U.S.C. 1815(a)(1)), relating to vessels;

"1-202. The authority vested in the President by Section 305(b) of the Act (92 Stat. 678, 43 U.S.C. 1815(b)), relating to offshore facilities; and

"1-203. The authority vested in the President by Section 312(a)(2) of the Act (92 Stat. 684, 43 U.S.C. 1822(a)(2)), relating to the assessment and compromise of penalties concerning vessels.".

Sec. 3. Section 5(b) of Executive Order No. 12316 of August 14, 1981 [42 U.S.C. 9615 note] is amended to provide as follows:

"(b) The functions vested in the President by Section 108(a) of the Act are delegated to the Secretary of the Department in which the Coast Guard is operating. The Secretary shall be responsible, in accordance with Section 109 of the Act, for the enforcement of civil penalties for violations of the regulations issued under Section 108(a) of the Act.".

Sec. 4. The Secretary of the Department in which the Coast Guard is operating is hereby delegated the authority vested in the President by Sections 311(p)(1)-(2) of the Federal Water Pollution Control Act, as amended (86 Stat. 870, 33 U.S.C. 1321(p)(1)-(2)), as those sections are incorporated by reference in Section 204(c)(3) of the Trans-Alaska Pipeline Authorization Act of 1973 (Public Law 93-153, 87 Stat. 586, 587) [43 U.S.C. 1653(c)(3)], relating to the demonstration of financial responsibility for vessels carrying oil loaded from the Trans-Alaska pipeline.

Sec. 5. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all steps necessary or appropriate to effectuate the transfer of records, property, personnel, and positions and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, as provided in this Order, from the Federal Maritime Commission to the Secretary of the Department in which the Coast Guard is operating.

Sec. 6. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred from the Federal Maritime Commission to the Secretary of the Department in which the Coast Guard is operating by the delegation made in this Order shall remain in effect until amended, modified, or revoked.

Ronald Reagan.

Section Referred to in Other Sections

This section is referred to in sections 1266, 1314, 1318, 1376, 1402, 1486, 1517 of this title; title 43 sections 1653, 1811, 1821; title 42 sections 9601, 9602, 9605, 9606, 9611, 9631, 9651, 9652, 9654, 10601; title 46 section 2101.

SUBCHAPTER IV—PERMITS AND LICENSES

§ 1342. National pollutant discharge elimination system

Section Referred to in Other Sections

This section is referred to in sections 1251, 1284, 1285, 1288, 1311, 1314, 1318, 1319, 1321, 1323, 1328, 1341, 1343, 1344, 1345, 1365, 1369, 1371, 1373, 2104 of this title; title 42 sections 6903, 6925, 9601.

§ 1343. Ocean discharge criteria

Discharges From Point Sources in United States Virgin Islands Attributable to Manufacture of Rum; Exemption; Conditions

Discharges from point sources in the United States Virgin Islands in existence on Aug. 5, 1983, attributable to the manufacture of rum not to be subject to the requirements of this section under certain conditions, see section 214(g) of Pub. L. 98-67, set out as a note under section 1311 of this title.

§ 1344. Permits for dredged or fill material

[*See main edition for text of* (a)]

(b) Specification for disposal sites

Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 1343(c) of this title, and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

[*See main edition for text of* (*c*) *to* (*t*); *credits*]

CODIFICATION

Subsec. (b) of this section is set out in this supplement to correct typographical error appearing in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1251, 1285, 1288, 1311, 1318, 1319, 1342, 2104 of this title; title 42 section 9601.

SUBCHAPTER V—GENERAL PROVISIONS

§ 1369. Administrative procedure and judicial review

[*See main edition for text of* (*a*)]

(b) Review of Administrator's actions

(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 1316 of this title, (B) in making any determination pursuant to section 1316(b)(1)(C) of this title, (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 1317 of this title, (D) in making any determination as to a State permit program submitted under section 1342(b) of this title, (E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, or 1316 of this title, and (F) in issuing or denying any permit under section 1342 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

[*See main edition for text of* (*2*); (*c*); *credits*]

CODIFICATION

Subsec. (b)(1) of this section is set out in this supplement to correct typographical error appearing in the main edition.

CHAPTER 29—DEEPWATER PORTS

§ 1501. Congressional declaration of policy

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-419, § 1, Sept. 25, 1984, 98 Stat. 1607, provided: "That this Act [amending sections 1502, 1503, 1504, 1506, 1507, 1517, and 1518 of this title and enacting provisions set out as a note under section 1518 of this title] may be cited as the 'Deepwater Port Act Amendments of 1984'."

§ 1502. Definitions

As used in this chapter, unless the context otherwise requires, the term—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) "application" means an application submitted under this Act for a license for the ownership, construction, and operation of a deepwater port;

[*See main edition for text of* (*5*) *to* (*19*)]

(As amended Pub. L. 98-419, § 2(a), Sept. 25, 1984, 98 Stat. 1607.)

AMENDMENTS

1984—Par. (4). Pub. L. 98-419 substituted "means an application" for "means any application", struck out the designation "(A)" before "for a license", and struck out former cls. (B) and (C), which had provided that the term "application" meant any application submitted under this chapter for transfer of any license referred to in this paragraph, or for any substantial change in any of the conditions and provisions of any such license.

§ 1503. License for ownership, construction, and operation of deepwater port

[*See main edition for text of* (*a*)]

(b) Issuance, transfer, amendment, or reinstatement

The Secretary may—

(1) on application, issue a license for the ownership, construction, and operation of a deepwater port; and

(2) on petition of the licensee, amend, transfer, or reinstate a license issued under this chapter.

[*See main edition for text of* (*c*) *and* (*d*)]

(e) Additional conditions; removal requirements, waiver; Outer Continental Shelf Lands Act applicable to utilization of components upon waiver of removal requirements

(1) In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe any conditions which he deems necessary to carry out the provisions of this chapter, or which are otherwise required by any Federal department or agency pursuant to the terms of this chapter. On petition of a licensee, the Secretary shall review any condition of a license issued under this chapter to determine if that condition is uniform, insofar as practicable, with the conditions of other licenses issued under this chapter, reasonable, and necessary to meet the objectives of this chapter. The Secretary shall amend or rescind any condition that is no longer necessary or otherwise required by any Federal department or agency under this chapter.

[*See main edition for text of* (*2*) *and* (*3*)]

(f) Amendment, transfer, or reinstatement of license

The Secretary may amend, transfer, or reinstate a license issued under this chapter if the amendment, transfer, or reinstatement is consistent with the findings made at the time the license was issued.

[*See main edition for text of* (*g*)]

(h) Term of license

A license issued under this chapter remains in effect unless suspended or revoked by the Secretary or until surrendered by the licensee.

(As amended Pub. L. 98-419, § 2(b)-(e), Sept. 25, 1984, 98 Stat. 1607.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-419, § 2(b), substituted provisions authorizing the Secretary, on application, to issue a license for the ownership, construction, and operation of a deepwater port and, on petition of the licensee, to amend, transfer, or reinstate a license issued under this chapter for provisions which had authorized the Secretary, upon application and in accordance with the provisions of this chapter, to issue, transfer, amend, or renew a license for the ownership, construction, and operation of a deepwater port.

Subsec. (e)(1). Pub. L. 98-419, § 2(e), added provision that on petition of a licensee, the Secretary shall review any condition of a license issued under this chapter to determine if that condition is uniform, insofar as practicable, with the conditions of other licenses issued under this chapter and is reasonable, and necessary to meet the objectives of this chapter, and that the Secretary shall amend or rescind any condition that is no longer necessary or otherwise required by any Federal department or agency under this chapter.

Subsec. (f). Pub. L. 98-419, § 2(c), substituted provisions authorizing the Secretary to amend, transfer, or reinstate a license issued under this chapter if the amendment, transfer, or reinstatement is consistent with the findings made at the time the license was issued for provisions which had authorized the Secretary to transfer such licenses if the Secretary determined that such transfer was in the public interest and that the transferee met the requirements of this chapter and the prerequisites to issuance under subsec. (c) of this section.

Subsec. (h). Pub. L. 98-419, § 2(d), substituted provision that a license issued under this chapter remain in effect unless suspended or revoked by the Secretary or until surrendered by the licensee for provisions which had limited the terms of licenses to not more than 20 years and which had granted each licensee a preferential right of renewal for not more than 10 years, subject to subsec. (c), upon such conditions and for such term as determined by the Secretary to be reasonable and appropriate.

§ 1504. Procedure

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Public notice and hearings; evidentiary hearing in District of Columbia; decision of Secretary based on evidentiary record; consolidation of hearings

A license may be issued only after public notice and public hearings in accordance with this subsection. At least one such public hearing shall be held in each adjacent coastal State. Any interested person may present relevant material at any hearing. After hearings in each adjacent coastal State are concluded if the Secretary determines that there exists one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in accordance with the provisions of section 554 of title 5 in the District of Columbia. The record developed in any such adjudicatory hearing shall be basis for the Secretary's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications for any designated application area shall be consolidated and shall be concluded not later than 240 days after notice of the initial application has been published pursuant to subsection (c) of this section.

[*See main edition for text of* (*h*) *and* (*i*)]

(As amended Pub. L. 98-419, § 2(f), Sept. 25, 1984, 98 Stat. 1607.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-419 substituted "issued" for "issued, transferred, or renewed".

§ 1506. Antitrust review

(a) Opinions of Attorney General and Federal Trade Commission; defense to judicial proceedings, license inadmissible

The Secretary shall not issue any license pursuant to section 1503 of this title unless he has received the opinions of the Attorney General of the United States and the Federal Trade Commission as to whether such action would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws. The issuance of a license under this chapter shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

(b) Applications; submittal to Attorney General and Federal Trade Commission for preparation of reports to Secretary of Transportation; antitrust laws unaffected

(1) The Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of each application for issuance of a license or a petition for the amendment, transfer, or reinstatement of a license that is received. Within 45 days following the last public hearing on license application, the Attorney General and the Federal Trade Commission shall each prepare and submit to the Secretary a report assessing the competitive effects which may result from issuance of the proposed license and the opinions described in subsection (a) of this section. If either the Attorney General or the Federal Trade Commission, or both, fails to file such views within such period, the Secretary shall proceed as if he had received such views.

[*See main edition for text of* (*2*) *and* (*3*)]

(As amended Pub. L. 98-419, § 2(g), (h), Sept. 25, 1984, 98 Stat. 1607.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-419, § 2(g), substituted "issue" for "issue, transfer, or renew".

Subsec. (b)(1). Pub. L. 98-419, § 2(h), substituted provisions requiring the Secretary transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of each application for issuance of a license or a petition for the amendment, transfer, or reinstatement of a license that is received for provisions which had required that whenever any application for issuance, transfer, substantial change in, or renewal of any license was received, the Secretary was required to transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of such application, and inserted "on license application" after "public hearing".

§ 1507. Common carrier status

(a) Status of deepwater ports and storage facilities

A deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions of part I of the Interstate Commerce Act and subtitle IV of title 49, except as provided by subsection (b) of this section.

(b) Discrimination prohibition; exceptions

A licensee under this chapter shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. However, a licensee is not subject to common carrier regulations under subsection (a) of this section when that licensee—

(1) is subject to effective competition for the transportation of oil from alternative transportation systems; and

(2) sets its rates, fees, charges, and conditions of service on the basis of competition, giving consideration to other relevant business factors such as the market value of services provided, licensee's cost of operation, and the licensee's investment in the deepwater port and a storage facility, and components thereof, serviced directly by that deepwater port.

(c) Enforcement, suspension, or termination proceedings

When the Secretary has reason to believe that a licensee is not in compliance with this section, the Secretary shall commence an appropriate proceeding before the Federal Energy Regulatory Commission or request the Attorney General to take appropriate steps to enforce compliance with this section and, when appropriate, to secure the imposition of appropriate sanctions. In addition, the Secretary may suspend or revoke the license of a licensee not complying with its obligations under this section.

(As amended Pub. L. 98-419, § 3(a), Sept. 25, 1984, 98 Stat. 1608.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsec. (a), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended. Part I of the Act, which was classified to chapter 1 (§ 1 et seq.) of former Title 49, Transportation, was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-419 substituted provision that a deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions of part I of the Interstate Commerce Act and subtitle IV of title 49 except as provided by subsec. (b), for provision that such port and such facilities were subject to regulations as a common carrier in accordance with the Interstate Commerce Act, as amended, for purposes of chapter 39 of Title 18 and former sections 1 to 27 of Title 49.

Subsec. (b). Pub. L. 98-419 added provisions enumerating conditions under which a licensee is not subject to common carrier regulations under subsec. (a). Provisions dealing with enforcement, suspension, or termination proceedings, formerly set out as unenumerated provisions of subsec. (b), were redesignated as subsec. (c).

Subsec. (c). Pub. L. 98-419 redesignated formerly unenumerated provisions of subsec. (b) as subsec. (c), and in subsec. (c) as so redesignated substituted provisions authorizing the Secretary to commence proceedings before the Federal Energy Regulatory Commission, or to suspend or revoke licenses of noncomplying licensees, in the event of noncompliance with this section, for provisions which had authorized the Secretary to commence proceedings before the Interstate Commerce Commission or to suspend or terminate licenses of noncomplying licensees as provided in section 1511 of this title, in the event of noncompliance by a licensee with its obligations as a common carrier.

§ 1517. Liability

(a) Oil discharge; prohibition; penalty; notice and hearing; separate offense; vessel clearance: withholding, bond or surety

[*See main edition for text of* (*1*)]

(2) The owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged in violation of this subsection shall be assessed a civil penalty of not more than $10,000 for each violation. No penalty shall be assessed unless the owner or operator or the licensee has been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. The Secretary of the Treasury shall withhold, at the request of the Secretary, the clearance required by section 91 of title 46, Appendix, of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Joint and several liability of owners and operators; limitation of liability; full amount of liability for gross negligence or willful misconduct

Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port while located in the safety zone, except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages.

[*See main edition for text of* (*e*)]

(f) Deepwater Port Liability Fund; establishment; suits; administration; liability for uncompensated cleanup costs and damages; fees and exemptions; maintenance of prescribed amount of money; loans from Treasury for payment of claims, interest; appropriation for administration costs; income from investments to principal of Fund

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. These collections shall cease after September 25, 1984, unless there are adjudicated claims against the Fund to be satisfied. The Secretary may order the collection of the fee to be resumed when the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury is less than $4,000,000. Any collection of fees ordered by the Secretary under the preceding sentence shall cease whenever the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury exceeds $4,000,000. The Fund may borrow from the United States Treasury at an interest rate to be determined by the Secretary of the Treasury amounts sufficient to maintain the available balance in the Fund at $4,000,000, but only to such extent and in such amounts as are provided in advance in appropriation Acts. Such amounts shall remain available until expended. Whenever the money in the Fund is less than the amount the Secretary determines is needed to draw upon under subsection (c)(3) of this section or the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed to draw upon under subsection (c)(3) of this section or for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

[*See main edition for text of* (*g*)]

(h) Subrogation; joint and several liability; third party liability; recovery of reasonable cleanup cost of discharge caused by act of war or negligence of Federal Government

[*See main edition for text of* (*1*)]

(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator. In that event, the owner and operator of the vessel are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.

(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person. When the Fund under this subsection is subrogated to the right of any person entitled to recovery against the owner or operator of a vessel, that owner and operator are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.

[*See main edition for text of* (*4*) *and* (*5*);
(*i*) *to* (*n*)]

(As amended Pub. L. 98–419, § 4(a), Sept. 25, 1984, 98 Stat. 1608.)

Codification

Subsec. (a)(2) is set out in this supplement to reflect the transfer of section 91 of title 46, referred to in text, to title 46, Appendix.

Amendments

1984—Subsec. (d). Pub. L. 98–419, § 4(a)(1), substituted "another vessel at a deepwater port while located in the safety zone" for "another vessel at a deepwater port".

Subsec. (f)(3). Pub. L. 98–419, § 4(a)(2), substituted provisions directing that collections cease after Sept. 25, 1984, unless there are unadjudicated claims to be satisfied, and authorizing the Secretary to resume collection when the unobligated balance of the Fund is less than $4,000,000, with such collections to cease whenever the balance exceeds that amount for provisions that had directed that collections were to cease when the amount of money in the Fund reached $100,000,000, unless there were unadjudicated claims to be satisfied, and would be resumed when the Fund was reduced below that amount, and added provisions authorizing the Fund to borrow from the Treasury amounts sufficient to maintain the available balance at $4,000,000, with such amounts remaining available until expended.

Pub. L. 98–419, § 4(a)(3), inserted "the amount the Secretary determines is needed to draw upon under subsection (c)(3) of this section or" after "Whenever the money in the Fund is less than".

Pub. L. 98–419, § 4(a)(4), inserted "to draw upon under subsection (c)(3) of this section or" after "All sums not needed".

Subsec. (h)(2). Pub. L. 98–419, § 4(a)(5), added provision that the owner and operator of the vessel are jointly and severally liable for cleanup costs and damages resulting from a discharge in the same manner and to the same extent as under subsec. (d) of this section.

Subsec. (h)(3). Pub. L. 98–419, § 4(a)(6), added provision that when the Fund under this subsection is subrogated to the right of any person entitled to recovery against the owner or operator of a vessel, that owner and operator are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsec. (d) of this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1503 of this title.

§ 1517a. Deepwater Port Liability Fund; notes and other obligations; issuance and purchase authority

To the extent that available appropriations are not adequate to meet the obligations of the Fund, the Secretary of Transportation is authorized to issue, and the Secretary of the Treasury is authorized to purchase, without fiscal year limitation, notes or other obligations in such amounts and at such times as may be necessary.

(Pub. L. 99-190, § 101(e) [title I, § 101], Dec. 19, 1985, 99 Stat. 1267, 1270.)

REFERENCES IN TEXT

The Fund, referred to in text, is the Deepwater Port Liability Fund. See section 1517 of this title.

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of the Deepwater Port Act of 1974 which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 98-473, title I, § 101(i) [title I, § 101], Oct. 12, 1984, 98 Stat. 1944, 1947.

Pub. L. 98-78, title I, § 101, Aug 15, 1983, 97 Stat. 455.

Pub. L. 97-369, title I, § 101, Dec. 18, 1982, 95 Stat. 1767.

§ 1518. Relationship to other laws

(a) Federal Constitution, laws, and treaties applicable; other Federal requirements applicable; status of deepwater port; Federal or State authorities and responsibilities within territorial seas unaffected; notification by Secretary of State of intent to exercise jurisdiction; objections by foreign governments

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The Secretary of State shall notify the government of each foreign state having vessels registered under its authority or flying its flag which may call at or otherwise utilize a deepwater port but which do not currently have an agreement in effect as provided in subsection (c)(2)(A)(i) of this section that the United States intends to exercise jurisdiction over vessels calling at or otherwise utilizing a deepwater port and the persons on board such vessels. The Secretary of State shall notify the government of each such state that, absent its objection, its vessels will be subject to the jurisdiction of the United States whenever they—

(A) are calling at or otherwise utilizing a deepwater port; and

(B) are within the safety zone of such a deepwater port and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The Secretary of State shall promptly inform licensees of deepwater ports of all objections received from governments of foreign states in response to notifications made under this paragraph.

[*See main edition for text of* (*b*)]

(c) Vessels of United States and foreign states subject to Federal jurisdiction; objections to jurisdiction; designation of agent for service of process; duty of licensee

(1) The jurisdiction of the United States shall apply to vessels of the United States and persons on board such vessels. The jurisdiction of the United States shall also apply to vessels, and persons on board such vessels, registered in or flying the flags of foreign states, whenever such vessels are—

(A) calling at or otherwise utilizing a deepwater port; and

(B) are within the safety zone of such a deepwater port, and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The jurisdiction of the United States under this paragraph shall not, however, apply to vessels registered in or flying the flag of any foreign state that has objected to the application of such jurisdiction.

(2) Except in a situation involving force majeure, a licensee shall not permit a vessel registered in or flying the flag of a foreign state to call at or otherwise utilize a deepwater port licensed under this chapter unless—

(A)(i) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessels registered in or flying the flag of that state and persons on board such vessels in accordance with the provisions of paragraph (1) of this subsection, while the vessel is located within the safety zone, or

(ii) the foreign state has not objected to the application of the jurisdiction of the United States to any vessel, or persons on board such vessel, while the vessel is located within the safety zone; and

(B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(3) For purposes of paragraph (2)(A)(ii) of this subsection, a licensee shall not be obliged to prohibit a call at or use of a deepwater port by a vessel registered in or flying the flag of an objecting state unless the licensee has been informed by the Secretary of State as required by subsection (a)(3) of this section.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Pub. L. 98-419, § 5(a), (b), Sept. 25, 1984, 98 Stat. 1609.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-419, § 5(a), added par. (3).

Subsec. (c)(1). Pub. L. 98-419, § 5(b), added par. (1). Former cl. (1) redesignated cl. (A)(i) of par. (2).

Subsec. (c)(2). Pub. L. 98-419, § 5(b), redesignated existing provisions of subsec. (c) as par. (2)(A)(i) and (B) thereof, substituted reference to provisions of par. (1) for former reference to provisions of this chapter in par. (2)(A)(i) as so redesignated, and added par. (2)(A)(ii).

Subsec. (c)(3). Pub. L. 98-419, § 5(b), added par. (3).

Effective Date of 1984 Amendment

Section 5(c) of Pub. L. 98-419 provided that: "The amendment made by subsection (b) of this section [amending subsec. (c) of this section] shall be effective on the ninetieth day following the date of enactment of this Act [Sept. 25, 1984]. The Secretary of State shall make the first series of notifications referred to in section 19(a)(3) of the Deepwater Port Act of 1974 [subsec. (a)(3) of this section], as added by subsection (a) of this section, prior to the thirtieth day following the date of enactment of this Act [Sept. 25, 1984]."

CHAPTER 30—INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA

§ 1602. International Regulations

International Regulations for Preventing Collisions at Sea, 1972

The Convention on the International Regulations for Preventing Collisions at Sea, 1972, was proclaimed by the President on Jan. 19, 1977. The President's proclamation, set out as a note below, provided that the Convention enter into force for the United States on July 15, 1977. The proclamation and the International Regulations were published in the Federal Register on Mar. 31, 1977, 42 F.R. 17112, with corrections to the International Regulations published on Apr. 7, 1977, 42 F.R. 18401 and on Apr. 21, 1977, 42 F.R. 20625. The International Regulations were amended, effective June 23, 1983, by a proclamation of the President on June 16, 1983, set out as a note below, published on June 23, 1983, 48 F.R. 28634. The International Regulations For Preventing Collisions At Sea, 1972, as amended, read as follows:

INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

PART A—GENERAL

Rule 1—Application

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Nothing in these Rules shall interfere with the operation of any special rules made by the Government of any State with respect to additional station or signal lights, shapes or whistle signals for ships of war and vessels proceeding under convoy, or with respect to additional station or signal lights or shapes for fishing vessels engaged in fishing as a fleet. These additional station or signal lights, shapes or whistle signals shall, so far as possible, be such that they cannot be mistaken for any light, shape or signal authorized elsewhere under these Rules.

[*See main edition for text of* (*d*) *and* (*e*); *Rule 2*]

Rule 3—General definitions

For the purpose of these Rules, except where the context otherwise requires:

[*See main edition for text of* (*a*) *to* (*f*)]

(g) The term "vessel restricted in her ability to manoeuvre" means a vessel which from the nature of her work is restricted in her ability to manoeuvre as required by these Rules and is therefore unable to keep out of the way of another vessel.

The term "vessels restricted in their ability to manoeuvre" shall include but not be limited to:

[*See main edition for text of* (*i*) *to* (*iv*)]

(v) A vessel engaged in mineclearance operations;

[*See main edition for text of* (*vi*); (*h*) *to* (*l*)]

PART B—STEERING AND SAILING RULES

SECTION I—CONDUCT OF VESSELS IN ANY CONDITION OF VISIBILITY

[*See main edition for text of Rules 4 to 9*]

Rule 10—Traffic separation schemes

[*See main edition for text of* (*a*)]

(b) A vessel using a traffic separation scheme shall:

[*See main edition for text of* (*i*) *and* (*ii*)]

(iii) Normally join or leave a traffic lane at the termination of the lane, but when joining or leaving from either side shall do so at as small an angle to the general direction of traffic flow as practicable.

[*See main edition for text of* (*c*)]

(d) Inshore traffic zones shall not normally be used by through traffic which can safely use the appropriate traffic lane within the adjacent traffic separation scheme. However, vessels of less than 20 metres in length and sailing vessels may under all circumstances use inshore traffic zones.

(e) A vessel other than a crossing vessel or a vessel joining or leaving a lane shall not normally enter a separation zone or cross a separation line except:

[*See main edition for text of* (*i*) *and* (*ii*); (*f*) *to* (*j*)]

(k) A vessel restricted in her ability to manoeuvre when engaged in an operation for the maintenance of safety of navigation in a traffic separation scheme is exempted from complying with this Rule to the extent necessary to carry out the operation.

(*l*) A vessel restricted in her ability to manoeuvre when engaged in an operation for the laying, servicing or picking up of a submarine cable, within a traffic separation scheme, is exempted from complying with this Rule to the extent necessary to carry out the operation.

SECTION II—CONDUCT OF VESSELS IN SIGHT OF ONE ANOTHER

[*See main edition for text of Rules 11 and 12*]

Rule 13—Overtaking

(a) Notwithstanding anything contained in the Rules of Part B, Sections I and II, any vessel overtaking any other shall keep out of the way of the vessel being overtaken.

[*See main edition for text of* (*b*) *to* (*d*); *Rules 14 to 18; Section III*]

PART C—LIGHTS AND SHAPES

[*See main edition for text of Rules 20 and 21*]

Rule 22—Visibility of lights

The lights prescribed in these Rules shall have an intensity as specified in Section 8 of Annex I to these Regulations so as to be visible at the following minimum ranges:

[*See main edition for text of* (*a*) *to* (*c*)]

(d) In inconspicuous, partly submerged vessels or objects being towed:—a white all-round light, 3 miles.

Rule 23—Power-driven vessels underway

[*See main edition for text of* (*a*) *and* (*b*)]

(c)(i) A power-driven vessel of less than 12 metres in length may in lieu of the lights prescribed in paragraph (a) of this Rule exhibit an all-round white light and sidelights;

(ii) a power-driven vessel of less than 7 metres in length whose maximum speed does not exceed 7 knots may in lieu of the lights prescribed in paragraph (a) of this Rule exhibit an all-round white light and shall, if practicable, also exhibit sidelights;

(iii) the masthead light or all-round white light on a power-driven vessel of less than 12 metres in length may be displaced from the fore and aft centreline of the vessel if centreline fitting is not practicable, provided that the sidelights are combined in one lantern which shall be carried on the fore and aft centreline of the vessel or located as nearly as practicable in the same fore and aft line as the masthead light or the all-round white light.

Rule 24—Towing and pushing

(a) A power-driven vessel when towing shall exhibit: (i) Instead of the light prescribed in Rule 23(a)(i) or (a)(ii), two masthead lights in a vertical line. When the length of the tow measuring from the stern of the towing vessel to the after end of the tow exceeds 200 metres, three such lights in a vertical line;

[*See main edition for text of* (ii) *to* (v); (b)]

(c) A power-driven vessel when pushing ahead or towing alongside, except in the case of a composite unit, shall exhibit:

(i) Instead of the light prescribed in Rule 23(a)(i) or (a)(ii), two masthead lights in a vertical line;

[*See main edition for text of* (ii) *and* (iii)]

(d) A power-driven vessel to which paragraphs (a) or (c) of this Rule apply shall also comply with Rule 23(a)(ii).

(e) A vessel or object being towed, other than those mentioned in paragraph (g) of this Rule, shall exhibit: (i) Sidelights;

[*See main edition for text of* (ii) *and* (iii); (*f*)]

(g) An inconspicuous, partly submerged vessel or object, or combination of such vessels or objects being towed, shall exhibit:

(i) if it is less than 25 metres in breadth, one all-round white light at or near the forward end and one at or near the after end except that dracones need not exhibit a light at or near the forward end;

(ii) if it is 25 metres or more in breadth, two additional all-round white lights at or near the extremities of its breadth;

(iii) if it exceeds 100 metres in length, additional all-round white lights between the lights prescribed in sub-paragraphs (i) and (ii) so that the distance between the lights shall not exceed 100 metres;

(iv) a diamond shape at or near the aftermost extremity of the last vessel or object being towed and if the length of the tow exceeds 200 metres an additional diamond shape where it can best be seen and located as far forward as is practicable.

(h) Where from any sufficient cause it is impracticable for a vessel or object being towed to exhibit the lights or shapes prescribed in paragraph (e) or (g) of this Rule, all possible measures shall be taken to light the vessel or object towed or at least to indicate the presence of such vessel or object.

(i) Where from any sufficient cause it is impracticable for a vessel not normally engaged in towing operations to display the lights prescribed in paragraph (a) or (c) of this Rule, such vessel shall not be required to exhibit those lights when engaged in towing another vessel in distress or otherwise in need of assistance. All possible measures shall be taken to indicate the nature of the relationship between the towing vessel and the vessel being towed as authorized by Rule 36, in particular by illuminating the towline.

Rule 25—Sailing vessels underway and vessels under oars

[*See main edition for text of* (a)]

(b) In a sailing vessel of less than 20 metres in length the lights prescribed in paragraph (a) of this Rule may be combined in one lantern carried at or near the top of the mast where it can best be seen.

[*See main edition for text of* (c) *to* (e); *Rule 26*]

Rule 27—Vessels not under command or restricted in their ability to manoeuvre

[*See main edition for text of* (a)]

(b) A vessel restricted in her ability to manoeuvre, except a vessel engaged in mineclearance operations, shall exhibit: (i) Three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white;

[*See main edition for text of* (ii)]

(iii) When making way through the water, a masthead light or lights, sidelights and a sternlight, in addition to the lights prescribed in subparagraph (i);

[*See main edition for text of* (iv)]

(c) A power-driven vessel engaged in a towing operation such as severely restricts the towing vessel and her tow in their ability to deviate from their course shall, in addition to the lights or shapes prescribed in rule 24(a), exhibit the lights or shapes prescribed in subparagraphs (b)(i) and (ii) of this Rule.

(d) A vessel engaged in dredging or underwater operations, when restricted in her ability to manoeuvre, shall exhibit the lights and shapes prescribed in subparagraphs (b)(i), (ii) and (iii) of this Rule and shall in addition, when an obstruction exists, exhibit: (i) Two all-round red lights or two balls in a vertical line to indicate the side on which the obstruction exists;

[*See main edition for text of* (ii)]

(iii) when at anchor, the lights or shapes prescribed in this paragraph instead of the lights or shape prescribed in Rule 30.

(e) Whenever the size of a vessel engaged in diving operations makes it impracticable to exhibit all lights and shapes prescribed in paragraph (d) of this rule, the following shall be exhibited:

(i) three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white;

(ii) a rigid replica of the International code flag "A" not less than 1 metre in height. Measures shall be taken to ensure its all-round visibility.

(f) A vessel engaged in mineclearance operations shall in addition to the lights prescribed for a power-driven vessel in Rule 23 or to the lights or shape prescribed for a vessel at anchor in Rule 30 as appropriate, exhibit three all-round green lights or three balls. One of these lights or shapes shall be exhibited near the foremast head and one at each end of the fore yard. these lights or shapes indicate that it is dangerous for another vessel to approach within 1000 metres of the mineclearance vessel.

(g) vessels of less than 12 metres in length, except those engaged in diving operations, shall not be required to exhibit the lights and shapes prescribed in this Rule.

[*See main edition for text of* (h); *Rule 28*]

Rule 29—Pilot vessels

(a) A vessel engaged on pilotage duty shall exhibit: (i) At or near the masthead, two all-round lights in a vertical line, the upper being white and the lower red;

[*See main edition for text of* (ii)]

(iii) when at anchor, in addition to the lights prescribed in sub-paragraph (i), the light, lights or shape prescribed in Rule 30 for vessels at anchor.

[*See main edition for text of* (*b*)]

Rule 30—Anchored vessels and vessels aground

[*See main edition for text of* (*a*) *to* (*d*)]

(e) A vessel of less than 7 metres in length, when at anchor, not in or near a narrow channel, fairway or anchorage, or where other vessels normally navigate, shall not be required to exhibit the lights or shape prescribed in paragraphs (a) and (b) of this Rule.

(f) A vessel of less than 12 metres in length, when aground, shall not be required to exhibit the lights or shapes prescribed in subparagraphs (d)(i) and (ii) of this Rule.

[*See main edition for text of Rule 31*]

PART D—SOUND AND LIGHT SIGNALS

[*See main edition for text of Rule 32*]

Rule 33—Equipment for sound signals

(a) A vessel of 12 metres or more in length shall be provided with a whistle and a bell and a vessel of 100 metres or more in length shall, in addition be provided with a gong, the tone and sound of which cannot be confused with that of the bell. The whistle, bell and gong shall comply with the specifications in Annex III to these Regulations. The bell or gong or both may be replaced by other equipment having the same respective sound characteristics, provided that manual sounding of the prescribed signals shall always be possible.

[*See main edition for text of* (*b*)]

Rule 34—Manoeuvring and warning signals

[*See main edition for text of* (*a*)]

(b) Any vessel may supplement the whistle signals prescribed in paragraph (a) of this Rule by light signals, repeated as appropriate, whilst the manoeuvre is being carried out:

[*See main edition for text of* (*i*) *and* (*ii*)]

(iii) The light used for this signal shall, if fitted, be an all-round white light, visible at a minimum range of 5 miles, and shall comply with the provisions of Annex I to these regulations.

[*See main edition for text of* (*c*) *to* (*f*)]

Rule 35—Sound signals in restricted visability

In or near an area of restricted visability, whether by day or night, the signals prescribed in this Rule shall be used as follows:

[*See main edition for text of* (*a*) *to* (*c*)]

(d) A vessel engaged in fishing, when at anchor, and a vessel restricted in her ability to manoeuvre when carrying out her work at anchor, shall instead of the signals prescribed in paragraph (g) of this Rule sound the signal prescribed in paragraph (c) of this Rule.

(e) A vessel towed or if more than one vessel is towed the last vessel of the tow, if manned, shall at intervals of not more than 2 minutes sound four blasts in succession, namely one prolonged followed by three short blasts. When practicable, this signal shall be made immediately after the signal made by the towing vessel.

(f) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and shall give the signals prescribed in paragraphs (a) or (b) of this Rule.

(g) A vessel at anchor shall at intervals of not more than one minute ring the bell rapidly for about 5 seconds. In a vessel of 100 metres or more in length the bell shall be sounded in the forepart of the vessel and immediately after the ringing of the bell the gong shall be sounded rapidly for about 5 seconds in the after part of the vessel. A vessel at anchor may in addition sound three blasts in succession, namely one short, one prolonged and one short blast, to give warning of her position and of the possibility of collision to an approaching vessel.

(h) A vessel aground shall give the bell signal and if required the gong signal prescribed in paragraph (g) of this Rule and shall, in addition, give three separate and distinct strokes on the bell immediately before and after the rapid ringing of the bell. A vessel aground may in addition sound an appropriate whistle signal.

(i) A vessel of less than 12 metres in length shall not be obliged to give the above-mentioned signals but, if she does not, shall make some other efficient sound signal at intervals of not more than 2 minutes.

(j) A pilot vessel when engaged on pilotage duty may in addition to the signals prescribed in paragraphs (a), (b) or (g) of this Rule sound an identity signal consisting of four short blasts.

Rule 36—Signals to attract attention

If necessary to attract the attention of another vessel any vessel may make light or sound signals that cannot be mistaken for any signal authorized elsewhere in these Rules, or may direct the beam of her searchlight in the direction of the danger, in such a way as not to embarrass any vessel. Any light to attract the attention of another vessel shall be such that it cannot be mistaken for any aid to navigation. For the purpose of this Rule the use of high intensity intermittent or revolving lights, such as strobe lights, shall be avoided.

Rule 37—Distress signals

When a vessel is in distress and requires assistance she shall use or exhibit the signals described in Annex IV to these Regulations.

PART E—EXEMPTIONS

Rule 38—Exemptions

Any vessel (or class of vessels) provided that she complies with the requirements of the International Regulations for Preventing Collisions at Sea, 1960, the keel of which is laid or which is at a corresponding stage of construction before the entry into force of these Regulations may be exempted from compliance therewith as follows:

[*See main edition for text of* (*a*) *to* (*c*)]

(d)(i) The repositioning of masthead lights on vessels of less than 150 metres in length, resulting from the prescriptions of Section 3(a) of Annex I to these Regulations, permanent exemption.

[*See main edition for text of* (*ii*)]

(e) The repositioning of masthead lights resulting from the prescriptions of Section 2(b) of Annex I to these Regulations, until nine years after the date of entry into force of these Regulations.

(f) The repositioning of sidelights resulting from the prescriptions of Sections 2(g) and 3(b) of Annex I to these Regulations, until nine years after the date of entry into force of these Regulations.

(g) The requirements for sound signal appliances prescribed in Annex III to these Regulations, until nine years after the date of entry into force of these Regulations.

(h) The repositioning of all-round lights resulting from the prescription of Section 9(b) of Annex I to these Regulations, permanent exemption.

ANNEX I

POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

1. *Definition.* The term "height above the hull" means height above the uppermost continuous deck.

This height shall be measured from the position vertically beneath the location of the light.

2. *Vertical positioning and spacing of lights.* (a) On a power-driven vessel of 20 metres or more in length the masthead lights shall be placed as follows:

[*See main edition for text of* (*i*) *and* (*ii*), (*b*) *to* (*d*)]

(e) One of the two or three masthead lights prescribed for a power-driven vessel when engaged in towing or pushing another vessel shall be placed in the same position as either the forward masthead light or the after masthead light; provided that, if carried on the aftermast, the lowest after masthead light shall be at least 4.5 metres vertically higher than the forward masthead light.

(f)(i) The masthead light or lights prescribed in Rule 23(a) shall be so placed as to be above and clear of all other lights and obstructions except as described in subparagraph (ii).

(ii) When it is impracticable to carry the all-round lights prescribed by Rule 27(b)(i) or Rule 28 below the masthead lights, they may be carried above the after masthead light(s) or vertically in between the forward masthead light(s) and after masthead light(s), provided that in the latter case the requirement of Section 3(c) of this Annex shall be complied with.

[*See main edition for text of* (*g*) *and* (*h*)]

(i) When the Rules prescribe two or three lights to be carried in a vertical line, they shall be spaced as follows:

(i) On a vessel of 20 metres in length or more such lights shall be spaced not less than 2 metres apart, and the lowest of these lights shall, except where a towing light is required, be placed at a height of not less than 4 metres above the hull;

(ii) On a vessel of less than 20 metres in length such lights shall be spaced not less than 1 metre apart and the lowest of these lights shall, except where a towing light is required, be placed at a height of not less than 2 metres above the hull;

(iii) When three lights are carried they shall be equally spaced.

(j) The lower of the two all-round lights prescribed for a vessel when engaged in fishing shall be at a height above the sidelights not less than twice the distance between the two vertical lights.

(k) The forward anchor light prescribed in Rule 30(a)(i), when two are carried, shall not be less than 4.5 metres above the after one. On a vessel of 50 metres or more in length this forward anchor light shall be placed at a height of not less than 6 metres above the hull.

3. *Horizontal positioning and spacing of lights.* (a) When two masthead lights are prescribed for a power-driven vessel, the horizontal distance between them shall not be less than one half of the length of the vessel but need not be more than 100 metres. The forward light shall be placed not more than one quarter of the length of the vessel from the stem.

(b) On a power-driven vessel of 20 metres or more in length the sidelights shall not be placed in front of the forward masthead lights. They shall be placed at or near the side of the vessel.

(c) When the lights prescribed in Rule 27(b)(i) or Rule 28 are placed vertically between the forward masthead light(s) and the after masthead light(s) these all-round lights shall be placed at a horizontal distance of not less than 2 metres from the fore and aft centreline of the vessel in the athwartship direction.

[*See main edition for text of Sec. 4*]

5. *Screens for sidelights.* The sidelights of vessels of 20 metres or more in length shall be fitted with inboard screens painted matt black, and meeting the requirements of Section 9 of this Annex. On vessels of less than 20 metres in length the sidelights, if necessary to meet the requrements of Section 9 of this Annex, shall be fitted with inboard matt black screens. With a combined lantern, using a single vertical filament and a very narrow division between the green and red sections, external screens need not be fitted.

[*See main edition for text of Secs. 6 and 7*]

8. *Intensity of lights.* (a) The minimum luminous intensity of lights shall be calculated by using the formula:

$$I = 3.43 \times 10^6 \times T \times D^2 \times K^{-D}$$

where I is luminous intensity in candelas under service conditions,

T is threshold factor 2×10^{-7} lux, *D* is range of visibility (luminous range) of the light in nautical miles, *K* is atmospheric transmissivity.

For prescribed lights the value of *K* shall be 0.8, corresponding to a meteorological visibility of approximately 13 nautical miles.

(b) A selection of figures derived from the formula is given in the following table:

Range of visibility (luminous range) of light in nautical miles, *D*:	*Luminous intensity of light in candelas for K=0.8, I*
1	0.9
2	4.3
3	12
4	27
5	52
6	94

NOTE.—The maximum luminous intensity of navigation lights should be limited to avoid undue glare. This shall not be achieved by a variable control of the luminous intensity.

9. *Horizontal sectors.* (a)(i) In the forward direction, sidelights as fitted on the vessel shall show the minimum required intensities. The intensities shall decrease to reach practical cut-off between 1 degree and 3 degrees outside the prescribed sectors.

(ii) For sternlights and masthead lights and at 22.5 degrees abaft the beam for sidelights, the minimum required intensities shall be maintained over the arc of the horizon up to 5 degrees within the limits of the sectors prescribed in Rule 21. From 5 degrees within the prescribed sectors the intensity may decrease by 50 percent up to the prescribed limits; it shall decrease steadily to reach practical cut-off at not more than 5 degrees outside the prescribed sectors.

(b) All-round lights shall be so located as not to be obscured by masts, topmasts or structures within angular sectors of more than 6 degrees, except anchor lights prescribed in Rule 30, which need not be placed at an impracticable height above the hull.

10. *Vertical sectors.* (a) The vertical sectors of electric lights as fitted, with the exception of lights on sailing vessels shall ensure that:

[*See main edition for text of* (*i*) *and* (*ii*)]

(b) In the case of sailing vessels the vertical sectors of electric lights as fitted shall ensure that:

[*See main edition for text of* (*i*) *and* (*ii*); (*c*);
Secs. 11 and 12]

13. *Approval.* The construction of lights and shapes and the installation of lights on board the vessel shall be to the satisfaction of the appropriate authority of the State whose flag the vessel is entitled to fly.

[*See main edition for text of Annex II*]

ANNEX III

TECHNICAL DETAILS OF SOUND SIGNAL APPLIANCES

1. *Whistles.* [*See main edition for text of* (*a*) *to* (c)]

(d) *Directional properties.* The sound pressure level of a directional whistle shall be not more than 4 dB below the prescribed sound pressure level on the axis at any direction in the horizontal plane within ±45 degrees of the axis. The sound pressure level at any other direction in the horizontal plane shall be not more than 10 dB below the prescribed sound pressure level on the axis, so that the range in any direction will be at least half the range on the forward axis. The sound pressure level shall be measured in that ⅓rd-octave band which determines the audibility range.

[*See main edition for text of* (*e*) *to* (*g*)]

2. *Bell or gong.* (a) *Intensity of signal.*—A bell or gong, or other device having similar sound characteristics shall produce a sound pressure level of not less than 110 dB at a distance of 1 metre from it.

(b) *Construction.* Bells and gongs shall be made of corrosion-resistant material and designed to give a clear tone. The diameter of the mouth of the bell shall be not less than 300mm for vessels of 20 metres or more in length, and shall be not less than 200mm for vessels of 12 metres or more but of less than 20 metres in length. Where practicable, a power-driven bell striker is recommended to ensure constant force but manual operation shall be possible. The mass of the striker shall be not less than 3 percent of the mass of the bell.

3. *Approval.* The construction of sound signal appliances, their performance and their installation on board the vessel shall be to the satisfaction of the appropriate authority of the State whose flag the vessel is entitled to fly.

[*See main edition for text of Annex IV*]

PROCLAMATION OF JUNE 16, 1983, RELATING TO AMENDMENTS TO THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

The proclamation set out below, together with the text of the amendments to the International Regulations for Preventing Collisions at Sea, 1972, was published in the Federal Register on June 23, 1983, 48 F.R. 28634. The amendments have been executed to the International Regulations for Preventing Collisions at Sea, 1972, set out above.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

The Convention on the International Regulations for Preventing Collisions at Sea, 1972, 28 U.S.T. 3459 (the "Convention"), was signed at London on October 20, 1972, was proclaimed by the President of the United States on January 19, 1977, and entered into force for the United States on July 15, 1977.

The International Maritime Organization, in accordance with Article VI of the Convention, by its resolution A. 464 (XII), at London on November 19, 1981, adopted amendments to the Convention. The amendments, which entered into force for the Contracting Parties on June 1, 1983, relax lighting requirements for smaller vessels and clarify the language of the existing regulations. A copy of the amendments, as corrected by a procès-verbal of rectification, is annexed to this Proclamation and made a part hereof.

On January 27, 1983, these amendments were transmitted to the Congress of the United States, consistent with section 3(d) of the International Navigational Rules Act of 1977 (91 Stat. 308; 33 U.S.C. 1602).

Now, therefore, I, Ronald Reagan, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 3(d) of the International Navigational Rules Act of 1977, do hereby declare and proclaim that these amendments to the Convention shall be effective on and after June 1, 1983, for the United States of America, the citizens of the United States of America, and all other persons subject to the jurisdiction of the United States of America.

In Witness Whereof, I have hereunto set my hand this 16th day of June, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

RONALD REAGAN.

RESOLUTION A.464 (XII) ADOPTED ON 19 NOVEMBER 1981

AMENDMENTS TO THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

The Assembly,

Recalling Article VI of the Convention on the International Regulations for Preventing Collisions at Sea, 1972, on amendments to the Regulations,

Recalling Also resolution A.431(XI) entitled "Recommendation concerning vessels restricted in their ability to manoeuvre when engaged in an operation for the maintenance of safety of navigation in a traffic separation scheme "including the decision to consider at its twelfth session the adoption of a corresponding amendment to Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972,

Having Considered the above and other amendments to the International Regulations for Preventing Collisions at Sea, 1972, adopted by the Maritime Safety Committee at its forty-fourth session and communicated to all Contracting Parties in accordance with paragraph 2 of Article VI of that Convention and also the recommendations of the Maritime Safety Committee concerning entry into force of these amendments,

1 Adopts, in accordance with paragraph 3 of Article VI of the Convention, the amendments set out in the Annex to the present resolution;

2 Decides, in accordance with paragraph 4 of Article VI of the Convention, that each amendment shall enter into force on 1 June 1983 unless by 1 June 1982 more than one third of the Contracting Parties have notified their objection to the amendments;

3 Requests the Secretary-General, in conformity with paragraph 3 of Article VI, to communicate this resolution to all Contracting Parties to the Convention for acceptance, together with copies to all Members of the Organization;

4 Invites Contracting Parties to submit any objections to the amendments not later than 1 June 1982 whereafter the amendments will be deemed to enter into force as determined in this resolution.

CHAPTER 33—PREVENTION OF POLLUTION FROM SHIPS

§ 1904. Certificates

[*See main edition for text of* (a) *to* (e)]

(f) Ship clearance or permits; refusal or revocation

If a ship is under a detention order under this section, the Secretary of the Treasury, upon the request of the Secretary, may refuse or revoke—

(1) the clearance required by section 91 of title 46, Appendix; or

(2) a permit to proceed under section 313 of title 46, Appendix, or section 1443 of title 19.

[*See main edition for text of* (*g*) *and* (*h*); *credits*]

CODIFICATION

Subsec. (f) is set out in this supplement to reflect the transfer of sections 91 and 313 of title 46, referred to in text, to title 46, Appendix.

§ 1908. Penalties for violations

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Ship clearance or permits; refusal or revocation; bond or other surety

If any ship subject to the MARPOL Protocol or this chapter, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, shall refuse or revoke—

(1) the clearance required by section 91 of title 46, Appendix; or

(2) a permit to proceed under section 313 of title 46, Appendix, or section 1443 of title 19.

Clearance or a permit to proceed may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

[*See main edition for text of* (*f*); *credits*]

CODIFICATION

Subsec. (e) is set out in this supplement to reflect the transfer of sections 91 and 313 of title 46, referred to in text, to title 46, Appendix.

CHAPTER 34—INLAND NAVIGATIONAL RULES

SUBCHAPTER I—RULES

PART B—STEERING AND SAILING RULES

SUBPART II—CONDUCT OF VESSELS IN SIGHT OF ONE ANOTHER

§ 2014. Head-on situation (Rule 14)

(a) Course alterations to starboard; port side passage

Unless otherwise agreed, when two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Vessel operating on Great Lakes, Western Rivers, or other specified waters, and proceeding downbound with following current

Notwithstanding paragraph (a) of this Rule, a power-driven vessel operating on the Great Lakes, Western Rivers, or waters specified by the Secretary, and proceeding downbound with a following current shall have the right-of-way over an upbound vessel, shall propose the manner of passage, and shall initiate the maneuvering signals prescribed by Rule 34(a)(i), as appropriate.

(As amended Pub. L. 98-557, § 16(c), Oct. 30, 1984, 98 Stat. 2867.)

REFERENCES IN TEXT

Rule 34(a)(i), referred to in subsec. (d), is classified to section 2034(a)(i) of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-557, § 16(c)(1), substituted "Unless otherwise agreed, when" for "When".

Subsec. (d). Pub. L. 98-557, § 16(c)(2), added subsec. (d).

SUBPART III—CONDUCT OF VESSELS IN RESTRICTED VISIBILITY

§ 2024. Towing and pushing (Rule 24)

[*See main edition for text of* (*a*) *to* (*h*)]

(i) Western Rivers or other specified waters; exception

Notwithstanding paragraph (c), on the Western Rivers (except below the Huey P. Long Bridge on the Mississippi River) and on waters specified by the Secretary, a power-driven vessel when pushing ahead or towing alongside, except as paragraph (b) applies, shall exhibit:

(i) sidelights; and

(ii) two towing lights in a vertical line.

[*See main edition for text of* (*j*)]

(As amended Pub. L. 98-557, § 16(b)(1), Oct. 30, 1984, 98 Stat. 2866.)

AMENDMENTS

1984—Subsec. (i). Pub. L. 98-557 added exception for below the Long Bridge on the Mississippi River.

PART D—SOUND AND LIGHT SIGNALS

§ 2034. Maneuvering and warning signals (Rule 34)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2009, 2014 of this title.

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

§ 2072. Violations of Inland Navigational Rules

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Authority to withhold or revoke clearances

The Secretary of the Treasury shall withhold or revoke, at the request of the Secretary, the clearance, required by section 91 of title 46, Appendix, of any vessel, the owner or operator of which is subject to any of the penalties in this section. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

[*See main edition for credits*]

CODIFICATION

Subsec. (d) is set out in this supplement to reflect the transfer of section 91 of title 46, referred to in text, to title 46, Appendix.

§ 2073. Rules of the Road Advisory Council

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Executive secretary; staff; travel expenses and status of members

The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary for the conduct of its business. Members of the Council, while away from their home or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5. Payments under this section shall not render members of the Council officers or employees of the United States for any purpose.

(d) Termination of Council

Unless extended by subsequent Act of Congress, the Council shall terminate on September 30, 1990.

(As amended Pub. L. 98-557, § 16(b)(2), Oct. 30, 1984, 98 Stat. 2866.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-557, § 16(b)(2)(A), struck out provisions authorizing members who are not officers or employees of the United States to receive compensation at a rate not exceeding the daily equivalent of the current rate of basic pay for GS-18 of the General Schedule under section 5332 of title 5.

Subsec. (d). Pub. L. 98-557, § 16(b)(2)(B), substituted "on September 30, 1990" for "5 years from the date of enactment of this Act".

CHAPTER 35—ARTIFICIAL REEFS

Sec.
2101. Congressional statement of findings and purpose.
2102. Establishment of standards.
2103. National artificial reef plan.
2104. Permits for construction and management of artificial reefs.
  (a) Secretarial action on permits.
  (b) Terms and conditions of permits.
  (c) Liability of permittee.
  (d) Liability of the United States.
  (e) Civil penalty.
2105. Definitions.
2106. Savings clauses.
  (a) Tennessee Valley Authority jurisdiction.
  (b) State jurisdiction.

§ 2101. Congressional statement of findings and purpose

(a) The Congress finds that—

(1) although fishery products provide an important source of protein and industrial products for United States consumption, United States fishery production annually falls far short of satisfying United States demand;

(2) overfishing and the degradation of vital fishery resource habitats have caused a reduction in the abundance and diversity of United States fishery resources;

(3) escalated energy costs have had a negative effect on the economics of United States commercial and recreational fisheries;

(4) commercial and recreational fisheries are a prominent factor in United States coastal economies and the direct and indirect returns to the United States economy from commercial and recreational fishing expenditures are threefold; and

(5) properly designed, constructed, and located artificial reefs in waters covered under this chapter can enhance the habitat and diversity of fishery resources; enhance United States recreational and commercial fishing opportunities; increase the production of fishery products in the United States; increase the energy efficiency of recreational and commercial fisheries; and contribute to the United States and coastal economies.

(b) The purpose of this chapter is to promote and facilitate responsible and effective efforts to establish artificial reefs in waters covered under this chapter.

(Pub. L. 98-623, title II, § 202, Nov. 8, 1984, 98 Stat. 3394.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 98-623, which in addition to enacting this chapter also enacted section 1220d of Title 16, Conservation, and amended sections 1220, 1220a, 1220b, and 1220c of Title 16.

SHORT TITLE

Section 201 of title II of Pub. L. 98-623 provided that: "This title [enacting this chapter and section 1220d of Title 16, Conservation, and amending sections 1220 to 1220c of Title 16] may be cited as the 'National Fishing Enhancement Act of 1984'."

§ 2102. Establishment of standards

Based on the best scientific information available, artificial reefs in waters covered under this chapter shall be sited and constructed, and subsequently monitored and managed in a manner which will—

(1) enhance fishery resources to the maximum extent practicable;

(2) facilitate access and utilization by United States recreational and commercial fishermen;

(3) minimize conflicts among competing uses of waters covered under this chapter and the resources in such waters;

(4) minimize environmental risks and risks to personal health and property; and

(5) be consistent with generally accepted principles of international law and shall not create any unreasonable obstruction to navigation.

(Pub. L. 98-623, title II, § 203, Nov. 8, 1984, 98 Stat. 3395.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2103 of this title.

§ 2103. National artificial reef plan

Not later than one year after November 8, 1984, the Secretary of Commerce, in consultation with the Secretary of the Interior, the Secretary of Defense, the Administrator of the Environmental Protection Agency, the Secretary of the Department in which the Coast Guard is operating, the Regional Fishery Managment Councils, interested States, Interstate Fishery Commissions, and representatives of the private sector, shall develop and publish a long-term plan which will meet the purpose of this chapter and be consistent with the standards established under section 2102 of this chapter. The plan must include—

(1) geographic, hydrographic, geologic, biological, ecological, social, economic, and other criteria for siting artificial reefs;

(2) design, material, and other criteria for constructing artificial reefs;

(3) mechanisms and methodologies for monitoring the compliance of artificial reefs with the requirements of permits issued under section 2104 of this title;

(4) mechanisms and methodologies for managing the use of artificial reefs;

(5) a synopsis of existing information on artificial reefs and needs for further research on artificial reef technology and management strategies; and

(6) an evaluation of alternatives for facilitating the transfer of artificial reef construction materials to persons holding permits issued pursuant to section 2104 of this title, including, but not limited to, credits for environmental mitigation and modified tax obligations.

(Pub. L. 98-623, title II, § 204, Nov. 8, 1984, 98 Stat. 3395.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2104 of this title.

§ 2104. Permits for construction and management of artificial reefs

(a) Secretarial action on permits

In issuing a permit for artificial reefs under section 403 of this title, section 1344 of this title, or section 1333(e) of title 43, the Secretary of the Army (hereinafter in this section referred to as the "Secretary") shall—

(1) consult with and consider the views of appropriate Federal agencies, States, local governments, and other interested parties;

(2) ensure that the provisions for siting, constructing, monitoring, and managing the artificial reef are consistent with the criteria and standards established under this chapter;

(3) ensure that the chapter to the artificial reef construction material is unambiguous, and that responsibility for maintenance and the financial ability to assume liability for future damages are clearly established; and

(4) consider the plan developed under section 2103 of this title and notify the Secretary of Commerce of any need to deviate from that plan.

(b) Terms and conditions of permits

(1) Each permit issued by the Secretary subject to this section shall specify the design and location for construction of the artificial reef and the types and quantities of materials that may be used in constructing such artificial reef. In addition, each such permit shall specify such terms and conditions for the construction, operation, maintenance, monitoring, and managing the use of the artificial reef as are necessary for compliance with all applicable provisions of law and as are necessary to ensure the protection of the environment and human safety and property.

(2) Before issuing a permit under section 1342 of this title for any activity relating to the siting, design, construction, operation, maintenance, monitoring, or managing of an artificial reef, the Administrator of the Environmental Protection Agency shall consult with the Secretary to ensure that such permit is consistent with any permit issued by the Secretary subject to this section.

(c) Liability of permittee

(1) A person to whom a permit is issued in accordance with subsection (a) of this section and any insurer of that person shall not be liable for damages caused by activities required to be undertaken under any terms and conditions of the permit, if the permittee is in compliance with such terms and conditions.

(2) A person to whom a permit is issued in accordance with subsection (a) of this section and any insurer of that person shall be liable, to the extent determined under applicable law, for damages to which paragraph (1) does not apply.

(3) The Secretary may not issue a permit subject to this section to a person unless that person demonstrates to the Secretary the financial ability to assume liability for all damages that may arise with respect to an artificial reef and for which such permittee may be liable.

(4) Any person who has transferred title to artificial reef construction materials to a person to whom a permit is issued in accordance with subsection (a) of this section shall not be liable for damages arising from the use of such materials in an artificial reef, if such materials meet applicable requirements of the plan published under section 2103 of this title and are not otherwise defective at the time title is transferred.

(d) Liability of the United States

Nothing in this chapter creates any liability on the part of the United States.

(e) Civil penalty

Any person who, after notice and an opportunity for a hearing, is found to have violated any provision of a permit issued in accordance with subsection (a) of this section shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation. The Secretary may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

(Pub. L. 98-623, title II, § 205, Nov. 8, 1984, 98 Stat. 3396.)

§ 2105. Definitions

For purposes of this chapter—

(1) The term "artificial reef" means a structure which is constructed or placed in waters

covered under this chapter for the purpose of enhancing fishery resources and commercial and recreational fishing opportunities.

(2) The term "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, American Samoa, Guam, Johnston Island, Midway Island, and Wake Island.

(3) The term "waters covered under this chapter" means the navigable waters of the United States and the waters superjacent to the Outer Continental Shelf as defined in section 1331 of title 43, to the extent such waters exist in or are adjacent to any State.

(Pub. L. 98-623, title II, § 206, Nov. 8, 1984, 98 Stat. 3397.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2103 of this title.

§ 2106. Savings clauses

(a) Tennessee Valley Authority jurisdiction

Nothing in this chapter shall be construed as replacing or superseding section 831y-1 of title 16.

(b) State jurisdiction

Nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State over the siting, construction, monitoring, or managing of artificial reefs within its boundaries.

(Pub. L. 98-623, title II, § 208, Nov. 8, 1984, 98 Stat. 3398.)

TITLE 35—PATENTS

This title was enacted by Act July 19, 1952, ch. 950, § 1, 66 Stat. 792

Part Sec.
IV. Patent Cooperation Treaty 351

AMENDMENTS

1984—Pub. L. 98-622, title IV, § 403(b), Nov. 8, 1984, 98 Stat. 3392, added item IV.

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 17 section 912.

PART I—PATENT AND TRADEMARK OFFICE

CHAPTER 1—ESTABLISHMENT, OFFICERS, FUNCTIONS

Sec.
7. Board of Patent Appeals and Interferences.

AMENDMENTS

1984—Pub. L. 98-622, title II, § 201(b), Nov. 8, 1984, 98 Stat. 3386, substituted "Patent Appeals and Interferences" for "Appeals" in item 7.

§ 1. Establishment

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-622, § 1, Nov. 8, 1984, 98 Stat. 3383, provided that: "This Act [enacting section 157 of this title, amending sections 3, 7, 41, 103, 104, 116, 120, 134, 135, 141, 145, 146, 271, 305, 351, 361, 362, 365 to 368, 371 to 373, and 376 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, and sections 2182 and 2457 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 7, 41, 103, 157, and 351 of this title] may be cited as the 'Patent Law Amendments Act of 1984'."

§ 3. Officers and employees

[*See main edition for text of* (*a*) *to* (*d*)]

(e) The members of the Trademark Trial and Appeal Board of the Patent and Trademark Office shall each be paid at a rate not to exceed the maximum rate of basic pay payable for GS-16 of the General Schedule under section 5332 of title 5.

(As amended Nov. 8, 1984, Pub. L. 98-622, title IV, § 405, 98 Stat. 3392.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-622 added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 406(b) of Pub. L. 98-622 provided that: "The amendments made by sections 401, 402, and 405 of this Act [amending sections 3, 361, 366, 371, 372, and 376 of this title] shall take effect six months after the date of the enactment of this Act [Nov. 8, 1984]."

§ 7. Board of Patent Appeals and Interferences

(a) The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed to the competitive service. The Commissioner, the Deputy Commissioner, the Assistant Commissioners, and the examiners-in-chief shall constitute the Board of Patent Appeals and Interferences.

(b) The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title. Each appeal and interference shall be heard by at least three members of the Board of Patent Appeals and Interferences, who shall be designated by the Commissioner. Only the Board of Patent Appeals and Interferences has the authority to grant rehearings.

(c) Whenever the Commissioner considers it necessary, in order to keep current the work of the Board of Patent Appeals and Interferences, the Commissioner may designate any patent examiner of the primary examiner grade or higher, having the requisite ability, to serve as examiner-in-chief for periods not exceeding six months each. An examiner so designated shall be qualified to act as a member of the Board of Patent Appeals and Interferences. Not more than one of the members of the Board of Patent Appeals and Interferences hearing an appeal or determining an interference may be an examiner so designated. The Secretary of Commerce is authorized to fix the pay of each designated examiner-in-chief in the Patent and Trademark Office at not to exceed the maximum rate of basic pay payable for grade GS-16 of the General Schedule under section 5332 of title 5. The rate of basic pay of each individual designated examiner-in-chief shall be adjusted, at the close of the period for which that individual was designated to act as examiner-in-chief, to the rate of basic pay which that individual would have been receiving at the close of such period if such designation had not been made.

(As amended Nov. 8, 1984, Pub. L. 98-622, title II, § 201(a), 98 Stat. 3386.)

AMENDMENTS

1984—Pub. L. 98-622 substituted "Board of Patent Appeals and Interferences" for "Board of Patent Appeals" as section catchline.

Subsec. (a). Pub. L. 98-622 designated first two sentences of existing first paragraph as subsec. (a), and in subsec. (a) as so designated, substituted "competitive service" for "classified civil service" at end of first sentence, capitalized "Deputy Commissioner" and "Assistant Commissioner" and further substituted "the

Board of Patent Appeals and Interferences" for "a Board of Appeals, which on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents".

Subsec. (b). Pub. L. 98-622 designated final two sentences of existing first paragraph as subsec. (b), and in subsec. (b) as so designated, added first sentence, substituted "Board of Patent Appeals and Interferences" for "Board of Patent Appeals" in two places and further substituted "authority" for "sole power" before "to grant rehearings" in third sentence.

Subsec. (c). Pub. L. 98-622 designated existing second paragraph as subsec. (c), and in subsec. (c) as so designated, substituted "Board of Patent Appeals and Interferences" for "Board of Patent Appeals" wherever appearing, added "or determining an interference" before "may be an examiner so designated", substituted "maximum rate of basic pay payable for grade GS-16 of the General Schedule under section 5332 of title 5" for "maximum scheduled rate provided for positions in grade 16 of the General Schedule of the Classification Act of 1949, as amended", and substituted "rate of basic pay" for "per annum rate of basic compensation" in two places.

Effective Date of 1984 Amendment

Section 207 of title II of Pub. L. 98-622 provided that: "Section 206 of this Act [set out as a note below] and the amendments made by this title [amending sections 7, 41, 134, 135, 141, 145, 146, and 305 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, and sections 2182 and 2457 of Title 42, The Public Health and Welfare] shall take effect three months after the date of the enactment of this Act [Nov. 8, 1984]."

Savings Provision

Section 206 of title II of Pub. L. 98-622 provided that: "Any individual who, on the effective date of this title [see Effective Date of 1984 Amendment note above], is an examiner-in-chief of the Board of Patent Appeals of the Patent and Trademark Office or an examiner of interferences of the Board of Patent Interferences of such office shall be entitled to continue in office as a member of the Board of Patent Appeals and Interferences of the Patent and Trademark Office as of such effective date."

CHAPTER 4—PATENT FEES

§ 41. Patent fees

(a) The Commissioner shall charge the following fees:

[*See main edition for text of* (1) *to* (5)]

6. On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, $115; in addition, on filing a brief in support of the appeal, $115, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, $100.

[*See main edition for text of* (7) *and* (8); (*b*) *to* (*g*)]

(As amended Nov. 8, 1984, Pub. L. 98-622, title II, § 204(a), 98 Stat. 3388.)

Amendments

1984—Subsec. (a)(6). Pub. L. 98-622 substituted "Patent Appeals and Interferences" for "Appeals" in two places and added "in the appeal" after "oral hearing".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as a note under section 7 of this title.

Patent Fees

Section 404 of Pub. L. 98-622 provided that:

"(a) Notwithstanding section 41 of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], no fee shall be collected for maintaining a plant patent in force.

"(b) Notwithstanding section 41(c) of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], the Commissioner of Patents and Trademarks may accept, after the six-month grace period referred to in such section 41(c), the payment of any maintenance fee due on any patent based on an application filed in the Patent and Trademark Office on or after December 12, 1980, and before August 27, 1982, to the same extent as in the case of patents based on applications filed in the Patent and Trademark Office on or after August 27, 1982."

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

CHAPTER 10—PATENTABILITY OF INVENTIONS

§ 103. Conditions for patentability; non-obvious subject matter

[*See main edition for text of first par.*]

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

(As amended Nov. 8, 1984, Pub. L. 98-622, title I, § 103, 98 Stat. 3384.)

Amendments

1984—Pub. L. 98-622 added "Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

Effective Date of 1984 Amendment

Section 106 of Pub. L. 98-622 provided that:

"(a) Subject to subsections (b), (c), (d), and (e) of this section, the amendments made by this Act [probably should be "this title", meaning title I of Pub. L. 98-622, enacting section 157 of this title, amending sections 103, 116, 120, 135, and 271 of this title, and enacting a provision set out as a note under section 157 of this title] shall apply to all United States patents granted before, on, or after the date of enactment of this Act [Nov. 8, 1984], and to all applications for United States patents pending on or filed after the date of enactment.

"(b) The amendments made by this Act shall not affect any final decision made by the court or the Patent and Trademark Office before the date of enactment of this Act [Nov. 8, 1984], with respect to a patent or application for patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

"(c) Section 271(f) of title 35, United States Code, added by section 101 of this Act shall apply only to the supplying, or causing to be supplied, of any component or components of a patented invention after the date of enactment of this Act [Nov. 8, 1984].

"(d) No United States patent granted before the date of enactment of this Act [Nov. 8, 1984] shall abridge or affect the right of any person or his successors in business who made, purchased, or used prior to such effective date anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used, if the patent claims were invalid or otherwise unenforceable on a ground obviated by section 103 or 104 of this Act [amending sections 103, 116, and 120 of this title] and the person made, purchased, or used the specific thing in reasonable reliance on such invalidity or unenforceability. If a person reasonably relied on such invalidity or unenforceability, the court before which such matter is in question may provide for the continued manufacture, use, or sale of the thing made, purchased, or used as specified, or for the manufacture, use, or sale of which substantial preparation was made before the date of enactment of this Act [Nov. 8, 1984], and it may also provide for the continued practice of any process practiced, or for the practice of which substantial preparation was made, prior to the date of enactment [Nov. 8, 1984], to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the date of enactment [Nov. 8, 1984].

"(e) The amendments made by this Act shall not affect the right of any party in any case pending in court on the date of enactment [Nov. 8, 1984] to have their rights determined on the basis of the substantive law in effect prior to the date of enactment [Nov. 8, 1984]."

§ 104. Invention made abroad

In proceedings in the Patent and Trademark Office and in the courts, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States and serving in a foreign country in connection with operations by or on behalf of the United States, he shall be entitled to the same rights of priority with respect to such invention as if the same had been made in the United States.

(As amended Nov. 8, 1984, Pub. L. 98-622, title IV, § 403(a), 98 Stat. 3392.)

AMENDMENTS

1984—Pub. L. 98-622 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

CHAPTER 11—APPLICATION FOR PATENT

§ 112. Specification

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41, 111, 120, 157, 162, 282 of this title.

§ 116. Inventors

When an invention is made by two or more persons jointly, they shall apply for patent jointly and each make the required oath, except as otherwise provided in this title. Inventors may apply for a patent jointly even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent.

[See main edition for text of second and third pars.]

(As amended Nov. 8, 1984, Pub. L. 98-622, title I, § 104(a), 98 Stat. 3384.)

AMENDMENTS

1984—Pub. L. 98-622 amended first par. generally, striking out "and each sign the application" after "patent jointly" and adding sentence beginning "Inventors may apply".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622, applicable to all United States patents granted before, on, or after Nov. 8, 1984, and to all applications for United States patents pending on or filed after that date, except as otherwise provided, see section 106 of Pub. L. 98-622, set out as a note under section 103 of this title.

§ 120. Benefit of earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

(As amended Nov. 8, 1984, Pub. L. 98-622, title I, § 104(b), 98 Stat. 3385.)

AMENDMENTS

1984—Pub. L. 98-622 substituted "which is filed by an inventor or inventors named in the previously filed application" for "by the same inventor".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622, applicable to all United States patents granted before, on, or after Nov. 8, 1984, and to all applications for United States patents pending on or filed after that date, except as otherwise provided, see section 106 of Pub. L. 98-622, set out as a note under section 103 of this title.

CHAPTER 12—EXAMINATION OF APPLICATION

Sec.
134. Appeal to the Board of Patent Appeals and Interferences.

AMENDMENTS

1984—Pub. L. 98-622, title II, § 204(b)(2), Nov. 8, 1984, 98 Stat. 3388, substituted "Patent Appeals and Interferences" for "Appeals" in item 134.

§ 134. Appeal to the Board of Patent Appeals and Interferences

An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

(As amended Nov. 8, 1984, Pub. L. 98-622, title II, § 204(b)(1), 98 Stat. 3388.)

Amendments

1984—Pub. L. 98-622 substituted "Patent Appeals and Interferences" for "Appeals" in section catchline and text.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as a note under section 7 of this title.

Section Referred to in Other Sections

This section is referred to in sections 141, 145, 306 of this title.

§ 135. Interferences

(a) Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, an interference may be declared and the Commissioner shall give notice of such declaration to the applicants, or applicant and patentee, as the case may be. The Board of Patent Appeals and Interferences shall determine questions of priority of the inventions and may determine questions of patentability. Any final decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office of the claims involved, and the Commissioner may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims involved in the patent, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation by the Patent and Trademark Office.

[*See main edition for text of* (b) *and* (c)]

(d) Parties to a patent interference, within such time as may be specified by the Commissioner by regulation, may determine such contest or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of title 9 to the extent such title is not inconsistent with this section. The parties shall give notice of any arbitration award to the Commissioner, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Commissioner from determining patentability of the invention involved in the interference.

(As amended Nov. 8, 1984, Pub. L. 98-622, title I, § 105, title II, § 202, 98 Stat. 3385, 3386.)

Amendments

1984—Subsec. (a). Pub. L. 98-622, § 202, amended subsec. (a) generally, substituting ", an interference may be declared and the Commissioner shall give notice of such declaration to the applicants, or applicant and patentee, as the case may be" for "he shall give notice thereof to the applicants, or applicant and patentee, as the case may be" and substituting provisions vesting jurisdiction for determining questions of interference in the Board of Patent Appeals and Interferences for provisions vesting such jurisdiction in a board of patent interferences.

Subsec. (d). Pub. L. 98-622, § 105, added subsec. (d).

Effective Date of 1984 Amendment

Amendment by section 105 of Pub. L. 98-622, applicable to all United States patents granted before, on, or after Nov. 8, 1984, and to all applications for United States patents pending on or filed after that date, except as otherwise provided, see section 106 of Pub. L. 98-622, set out as a note under section 103 of this title.

Amendment by section 202 of Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as a note under section 7 of this title.

Section Referred to in Other Sections

This section is referred to in section 7 of this title.

CHAPTER 13—REVIEW OF PATENT AND TRADEMARK OFFICE DECISIONS

§ 141. Appeal to Court of Appeals for the Federal Circuit

An applicant dissatisfied with the decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title may appeal the decision to the United States Court of Appeals for the Federal Circuit. By filing such an appeal the applicant waives his or her right to proceed under section 145 of this title. A party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences on the interference may appeal the decision to the United States Court of Appeals for the Federal Circuit, but such appeal shall be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal in accordance with section 142 of this title, files notice with the Commissioner that the party elects to have all further proceedings conducted as provided in section 146 of this title. If the appellant does not, within thirty days after the filing of such notice by the adverse party, file a civil action under section 146, the decision appealed from shall govern the further proceedings in the case.

(As amended Nov. 8, 1984, Pub. L. 98-622, title II, § 203(a), 98 Stat. 3387.)

Amendments

1984—Pub. L. 98-622, § 203(a)(1)(A), substituted "in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title may appeal the decision" for "of the Board of Patent Appeals may appeal" in first sentence.

Pub. L. 98-622, § 203(a)(1)(B), substituted ". By filing such an appeal the applicant waives his or her right" for ", thereby waiving his right" in first sentence.

Pub. L. 98-622, § 203(a)(2)(A), substituted "Board of Patent Appeals and Interferences on the interference may appeal the decision" for "board of patent interferences on the question of priority of appeal" in second sentence.

Pub. L. 98-622, § 203(a)(2)(B), substituted "In accordance with" for "according to" in second sentence.

Pub. L. 98-622, § 203(a)(2)(C), substituted "the party" for "he" in second sentence.

Pub. L. 98-622, § 203(a)(3), reenacted last sentence with minor changes in wording.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as a note under section 7 of this title.

§ 142. Notice of appeal

When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the Commissioner, within such time after the date of the decision from which the appeal is taken as the Commissioner prescribes, but in no case less than 60 days after that date.

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 414(a), 98 Stat. 3363.)

AMENDMENTS

1984—Pub. L. 98-620 amended section generally, substituting "the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the Commissioner, within such time after the date of the decision from which the appeal is taken as the Commissioner prescribes, but in no case less than 60 days after that date" for "the appellant shall give notice thereof to the Commissioner, and shall file in the Patent and Trademark Office his reasons of appeal, specifically set forth in writing, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner appoints".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 414(c) of Pub. L. 98-620 provided that: "The amendments made by this section [amending sections 142, 143, and 144 of this title and section 1071 of Title 15, Commerce and Trade] shall apply to proceedings pending in the Patent and Trademark Office on the date of the enactment of this Act [Nov. 8, 1984] and to appeals pending in the United States Court of Appeals for the Federal Circuit on such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 141, 143, 306 of this title.

§ 143. Proceedings on appeal

With respect to an appeal described in section 142 of this title, the Commissioner shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office. The court may request that the Commissioner forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Commissioner shall submit to the court in writing the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Commissioner and the parties in the appeal.

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 414(a), 98 Stat. 3363.)

AMENDMENTS

1984—Pub. L. 98-620 substituted provisions requiring the Commissioner to transmit to the court a certified list of the documents comprising the record in the Patent and Trademark Office, with respect to an appeal described in section 142 of this title, for provision which required the Commissioner to transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and the appellee, and added provision that the court may request that the Commissioner forward the original or certified copies of such documents during the pendency of the appeal.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 to apply to proceedings pending in the Patent and Trademark Office on Nov. 8, 1984, and to appeals pending in the United States Court of Appeals for the Federal Circuit on such date, see section 414(c) of Pub. L. 98-620, set out as a note under section 142 of this title.

§ 144. Decision on appeal

The United States Court of Appeals for the Federal Circuit shall review the decision from which an appeal is taken on the record before the Patent and Trademark Office. Upon its determination the court shall issue to the Commissioner its mandate and opinion, which shall be entered of record in the Patent and Trademark Office and shall govern the further proceedings in the case.

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 414(a), 98 Stat. 3363.)

AMENDMENTS

1984—Pub. L. 98-620 substituted provisions requiring the court to review the decision on the record before the Patent and Trademark Office and upon reaching a determination to issue its mandate and opinion to the Commissioner for provisions which required the court, on petition, to hear and determine the appeal on the evidence produced before the Patent and Trademark Office (with the decision to be confined to the points set forth in the reasons of appeal) and, upon its determination, to return to the Commissioner a certificate of its proceedings and decision.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 to apply to proceedings pending in the Patent and Trademark Office on Nov. 8, 1984, and to appeals pending in the United States Court of Appeals for the Federal Circuit on such date, see section 414(c) of Pub. L. 98-620, set out as a note under section 142 of this title.

§ 145. Civil action to obtain patent

An applicant dissatisfied with the decision of the Board of Patent Appeals and Interferences in an appeal under section 134 of this title may, unless appeal has been taken to the United States Court of Appeals for the Federal Circuit, have remedy by civil action against the Commissioner in the United States District Court for the District of Columbia if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints. The court may adjudge that such applicant is entitled to receive a patent for his invention, as specified in any of his claims involved in the decision of the Board of Patent Appeals and Interferences, as the facts in the case may appear and such adjudication shall authorize the Commissioner to issue such patent on compliance with the requirements of law. All the expenses of the proceedings shall be paid by the applicant.

(As amended Nov. 8, 1984, Pub. L. 98-622, title II, § 203(b), 98 Stat. 3387.)

AMENDMENTS

1984—Pub. L. 98-622 substituted "Patent Appeals and Interferences in an appeal under section 134 of this title may," for "Appeals may" in first sentence and "Patent Appeals and Interferences" for "Appeals" in second sentence.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as a note under section 7 of this title.

§ 146. Civil action in case of interference

Any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences on the interference, may have remedy by civil action, if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 141 of this title, unless he has appealed to the United States Court of Appeals for the Federal Circuit, and such appeal is pending or has been decided. In such suits the record in the Patent and Trademark Office shall be admitted on motion of either party upon the terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Patent and Trademark Office when admitted shall have the same effect as if originally taken and produced in the suit.

[*See main edition for text of second par.*]

(As amended Nov. 8, 1984, Pub. L. 98-622, title II, § 203(c), 98 Stat. 3387.)

AMENDMENTS

1984—Pub. L. 98-622 substituted "Board of Patent Appeals and Interferences on the interference" for "board of patent interference on the question of priority".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as a note under section 7 of this title.

CHAPTER 14—ISSUE OF PATENT

Sec.
155A. Patent term restoration.
156. Extension of patent term.
157. Statutory invention registration.

AMENDMENTS

1984—Pub. L. 98-622, title I, § 102(b), Nov. 8, 1984, 98 Stat. 3384, added item 157.

Pub. L. 98-417, title II, § 201(b), Sept. 24, 1984, 98 Stat. 1602, added item 156.

1983—Pub. L. 98-127, § 4(b), Oct. 13, 1983, 97 Stat. 833, added item 155A.

§ 154. Contents and term of patent

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 155, 155A of this title.

§ 155A. Patent term restoration

(a) Notwithstanding section 154 of this title, the term of each of the following patents shall be extended in accordance with this section:

(1) Any patent which encompasses within its scope a composition of matter which is a new drug product, if during the regulatory review of the product by the Federal Food and Drug Administration—

(A) the Federal Food and Drug Administration notified the patentee, by letter dated February 20, 1976, that such product's new drug application was not approvable under section 505(b)(1) of the Federal Food, Drug and Cosmetic Act;

(B) in 1977 the patentee submitted to the Federal Food and Drug Administration the results of a health effects test to evaluate the carcinogenic potential of such product;

(C) the Federal Food and Drug Administration approved, by letter dated December 18, 1979, the new drug application for such product; and

(D) the Federal Food and Drug Administration approved, by letter dated May 26, 1981, a supplementary application covering the facility for the production of such product.

(2) Any patent which encompasses within its scope a process for using the composition of matter described in paragraph (1).

(b) The term of any patent described in subsection (a) shall be extended for a period equal to the period beginning February 20, 1976, and ending May 26, 1981, and such patent shall have the effect as if originally issued with such extended term.

(c) The patentee of any patent described in subsection (a) of this section shall, within ninety days after the date of enactment of this section, notify the Commissioner of Patents and Trademarks of the number of any patent so extended. On receipt of such notice, the Commissioner shall confirm such extension by placing a notice thereof in the official file of such patent and publishing an appropriate notice of such extension in the Official Gazette of the Patent and Trademark Office.

(Added Pub. L. 98-127, § 4(a), Oct. 13, 1983, 97 Stat. 832.)

REFERENCES IN TEXT

Section 505(b)(1) of the Federal Food, Drug and Cosmetic Act, referred to in subsec. (a)(1)(A), is classified to section 355(b)(1) of Title 21, Food and Drugs.

The date of enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 98-127, which was approved Oct. 13, 1983.

§ 156. Extension of patent term

(a) The term of a patent which claims a product, a method of using a product, or a method of manufacturing a product shall be extended in accordance with this section from the original expiration date of the patent if—

(1) the term of the patent has not expired before an application is submitted under subsection (d) for its extension;

(2) the term of the patent has never been extended;

(3) an application for extension is submitted by the owner of record of the patent or its agent and in accordance with the requirements of subsection (d);

(4) the product has been subject to a regulatory review period before its commercial marketing or use;

(5)(A) except as provided in subparagraph (B), the permission for the commercial marketing or use of the product after such regulatory review period is the first permitted commercial marketing or use of the product under the provision of law under which such regulatory review period occurred; or

(B) in the case of a patent which claims a method of manufacturing the product which primarily uses recombinant DNA technology in the manufacture of the product, the permission for the commercial marketing or use of the product after such regulatory review period is the first permitted commercial marketing or use of a product manufactured under the process claimed in the patent.

The product referred to in paragraphs (4) and (5) is hereinafter in this section referred to as the "approved product".

(b) The rights derived from any patent the term of which is extended under this section shall during the period during which the patent is extended—

(1) in the case of a patent which claims a product, be limited to any use approved for the approved product before the expiration of the term of the patent under the provision of law under which the applicable regulatory review occurred;

(2) in the case of a patent which claims a method of using a product, be limited to any use claimed by the patent and approved for the approved product before the expiration of the term of the patent under the provision of law under which the applicable regulatory review occurred; and

(3) in the case of a patent which claims a method of manufacturing a product, be limited to the method of manufacturing as used to make the approved product.

(c) The term of a patent eligible for extension under subsection (a) shall be extended by the time equal to the regulatory review period for the approved product which period occurs after the date the patent is issued, except that—

(1) each period of the regulatory review period shall be reduced by any period determined under subsection (d)(2)(B) during which the applicant for the patent extension did not act with due diligence during such period of the regulatory review period;

(2) after any reduction required by paragraph (1), the period of extension shall include only one-half of the time remaining in the periods described in paragraphs (1)(B)(i), (2)(B)(i), and (3)(B)(i) of subsection (g);

(3) if the period remaining in the term of a patent after the date of the approval of the approved product under the provision of law under which such regulatory review occurred when added to the regulatory review period as revised under paragraphs (1) and (2) exceeds fourteen years, the period of extension shall be reduced so that the total of both such periods does not exceed fourteen years; and

(4) in no event shall more than one patent be extended for the same regulatory review period for any product.

(d)(1) To obtain an extension of the term of a patent under this section, the owner of record of the patent or its agent shall submit an application to the Commissioner. Such an application may only be submitted within the sixty-day period beginning on the date the product received permission under the provision of law under which the applicable regulatory review period occurred for commercial marketing or use. The application shall contain—

(A) the identity of the approved product and the Federal statute under which regulatory review occurred;

(B) the identity of the patent for which an extension is being sought and the identity of each claim of such patent which claims the approved product or a method of using or manufacturing the approved product;

(C) information to enable the Commissioner to determine under subsections (a) and (b) the eligibility of a patent for extension and the rights that will be derived from the extension and information to enable the Commissioner and the Secretary of Health and Human Services to determine the period of the extension under subsection (g);

(D) a brief description of the activities undertaken by the applicant during the applicable regulatory review period with respect to the approved product and the significant dates applicable to such activities; and

(E) such patent or other information as the Commissioner may require.

(2)(A) Within sixty days of the submittal of an application for extension of the term of a patent under paragraph (1), the Commissioner shall notify the Secretary of Health and Human Services if the patent claims any human drug product, a medical device, or a food additive or color additive or a method of using or manufacturing such a product, device, or additive and if the product, device, and additive are subject to the Federal Food, Drug, and Cosmetic Act, of the extension application and shall submit to the Secretary a copy of the application. Not later than thirty days after the receipt of an application from the Commissioner, the Secretary shall review the dates contained in the application pursuant to paragraph (1)(C) and determine the applicable regulatory review period, shall notify the Commissioner of the determination, and shall publish in the Federal Register a notice of such determination.

(B)(i) If a petition is submitted to the Secretary under subparagraph (A), not later than one hundred and eighty days after the publication of the determination under subparagraph (A), upon which it may reasonably be determined that the applicant did not act with due diligence during the applicable regulatory review period, the Secretary shall, in accordance with regulations promulgated by the Secretary determine if the applicant acted with due diligence during the applicable regulatory review period. The Secretary shall make such determination not later than ninety days after the receipt of such a petition. The Secretary may not delegate the authority to make the determination prescribed by this subparagraph to an office below the Office of the Commissioner of Food and Drugs.

(ii) The Secretary shall notify the Commissioner of the determination and shall publish in the Federal Register a notice of such determination together with the factual and legal basis for such determination. Any interested person may request, within the sixty-day period beginning on the publication of a determination, the Secretary to hold an informal hearing on the determination. If such a request is made within such period, the Secretary shall hold such hearing not later than thirty days after the date of the request, or at the request of the person making the request, not later than sixty days after such date. The Secretary shall provide notice of the hearing to the owner of the patent involved and to any interested person and provide the owner and any interested person an opportunity to participate in the hearing. Within thirty days after the completion of the hearing, the Secretary shall affirm or revise the determination which was the subject of the hearing and notify the Commissioner of any revision of the determination and shall publish any such revision in the Federal Register.

(3) For the purposes of paragraph (2)(B), the term "due diligence" means that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period.

(4) An application for the extension of the term of a patent is subject to the disclosure requirements prescribed by the Commissioner.

(e)(1) A determination that a patent is eligible for extension may be made by the Commissioner solely on the basis of the representations contained in the application for the extension. If the Commissioner determines that a patent is eligible for extension under subsection (a) and that the requirements of subsection (d) have been complied with, the Commissioner shall issue to the applicant for the extension of the term of the patent a certificate of extension, under seal, for the period prescribed by subsection (c). Such certificate shall be recorded in the official file of the patent and shall be considered as part of the original patent.

(2) If the term of a patent for which an application has been submitted under subsection (d) would expire before a certificate of extension is issued or denied under paragraph (1) respecting the application, the Commissioner shall extend, until such determination is made, the term of the patent for periods of up to one year if he determines that the patent is eligible for extension.

(f) For purposes of this section:

(1) The term "product" means:

(A) A human drug product.

(B) Any medical device, food additive, or color additive subject to regulation under the Federal Food, Drug, and Cosmetic Act.

(2) The term "human drug product" means the active ingredient of a new drug, antibiotic drug, or human biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act) including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.

(3) The term "major health or environmental effects test" means a test which is reasonably related to the evaluation of the health or environmental effects of a product, which requires at least six months to conduct, and the data from which is submitted to receive permission for commercial marketing or use. Periods of analysis or evaluation of test results are not to be included in determining if the conduct of a test required at least six months.

(4)(A) Any reference to section 351 is a reference to section 351 of the Public Health Service Act.

(B) Any reference to section 503, 505, 507, or 515 is a reference to section 503, 505, 507, or 515 of the Federal Food, Drug, and Cosmetic Act.

(5) The term "informal hearing" has the meaning prescribed for such term by section 201(y) of the Federal Food, Drug, and Cosmetic Act.

(6) The term "patent" means a patent issued by the United States Patent and Trademark Office.

(g) For purposes of this section, the term "regulatory review period" has the following meanings:

(1)(A) In the case of a product which is a human drug product, the term means the period described in subparagraph (B) to which the limitation described in paragraph (4) applies.

(B) The regulatory review period for a human drug product is the sum of—

(i) the period beginning on the date an exemption under subsection (i) of section 505 or subsection (d) of section 507 became effective for the approved human drug product and ending on the date an application was initially submitted for such drug product under section 351, 505, or 507, and

(ii) the period beginning on the date the application was initially submitted for the approved human drug product under section 351, subsection (b) of section 505, or section 507 and ending on the date such application was approved under such section.

(2)(A) In the case of a product which is a food additive or color additive, the term means the period described in subparagraph (B) to which the limitation described in paragraph (4) applies.

(B) The regulatory review period for a food or color additive is the sum of—

(i) the period beginning on the date a major health or environmental effects test on the additive was initiated and ending on the date a petition was initially submitted with respect to the product under the Federal Food, Drug, and Cosmetic Act requesting the issuance of a regulation for use of the product, and

(ii) the period beginning on the date a petition was initially submitted with respect to the product under the Federal Food, Drug, and Cosmetic Act requesting the issuance of a regulation for use of the product, and ending on the date such regulation became effective or, if objections were filed to such regulation, ending on the date such objections were resolved and commercial marketing was permitted or, if commercial marketing was permitted and later revoked pending further proceedings as a result of such objections, ending on the date such proceedings were finally resolved and commercial marketing was permitted.

(3)(A) In the case of a product which is a medical device, the term means the period described in subparagraph (B) to which the limitation described in paragraph (4) applies.

(B) The regulatory review period for a medical device is the sum of—

(i) the period beginning on the date a clinical investigation on humans involving the device was begun and ending on the date an application was initially submitted with respect to the device under section 515, and

(ii) the period beginning on the date an application was initially submitted with respect to the device under section 515 and ending on the date such application was approved under such Act or the period beginning on the date a notice of completion of a product development protocol was initially submitted under section 515(f)(5) and ending on the date the protocol was declared completed under section 515(f)(6).

(4) A period determined under any of the preceding paragraphs is subject to the following limitations:

(A) If the patent involved was issued after the date of the enactment of this section, the period of extension determined on the basis of the regulatory review period determined under any such paragraph may not exceed five years.

(B) If the patent involved was issued before the date of the enactment of this section and—

(i) no request for an exemption described in paragraph (1)(B) was submitted,

(ii) no major health or environmental effects test described in paragraph (2) was initiated and no petition for a regulation or application for registration described in such paragraph was submitted, or

(iii) no clinical investigation described in paragraph (3) was begun or product development protocol described in such paragraph was submittted,[1]

before such date for the approved product the period of extension determined on the basis of the regulatory review period determined under any such paragraph may not exceed five years.

(C) If the patent involved was issued before the date of the enactment of this section and if an action described in subparagraph (B) was taken before the date of the enactment of this section with respect to the approved product and the commercial marketing or use of the product has not been approved before such date, the period of extension determined on the basis of the regulatory review period determined under such paragraph may not exceed two years.

(h) The Commissioner may establish such fees as the Commissioner determines appropriate to cover the costs to the Office of receiving and acting upon applications under this section.

(Added Pub. L. 98–417, title II, § 201(a), Sept. 24, 1984, 98 Stat. 1598.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (d)(2)(A), (f), and (g)(2)(B), (3)(B)(ii), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Sections 503, 505, and 507 of the Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (f)(4)(B) and (g)(1)(B)(i), (ii), are classified, respectively, to sections 353, 355, and 357 of Title 21.

Section 515 of the Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (f)(4)(B) and (g)(3)(B)(i), (ii), is classified to section 360e of Title 21.

Section 201(y) of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (f)(5), is classified to section 321(y) of Title 21.

The Public Health Service Act, referred to in subsec. (f)(2), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 351 of the Public Health Service Act, referred to in subsecs. (f)(4)(A) and (g)(1)(B)(i), (ii), is classified to section 262 of Title 42.

The date of the enactment of this section, referred to in subsec. (g)(4), is the date of the enactment of Pub. L. 98–417, which was approved Sept. 24, 1984.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 282 of this title.

§ 157. Statutory invention registration

(a) Notwithstanding any other provision of this title, the Commissioner is authorized to publish a statutory invention registration containing the specification and drawings of a regularly filed application for a patent without examination if the applicant—

(1) meets the requirements of section 112 of this title;

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[1] So in original.

(2) has complied with the requirements for printing, as set forth in regulations of the Commissioner;

(3) waives the right to receive a patent on the invention within such period as may be prescribed by the Commissioner; and

(4) pays application, publication, and other processing fees established by the Commissioner.

If an interference is declared with respect to such an application, a statutory invention registration may not be published unless the issue of priority of invention is finally determined in favor of the applicant.

(b) The waiver under subsection (a)(3) of this section by an applicant shall take effect upon publication of the statutory invention registration.

(c) A statutory invention registration published pursuant to this section shall have all of the attributes specified for patents in this title except those specified in section 183 and sections 271 through 289 of this title. A statutory invention registration shall not have any of the attributes specified for patents in any other provision of law other than this title. A statutory invention registration published pursuant to this section shall give appropriate notice to the public, pursuant to regulations which the Commissioner shall issue, of the preceding provisions of this subsection. The invention with respect to which a statutory invention certificate is published is not a patented invention for purposes of section 292 of this title.

(d) The Secretary of Commerce shall report to the Congress annually on the use of statutory invention registrations. Such report shall include an assessment of the degree to which agencies of the Federal Government are making use of the statutory invention registration system, the degree to which it aids the management of federally developed technology, and an assessment of the cost savings to the Federal Government of the use of such procedures.

(Added Pub. L. 98-622, title I, § 102(a), Nov. 8, 1984, 98 Stat. 3383.)

EFFECTIVE DATE

Section 102(c) of Pub. L. 98-622 provided that: "The amendments made by this section [enacting this section and item 157 in the table of sections of this chapter] shall take effect six months after the date of enactment of this Act [Nov. 8, 1984]."

CHAPTER 17—SECRECY OF CERTAIN INVENTIONS AND FILING APPLICATIONS IN FOREIGN COUNTRY

§ 183. Right to compensation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title.

CHAPTER 18—PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE

Sec.
212. Disposition of rights in educational awards.

AMENDMENTS

1984—Pub. L. 98-620, title V, § 501(15), Nov. 8, 1984, 98 Stat. 3368, added item 212.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 30 section 1226.

§ 200. Policy and objective

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2320; title 41 section 418a.

§ 201. Definitions

As used in this chapter—

[*See main edition for text of* (*a*) *to* (*c*)]

(d) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under this title or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(e) The term "subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a funding agreement: *Provided*, That in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d))) must also occur during the period of contract performance.

[*See main edition for text of* (*f*) *to* (*i*)]

(As amended Pub. L. 98-620, title V, § 501(1), (2), Nov. 8, 1984, 98 Stat. 3364.)

REFERENCES IN TEXT

The Plant Variety Protection Act, referred to in subsec. (d), is Pub. L. 91-577, Dec. 24, 1970, 84 Stat. 1542, as amended, which is classified principally to chapter 57 (§ 2321 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2321 of Title 7 and Tables.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-620, § 501(1), inserted "or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.)" immediately after "title".

Subsec. (e). Pub. L. 98-620, § 501(2), inserted ": *Provided*, That in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d))) must also occur during the period of contract performance" immediately after "agreement".

§ 202. Disposition of rights

(a) Each nonprofit organization or small business firm may, within a reasonable time after disclosure as required by paragraph (c)(1) of this section, elect to retain title to any subject invention: *Provided, however*, That a funding agreement may provide otherwise (i) when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government, (ii) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of this chapter (iii) when it is determined by a Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counter-intelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities or, iv)[1] when the funding agreement includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under this subparagraph on the contractor's right to elect title to a subject invention are limited to inventions occurring under the above two programs of the Department of Energy..[2] The rights of the nonprofit organization or small business firm shall be subject to the provisions of paragraph (c) of this section and the other provisions of this chapter.

(b)(1) The rights of the Government under subsection (a) shall not be exercised by a Federal agency unless it first determines that at least one of the conditions identified in clauses (i) through (iv) of subsection (a) exists. Except in the case of subsection (a)(iii), the agency shall file with the Secretary of Commerce, within thirty days after the award of the applicable funding agreement, a copy of such determination. In the case of a determination under subsection (a)(ii), the statement shall include an analysis justifying the determination. In the case of determinations applicable to funding agreements with small business firms, copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration. If the Secretary of Commerce believes that any individual determination or pattern of determinations is contrary to the policies and objectives of this chapter or otherwise not in conformance with this chapter, the Secretary shall so advise the head of the agency concerned and the Administrator of the Office of Federal Procurement Policy, and recommend corrective actions.

(2) Whenever the Administrator of the Office of Federal Procurement Policy has determined that one or more Federal agencies are utilizing the authority of clause (i) or (ii) of subsection (a) of this section in a manner that is contrary to the policies and objectives of this chapter, the Administrator is authorized to issue regulations describing classes of situations in which agencies may not exercise the authorities of those clauses.

[*See main edition for text of* (*3*)]

(4) If the contractor believes that a determination is contrary to the policies and objectives of this chapter or constitutes an abuse of discretion by the agency, the determination shall be subject to the last paragraph of section 203(2).

(c) Each funding agreement with a small business firm or nonprofit organization shall contain appropriate provisions to effectuate the following:

(1) That the contractor disclose each subject invention to the Federal agency within a reasonable time after it becomes known to contractor personnel responsible for the administration of patent matters, and that the Federal Government may receive title to any subject invention not disclosed to it within such time.

(2) That the contractor make a written election within two years after disclosure to the Federal agency (or such additional time as may be approved by the Federal agency) whether the contractor will retain title to a subject invention: *Provided*, That in any case where publication, on sale, or public use, has initiated the one year statutory period in which valid patent protection can still be obtained in the United States, the period for election may be shortened by the Federal agency to a date that is not more than sixty days prior to the end of the statutory period: *And provided further*, That the Federal Government may receive title to any subject invention in which the contractor does not elect to retain rights or fails to elect rights within such times.

(3) That a contractor electing rights in a subject invention agrees to file a patent application prior to any statutory bar date that may occur under this title due to publication, on sale, or public use, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title within reasonable times, and that the Federal Government may receive title to any subject inventions in the United States or other countries in which the contractor has not filed patent applications on the subject invention within such times.

(4) With respect to any invention in which the contractor elects rights, the Federal agency shall have a nonexclusive, nontransferrable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world: *Provided*, That the funding agreement may provide for such additional rights;[3] including the right to assign or have assigned foreign patent rights in the subject invention, as are determined by the agency as necessary for meeting the obligations of the United States under any treaty, international agreement, arrangement of cooperation, memorandum of understanding, or similar arrangement, including military agreement relating to weapons development and production.

(5) The right of the Federal agency to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or his licensees or assignees: *Provided*, That any such information as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 203 of this chapter shall be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure

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[1] So in original. Probably should be "(iv)".

[2] So in original.

[3] So in original. Probably should be a comma.

under section 552 of title 5 of the United States Code.

[*See main edition for text of* (6)]

(7) In the case of a nonprofit organization, (A) a prohibition upon the assignment of rights to a subject invention in the United States without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions (provided that such assignee shall be subject to the same provisions as the contractor); (B) a requirement that the contractor share royalties with the inventor; (C) except with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, a requirement that the balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, be utilized for the support of scientific research or education; (D) a requirement that, except where it proves infeasible after a reasonable inquiry, in the licensing of subject inventions shall be given to small business firms; and (E) with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, requirements (i) that after payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, 100 percent of the balance of any royalties or income earned and retained by the contractor during any fiscal year up to an amount equal to 5 percent of the annual budget of the facility, shall be used by the contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility; provided that if said balance exceeds 5 percent of the annual budget of the facility, that 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent shall be used for the same purposes as described above in this clause (D); and (ii) that, to the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by contractor employees on location at the facility.

[*See main edition for text of* (8); (*d*) *to* (*f*)]

(As amended Pub. L. 98-620, title V, § 501(3)-(8), Nov. 8, 1984, 98 Stat. 3364-3366.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-620, § 501(3), substituted "when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government" for "when the funding agreement is for the operation of a Government-owned research or production facility", struck out "or" before "(ii)", which was executed by striking out "or" before "(iii)" as the probable intent of Congress, and added cl. (iv).

Subsec. (b)(1). Pub. L. 98-620, § 501(4), gave to the Department of Commerce oversight of agency use of the exceptions to small business or nonprofit organization invention ownership.

Subsec. (b)(2). Pub. L. 98-620, § 501(4), substituted provisions authorizing the Administrator of the Office of Federal Procurement Policy to issue regulations describing situations in which agencies may not exercise the authorities of clauses (i) or (ii) of subsec. (a), whenever the Administrator has determined that one or more agencies are utilizing such authority in violation of this chapter for provisions which gave to the Comptroller General oversight of agency actions under this chapter.

Subsec. (b)(4). Pub. L. 98-620, § 501(4A), added par. (4).

Subsec. (c)(1). Pub. L. 98-620, § 501(5), substituted provisions requiring disclosure of each invention within a reasonable time after it becomes known to contractor personnel responsible for the administration of patent matters for provision requiring disclosure of each invention within a reasonable time after it is made.

Subsec. (c)(2). Pub. L. 98-620, § 501(5), substituted provisions requiring the contractor to make a written election within two years after disclosure to the Federal agency (or such additional time as may be approved by the Federal agency) whether the contractor will retain title to a subject invention for provision requiring election to retain title within a reasonable time after disclosure, and added provision authorizing the Federal agency to shorten the period for election under certain circumstances.

Subsec. (c)(3). Pub. L. 98-620, § 501(5), substituted provisions requiring a contractor electing rights in a subject invention to file a patent application prior to any statutory bar date that may occur under this title due to publication, on sale, or public use, and thereafter to file corresponding patent applications in other countries in which it wishes to retain title within reasonable times for provisions requiring the contractor to file patent applications within a reasonable time.

Subsec. (c)(4). Pub. L. 98-620, § 501(5), substituted provision that the funding agreement may provide for such additional rights, including the right to assign or have assigned foreign patent rights in the subject invention, as are determined by the agency as necessary for meeting the obligations of the United States under any treaty, international agreement, arrangement of cooperation, memorandum of understanding, or similar arrangement, including any military agreement relating to weapons development and production for provision that the agency could, if provided in the funding agreement, have additional rights to sublicense any foreign government or international organization pursuant to any existing or future treaty or agreement.

Subsec. (c)(5). Pub. L. 98-620, § 501(6), substituted "as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 203 of this chapter shall be treated" for "may be treated".

Subsec. (c)(7)(A). Pub. L. 98-620, § 501(7), struck out provision which made an exception for organizations which were not themselves engaged in or did not hold a substantial interest in other organizations engaged in the manufacture or sales of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention.

Subsec. (c)(7)(B). Pub. L. 98-620, § 501(8), redesignated cl. (C) as (B). Former cl. (B), relating to a prohibition against the granting of exclusive licenses under United States Patents or Patent Applications in a subject invention by the contractor to persons other than small business firms for periods in excess of certain specified periods and relating to commercial sales, was struck out.

Subsec. (c)(7)(C). Pub. L. 98-620, § 501(8), added cl. (C). Former cl. (C) redesignated (B).

Subsec. (c)(7)(D). Pub. L. 98-620, § 501(8), added cl. (D). Former cl. (D) redesignated (E).

Subsec. (c)(7)(E). Pub. L. 98-620, § 501(8), redesignated former cl. (D) as (E), and in cl. (E) as so redesignated added provisions placing a limit on the amount of royalties that the contract operators of Government-owned laboratories are entitled to retain after paying patent administrative expenses and a share of the royalties to inventors, requiring payment of amounts in excess of such limits to the United States Treasury, and requiring that, to the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by contractor employees on location at the facility.

Section Referred to in Other Sections

This section is referred to in sections 203, 206, 210 of this title.

§ 203. March-in rights

(1.[4] With respect to any subject invention in which a small business firm or nonprofit organization has acquired title under this chapter, the Federal agency under whose funding agreement the subject invention was made shall have the right, in accordance with such procedures as are provided in regulations promulgated hereunder to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant such a license itself, if the Federal agency determines that such—

[*See main edition for text of* (*a*) *to* (*d*)]

(2) A determination pursuant to this section or section 202(b)(4) shall not be subject to the Contract Disputes Act (41 U.S.C. § 601 et seq.). An administrative appeals procedure shall be established by regulations promulgated in accordance with section 206. Additionally, any contractor, inventor, assignee, or exclusive licensee adversely affected by a determination under this section may, at any time within sixty days after the determination is issued, file a petition in the United States Claims Court, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand or modify, ",[5] as appropriate, the determination of the Federal agency. In cases described in paragraphs (a) and (c), the agency's determination shall be held in abeyance pending the exhaustion of appeals or petitions filed under the preceding sentence.

(As amended Pub. L. 98-620, title V, § 501(9), Nov. 8, 1984, 98 Stat. 3367.)

References in Text

The Contract Disputes Act of 1978, referred to in par. (2), is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code see Short Title note set out under section 601 of Title 41 and Tables.

Amendments

1984—Pub. L. 98-620 designated existing provisions as par. (1) and added par. (2).

Section Referred to in Other Sections

This section is referred to in sections 202, 206, 210 of this title.

§ 206. Uniform clauses and regulations

The Secretary of Commerce may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 204 of this chapter and shall establish standard funding agreement provisions required under this chapter. The regulations and the standard funding agreement shall be subject to public comment before their issuance.

(As amended Pub. L. 98-620, title V, § 501(10), Nov. 8, 1984, 98 Stat. 3367.)

Amendments

1984—Pub. L. 98-620 amended section generally. Prior to amendment, section read as follows: "The Office of Federal Procurement Policy, after receiving recommendations of the Office of Science and Technology Policy, may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 204 of this chapter and the Office of Federal Procurement Policy shall establish standard funding agreement provisions required under this chapter."

Section Referred to in Other Sections

This section is referred to in section 203 of this title.

§ 207. Domestic and foreign protection of federally owned inventions

(a) Each Federal agency is authorized to—

(1) apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title, or interest;

(2) grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patent applications, patents, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 29 of this title as determined appropriate in the public interest;

(3) undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal Government either directly or through contract; and

(4) transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

(b) For the purpose of assuring the effective management of Government-owned inventions, the Secretary of Commerce is authorized to—

(1) assist Federal agency efforts to promote the licensing and utilization of Government-owned inventions;

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[4] So in original. Probably should be "(1)".

[5] So in original. Quotation marks and comma probably should not appear.

(2) assist Federal agencies in seeking protection and maintaining inventions in foreign countries, including the payment of fees and costs connected therewith; and

(3) consult with and advise Federal agencies as to areas of science and technology research and development with potential for commercial utilization.

(As amended Pub. L. 98-620, title V, § 501(11), Nov. 8, 1984, 98 Stat. 3367.)

AMENDMENTS

1984—Pub. L. 98-620 designated existing provisions as subsec. (a) and added subsec. (b).

§ 208. Regulations governing Federal licensing

The Secretary of Commerce is authorized to promulgate regulations specifying the terms and conditions upon which any federally owned invention, other than inventions owned by the Tennessee Valley Authority, may be licensed on a nonexclusive, partially exclusive, or exclusive basis.

(As amended Pub. L. 98-620, title V, § 501(12), Nov. 8, 1984, 98 Stat. 3367.)

AMENDMENTS

1984—Pub. L. 98-620 substituted "Secretary of Commerce" for "Administrator of General Services".

§ 210. Precedence of chapter

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Nothing in this chapter is intended to limit the authority of agencies to agree to the disposition of rights in inventions made in the performance of work under funding agreements with persons other than nonprofit organizations or small business firms in accordance with the Statement of Government Patent Policy issued on February 18, 1983, agency regulations, or other applicable regulations or to otherwise limit the authority of agencies to allow such persons to retain ownership of inventions except that all funding agreements, including those with other than small business firms and nonprofit organizations, shall include the requirements established in paragraph[9] 202(c)(4) and section 203 of this title..[10] Any disposition of rights in inventions made in accordance with the Statement or implementing regulations, including any disposition occurring before enactment of this section, are hereby authorized.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-620, title V, § 501(13), Nov. 8, 1984, 98 Stat. 3367.)

REFERENCES IN TEXT

Section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360), referred to in subsec. (a)(5), was amended by Pub. L. 99-159, title I, § 109(c), Nov. 22, 1985, 99 Stat. 889, by striking out subsec. (b) and designating subsec. (a) as the entire section.

Section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191), referred to in subsec. (a)(14), was omitted from the Code.

Section 306(d) of the Surface Mining and Reclamation Act, referred to in subsec. (a)(18), was classified to section 1226(d) of Title 30, Mineral Lands and Mining, prior to enactment of Pub. L. 98-409, which enacted a new section 1226 of Title 30. See section 1226(c) of Title 30.

The Native Latex Commercialization and Economic Development Act of 1978, referred to in subsec. (a)(21), is Pub. L. 95-592, Nov. 4, 1978, 92 Stat. 2529, as amended, which, as amended by Pub. L. 98-284, May 16, 1984, 98 Stat. 181, is known as the Critical Agricultural Materials Act and is classified principally to subchapter II (§ 178 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 178 of this title and Tables.

Section 408 of the Water Resources and Development Act of 1978 (42 U.S.C. 7879; 92 Stat. 1360), referred to in subsec. (a)(22), was repealed by Pub. L. 98-242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101. See section 10308 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-620 substituted "February 18, 1983" for "August 23, 1971 (36 Fed. Reg. 16887)" and added provision that all funding agreements, including those with other than small business firms and nonprofit organizations, shall include the requirements established in paragraph 202(c)(4) and section 203 of this title.

§ 212. Disposition of rights in educational awards

No scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily to an awardee for educational purposes will contain any provision giving the Federal agency any rights to inventions made by the awardee.

(Added Pub. L. 98-620, title V, § 501(14), Nov. 8, 1984, 98 Stat. 3368.)

PART III—PATENTS AND PROTECTION OF PATENT RIGHTS

CHAPTER 28—INFRINGEMENT OF PATENTS

§ 271. Infringement of patent

[*See main edition for text of* (*a*) *to* (*d*)]

(e)(1) It shall not be an act of infringement to make, use, or sell a patented invention (other than a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Act of March 4, 1913)) solely for uses reasonably related to the development and submission of information under a Federal law which regulates the manufacture, use, or sale of drugs.

(2) It shall be an act of infringement to submit an application under section 505(j) of the Federal Food, Drug, and Cosmetic Act or described in section 505(b)(2) of such Act for a drug claimed in a patent or the use of which is claimed in a patent, if the purpose of such submission is to obtain approval under such Act to engage in the commercial manufacture, use, or sale of a drug claimed in a patent or the use of which is claimed in a patent before the expiration of such patent.

(3) In any action for patent infringement brought under this section, no injunctive or other relief may be granted which would pro-

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[9] So in original. Probably should be "section".

[10] So in original.

hibit the making, using, or selling of a patented invention under paragraph (1).

(4) For an act of infringement described in paragraph (2)—

(A) the court shall order the effective date of any approval of the drug involved in the infringement to be a date which is not earlier than the date of the expiration of the patent which has been infringed,

(B) injunctive relief may be granted against an infringer to prevent the commercial manufacture, use, or sale of an approved drug, and

(C) damages or other monetary relief may be awarded against an infringer only if there has been commercial manufacture, use, or sale of an approved drug.

The remedies prescribed by subparagraphs (A), (B), and (C) are the only remedies which may be granted by a court for an act of infringement described in paragraph (2), except that a court may award attorney fees under section 285.

(f)(1) Whoever without authority supplies or causes to be supplied in or from the United States all or a substantial portion of the components of a patented invention, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, shall be liable as an infringer.

(2) Whoever without authority supplies or causes to be supplied in or from the United States any component of a patented invention that is especially made or especially adapted for use in the invention and not a staple article or commodity of commerce suitable for substantial noninfringing use, where such component is uncombined in whole or in part, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, shall be liable as an infringer.

(As amended Sept. 24, 1984, Pub. L. 98-417, title II, § 202, 98 Stat. 1603; Nov. 8, 1984, Pub. L. 98-622, title I, § 101(a), 98 Stat. 3383.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (e)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. Sections 505(b)(2) and 505(j) of that Act, referred to in subsec. (e)(2), are classified, respectively, to section 355(b)(2) and 355(j) of Title 21. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Act of March 4, 1913, referred to in subsec. (e)(1), is act Mar. 4, 1913, ch. 145, 37 Stat. 828, as amended. The provisions of such act relating to viruses, etc., applicable to domestic animals, popularly known as the Virus-Serum-Toxin Act, are classified generally to chapter 5 (§ 151 et seq.) of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 151 of Title 21 and Tables.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-417 added subsec. (e).
Subsec. (f). Pub. L. 98-622 added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 applicable only to the supplying, or causing to be supplied, of any component or components of a patented invention after Nov. 8, 1984, see section 106(c) of Pub. L. 98-622, set out as a note under section 103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title; title 21 section 355.

§ 272. Temporary presence in the United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title; title 42 section 2457.

CHAPTER 29—REMEDIES FOR INFRINGEMENT OF PATENT, AND OTHER ACTIONS

§ 281. Remedy for infringement of patent

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title.

§ 282. Presumption of validity; defenses

[*See main edition for text of first and second pars.*]

In actions involving the validity or infringement of a patent the party asserting invalidity or noninfringement shall give notice in the pleadings or otherwise in writing to the adverse party at least thirty days before the trial, of the country, number, date, and name of the patentee of any patent, the title, date, and page numbers of any publication to be relied upon as anticipation of the patent in suit or, except in actions in the United States Claims Court, as showing the state of the art, and the name and address of any person who may be relied upon as the prior inventor or as having prior knowledge of or as having previously used or offered for sale the invention of the patent in suit. In the absence of such notice proof of the said matters may not be made at the trial except on such terms as the court requires. Invalidity of the extension of a patent term or any portion thereof under section 156 of this title because of the material failure—

(1) by the applicant for the extension, or

(2) by the Commissioner,

to comply with the requirements of such section shall be a defense in any action involving the infringement of a patent during the period of the extension of its term and shall be pleaded. A due diligence determination under section 156(d)(2) is not subject to review in such an action.

(As amended Sept. 24, 1984, Pub. L. 98-417, title II, § 203, 98 Stat. 1603.)

AMENDMENTS

1984—Pub. L. 98-417 added provision at end that the invalidity of the extension of a patent term or any portion thereof under section 156 of this title because of the material failure by the applicant for the extension, or by the Commissioner, to comply with the requirements of such section shall be a defense in any action involving the infringement of a patent during the period of the extension of its term and shall be pleaded, and that a due diligence determination under section 156(d)(2) is not subject to review in such an action.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 157, 294 of this title.

§ 283. Injunction

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title.

§ 284. Damages

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title.

§ 285. Attorney fees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 157, 271 of this title.

§ 286. Time limitation on damages

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title.

§ 287. Limitation on damages; marking and notice

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title.

§ 288. Action for infringement of a patent containing an invalid claim

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title.

§ 289. Additional remedy for infringement of design patent

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title.

§ 292. False marking

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 157 of this title.

CHAPTER 30—PRIOR ART CITATIONS TO OFFICE AND REEXAMINATION OF PATENTS

§ 305. Conduct of reexamination proceedings

After the times for filing the statement and reply provided for by section 304 of this title have expired, reexamination will be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner will be permitted to propose any amendment to his patent and a new claim or claims thereto, in order to distinguish the invention as claimed from the prior art cited under the provisions of section 301 of this title, or in response to a decision adverse to the patentability of a claim of a patent. No proposed amended or new claim enlarging the scope of a claim of the patent will be permitted in a reexamination proceeding under this chapter. All reexamination proceedings under this section, including any appeal to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office.

(As amended Pub. L. 98-622, title II, § 204(c), Nov. 8, 1984, 98 Stat. 3388.)

AMENDMENTS

1984—Pub. L. 98-622, § 204(c), substituted "Patent Appeals and Interferences" for "Appeals".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as a note under section 7 of this title.

PART IV—PATENT COOPERATION TREATY

CHAPTER 35—DEFINITIONS

§ 351. Definitions

When used in this part unless the context otherwise indicates—

[*See main edition for text of* (*a*) *to* (*c*)]

(d) The term "international application originating in the United States" means an international application filed in the Patent and Trademark Office when it is acting as a Receiving Office under the treaty, irrespective of whether or not the United States has been designated in that international application.

[*See main edition for text of* (*e*) *to* (*i*)]

(As amended Pub. L. 98-622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-622 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 406(a) of Pub. L. 98-622 provided that: "Section 404 of this Act [set out as a note under section 41 of this title] and the amendments made by section 403 of this Act [amending sections 104, 351, 361, 362, 363, 364, 365, 367, 368, 371, 372, 373, and 376 of this title] shall take effect on the date of the enactment of this Act [Nov. 8, 1984]."

CHAPTER 36—INTERNATIONAL STAGE

§ 361. Receiving Office

(a) The Patent and Trademark Office shall act as a Receiving Office for international applications filed by nationals or residents of the United States. In accordance with any agreement made between the United States and another country, the Patent and Trademark Office may also act as a Receiving Office for international applications filed by residents or nationals of such country who are entitled to file international applications.

(b) The Patent and Trademark Office shall perform all acts connected with the discharge of duties required of a Receiving Office, including the collection of international fees and their transmittal to the International Bureau.

(c) International applications filed in the Patent and Trademark Office shall be in the English language.

(d) The basic fee portion of the international fee, and the transmittal and search fees prescribed under section 376(a) of this part, shall be paid on filing of an international application or within one month after the date of such filing. Payment of designation fees may be made on filing and shall be made not later than one year from the priority date of the international application.

(As amended Pub. L. 98-622, title IV, §§ 401(a), 403(a), Nov. 8, 1984, 98 Stat. 3391, 3392.)

Amendments

1984—Subsecs. (a) to (c). Pub. L. 98-622, § 403(a), substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (d). Pub. L. 98-622, § 401(a), added "or within one month after the date of such filing" after "application".

Effective Date of 1984 Amendment

Amendment by section 403(a) of Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

Amendment by section 401(a) of Pub. L. 98-622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98-622, set out as a note under section 3 of this title.

§ 362. International Searching Authority

The Patent and Trademark Office may act as an International Searching Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau.

(As amended Pub. L. 98-622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392.)

Amendments

1984—Pub. L. 98-622 substituted "Patent and Trademark Office" for "Patent Office".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 363. International application designating the United States: Effect

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in section 102(e) of this title.

(As amended Pub. L. 98-622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392.)

Amendments

1984—Pub. L. 98-622 substituted "Patent and Trademark Office" for "Patent Office".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 364. International stage: Procedure

(a) International applications shall be processed by the Patent and Trademark Office when acting as a Receiving Office or International Searching Authority, or both, in accordance with the applicable provisions of the treaty, the Regulations, and this title.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392.)

Amendments

1984—Subsec. (a). Pub. L. 98-622 substituted "Patent and Trademark Office" for "Patent Office".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 365. Right of priority; benefit of the filing date of a prior application

[*See main edition for text of* (*a*) *and* (*b*)]

(c) In accordance with the conditions and requirements of section 120 of this title, an international application designating the United States shall be entitled to the benefit of the filing date of a prior national application or a prior international application designating the United States, and a national application shall be entitled to the benefit of the filing date of a prior international application designating the United States. If any claim for the benefit of an earlier filing date is based on a prior international application which designated but did not originate in the United States, the Commissioner may require the filing in the Patent and Trademark Office of a certified copy of such application together with a translation thereof into the English language, if it was filed in another language.

(As amended Pub. L. 98-622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392.)

Amendments

1984—Subsec. (c). Pub. L. 98-622 substituted "Patent and Trademark Office" for "Patent Office".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 366. Withdrawn international application

Subject to section 367 of this part, if an international application designating the United States is withdrawn or considered withdrawn, either generally or as to the United States, under the conditions of the treaty and the Regulations, before the applicant has complied with the applicable requirements prescribed by section 371(c) of this part, the designation of the United States shall have no effect after the date of withdrawal, and shall be considered as not having been made, unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal. However, such withdrawn international application may serve as the basis for a claim of priority under section 365(a) and (b) of this part, if it designated a country other than the United States.

(As amended Pub. L. 98-622, title IV, § 401(b), Nov. 8, 1984, 98 Stat. 3391.)

AMENDMENTS

1984—Pub. L. 98-622 inserted "after the date of withdrawal," after "effect" and ", unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal" after "having been made" in first sentence, and inserted "withdrawn" after "such" in second sentence.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98-622, set out as a note under section 3 of this title.

§ 367. Actions of other authorities: Review

(a) Where a Receiving Office other than the Patent and Trademark Office has refused to accord an international filing date to an international application designating the United States or where it has held such application to be withdrawn either generally or as to the United States, the applicant may request review of the matter by the Commissioner, on compliance with the requirements of and within the time limits specified by the treaty and the Regulations. Such review may result in a determination that such application be considered as pending in the national stage.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-622 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 368. Secrecy of certain inventions; filing international applications in foreign countries

(a) International applications filed in the Patent and Trademark Office shall be subject to the provisions of chapter 17 of this title.

[*See main edition for text of* (*b*)]

(c) If a license to file in a foreign country is refused or if an international application is ordered to be kept secret and a permit refused, the Patent and Trademark Office when acting as a Receiving Office or International Searching Authority, or both, may not disclose the contents of such application to anyone not authorized to receive such disclosure.

(As amended Pub. L. 98-622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392.)

AMENDMENTS

1984—Subsecs. (a), (c). Pub. L. 98-622 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

CHAPTER 37—NATIONAL STAGE

§ 371. National stage: Commencement

(a) Receipt from the International Bureau of copies of international applications with amendments to the claims, if any, and international search reports may be required in the case of all international applications designating the United States.

(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2) of the treaty.

(c) The applicant shall file in the Patent and Trademark Office—

(1) the national fee prescribed under section 376(a)(4) of this part;

(2) a copy of the international application, unless not required under subsection (a) of this section or already communicated by the International Bureau, and a translation into the English language of the international application, if it was filed in another language;

(3) amendments, if any, to the claims in the international application, made under article 19 of the treaty, unless such amendments have been communicated to the Patent and Trademark Office by the International Bureau, and a translation into the English language if such amendments were made in another language;

[*See main edition for text of* (*4*)]

(d) The requirements with respect to the national fee referred to in subsection (c)(1), the translation referred to in subsection (c)(2), and the oath or declaration referred to in subsection (c)(4) of this section shall be complied with by the date of the commencement of the national stage or by such later time as may be fixed by the Commissioner. The copy of the international application referred to in subsection (c)(2) shall be submitted by the date of the commencement of the national stage. Failure to comply with these requirements shall be regarded as abandonment of the application by the parties thereof, unless it be shown to the satisfaction of the Commissioner that such failure to comply was unavoidable. The payment of a surcharge may be required as a condition of accepting the national fee referred to in subsection (c)(1) or the oath or declaration referred to in subsection (c)(4) of this section if these requirements are not met by the date of the commencement of the national stage. The requirements of subsection (c)(3) of this section shall be complied with by the date of the commencement of the national stage, and failure to do so shall be regarded as a cancellation of the amendments to the claims in the international application made under article 19 of the treaty.

[*See main edition for text of* (*e*) *and* (*f*)]

(As amended Pub. L. 98-622, title IV, §§ 402(a)-(d), 403(a), Nov. 8, 1984, 98 Stat. 3391, 3392.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-622, § 402(a), substituted "may be" for "is" and struck out ", except those filed in the Patent Office" after "United States", which amendment was executed by striking out ", except those filed in the Patent and Trademark Office" as the probable intent of Congress in view of the amendment by section 403(a) of Pub. L. 98-622. See Effective Date of 1984 Amendment note below.

Pub. L. 98-622, § 403(a), substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (b). Pub. L. 98-622 struck out ", at which time the applicant shall have complied with the applicable requirements specified in subsection (c) of this section" after "of the treaty".

Subsec. (c). Pub. L. 98-622, § 403(a), substituted "Patent and Trademark Office" for "Patent Office" in provisions preceding par. (1) and in par. (3).

Subsec. (c)(2). Pub. L. 98-622, § 402(c)(1), (2), substituted "communicated by" for "received from" and struck out "verified" before "translation".

Subsec. (d). Pub. L. 98-622, § 402(d), substituted provisions setting forth time periods for compliance with the requirements of subsec. (c), payments of surcharges, and the effect of failure to comply for provisions related only to the effect of failure to comply with the requirements of subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 403(a) of Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

Amendment by section 402(a)-(d) of Pub. L. 98-622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98-622, set out as a note under section 3 of this title.

§ 372. National stage: Requirements and procedure

(a) All questions of substance and, within the scope of the requirements of the treaty and Regulations, procedure in an international application designating the United States shall be determined as in the case of national applications regularly filed in the Patent and Trademark Office.

(b) In case of international applications designating but not originating in, the United States—

(1) the Commissioner may cause to be reexamined questions relating to form and contents of the application in accordance with the requirements of the treaty and the Regulations;

(2) the Commissioner may cause the question of unity of invention to be reexamined under section 121 of this title, within the scope of the requirements of the treaty and the Regulations; and

(3) the Commissioner may require a verification of the translation of the international application or any other document pertaining to the application if the application or other document was filed in a language other than English.

(As amended Pub. L. 98-622, title IV, §§ 402(e), (f), 403(a), Nov. 8, 1984, 98 Stat. 3392.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-622, § 403(a), substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (b)(3). Pub. L. 98-622, § 402(e), added par. (3).

Subsec. (c). Pub. L. 98-622, § 402(f), struck out subsec. (c) which related to cancellation of claims and payment of special fees.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 403(a) of Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

Amendment by section 402(e), (f) of Pub. L. 98-622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98-622, set out as a note under section 3 of this title.

§ 373. Improper applicant

An international application designating the United States, shall not be accepted by the Patent and Trademark Office for the national stage if it was filed by anyone not qualified under chapter 11 of this title to be an applicant for the purpose of filing a national application in the United States. Such international applications shall not serve as the basis for the benefit of an earlier filing date under section 120 of this title in a subsequently filed application, but may serve as the basis for a claim of the right of priority under section 119 of this title, if the United States was not the sole country designated in such international application.

(As amended Pub. L. 98-622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392.)

AMENDMENTS

1984—Pub. L. 98-622 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 376. Fees

(a) The required payment of the international fee, which amount is specified in the Regulations, shall be paid in United States currency. The Patent and Trademark Office may also charge the following fees:

(1) A transmittal fee (see section 361(d));

(2) A search fee (see section 361(d));

(3) A supplemental search fee (to be paid when required);

(4) A national fee (see section 371(c));

(5) Such other fees as established by the Commissioner.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-622, title IV, §§ 402(g), 403(a), Nov. 8, 1984, 98 Stat. 3392.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-622, § 403(a), substituted "Patent and Trademark Office" for "Patent Office" in provision preceding par. (1).

Subsec. (a)(5), (6). Pub. L. 98-622, § 402(g), redesignated par. (6) as (5). Former par. (5), which read "A special fee (to be paid when required; see section 372(c))", was struck out.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 403(a) of Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

Amendment by section 402(g) of Pub. L. 98-622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98-622, set out as a note under section 3 of this title.

TITLE 36—PATRIOTIC SOCIETIES AND OBSERVANCES

Chap. Sec.
8B. Navy Club of the United States of America 140
55. National Academy of Public Administration 2301
56. American Gold Star Mothers, Inc. 2401
57. Polish Legion of American Veterans, U.S.A. 2501
58. Catholic War Veterans of the United States of America, Inc. 2601
59. Jewish War Veterans of the United States of America, Inc. 2701
60. Navy Wives Clubs of America 2801
61. National Society, Daughters of the American Colonists 2901
62. 369th Veterans' Association 3001
63. Women's Army Corps Veterans' Association 3101
64. American Chemical Society 3201
65. The American National Theater and Academy 3301
66. American Symphony Orchestra League 3401
67. General Federation of Women's Clubs. 3501
68. Pearl Harbor Survivors Association 3601
69. Daughters of Union Veterans of the Civil War 1861-1865 3701

CHAPTER 4A—AMVETS (AMERICAN VETERANS OF WORLD WAR II, KOREA, AND VIETNAM)

§ 67e. Membership

Eligibility for membership in AMVETS and the rights and privileges of members shall, except as provided in this chapter, be as provided in the constitution and bylaws of the organization, and terms of membership and requirements for holding office within the organization shall not be discriminatory on the basis of race, color, religion, sex or national origin.

(As amended May 31, 1984, Pub. L. 98-304, 98 Stat. 220.)

Amendments

1984—Pub. L. 98-304 amended section generally. Prior to amendment, section read as follows: "Any person who served in the Armed Forces of the United States of America or any American citizen who served in the armed forces of an allied nation of the United States at any time after September 15, 1940, and before May 8, 1975, is eligible for regular membership in AMVETS, provided such service when terminated by discharge or release from active duty be by honorable discharge or separation. No person who is a member of, or who advocates the principles of, any organization believing in, or working for, the overthrow of the United States Government by force, and no person who refuses to uphold and defend the Constitution of the United States, shall be privileged to become, or continue to be, a member of this organization".

CHAPTER 6A—DISABLED AMERICAN VETERANS

§ 90i. Annual report

The said corporation shall, on or before the 1st day of January in each year, make and transmit to the Congress a report of its proceedings for its preceding fiscal year.

(As amended May 21, 1984, Pub. L. 98-291, 98 Stat. 203.)

Amendments

1984—Pub. L. 98-291 struck out "(a)" before "The said corporation shall" and struck out subsec. (b) which directed the corporation to make and transmit to the Comptroller General, at the close of each fiscal year, a report of its proceedings for the preceding fiscal year, including a full, complete, and itemized report of receipts and expenditures of whatever kind, which report had to be duly authorized by the Comptroller General, and which had directed the corporation to reimburse the Comptroller General for auditing its accounts, with the sums so paid to be covered into the Treasury of the United States as miscellaneous receipts.

CHAPTER 8—AMERICAN BATTLE MONUMENTS COMMISSION

§ 121b. Station allowance for Army officers serving on Commission

[*See main edition for text*]

(Nov. 25, 1985, Pub. L. 99-160, title II, § 201, 99 Stat. 914.)

Codification

Section is from the appropriation act cited as the credit to this section.

Similar Provisions

Similar provisions were contained in the following prior appropriation acts:

July 18, 1984, Pub. L. 98-371, title II, § 201, 98 Stat. 1221.

July 12, 1983, Pub. L. 98-45, title II, § 201, 97 Stat. 224.

Sept. 30, 1982, Pub. L. 97-272, title II, § 201, 96 Stat. 1165.

§ 122. Expenses of officers of Armed Forces serving on Commission

[*See main edition for text*]

(Nov. 25, 1985, Pub. L. 99-160, title II, § 201, 99 Stat. 914.)

Codification

Section is from the appropriation act cited as the credit to this section.

Similar Provisions

Similar provisions were contained in the following prior appropriation acts:

July 18, 1984, Pub. L. 98-371, title II, § 201, 98 Stat. 1221.

July 12, 1983, Pub. L. 98-45, title II, § 201, 97 Stat. 224.

Sept. 30, 1982, Pub. L. 97-272, title II, § 201, 96 Stat. 1165.

§ 122a. Reimbursement of agencies for salary, pay, and allowances of assigned personnel

[*See main edition for text*]

(Nov. 25, 1985, Pub. L. 99-160, title II, § 201, 99 Stat. 914.)

Codification

Section is from the appropriation act cited as the credit to this section.

Similar Provisions

Similar provisions were contained in the following prior appropriation acts:

July 18, 1984, Pub. L. 98-371, title II, § 201, 98 Stat. 1221.

July 12, 1983, Pub. L. 98-45, title II, § 201, 97 Stat. 224.

Sept. 30, 1982, Pub. L. 97-272, title II, § 201, 96 Stat. 1165.

§ 138. Records and archives

The records and archives of the Commission, shall, when no longer required by the Commission, be deposited with the National Archives in accordance with the provisions of section 2107 of title 44.

(Mar. 4, 1923, ch. 283, § 9, formerly § 11, 42 Stat. 1510; June 26, 1946, ch. 502, 60 Stat. 317, renumbered and amended July 25, 1956, ch. 721, §§ 2(c), 4(a), 70 Stat. 640, 641.)

Codification

"Section 2107 of title 44" was substituted for "the Federal Records Act of 1950 (44 U.S.C. 397)" on authority of Pub. L. 90-620, § 2(b), Oct. 22, 1968, 82 Stat. 1305, the first section of which enacted Title 44, Public Printing and Documents, and Pub. L. 98-497, title I, § 102(a)(1), Oct. 19, 1984, 98 Stat. 2280, which renumbered section 2103 of Title 44 (as enacted by Pub. L. 90-620) as section 2107.

Transfer of Functions

The National Archives Establishment was transferred to the General Services Administration by act June 30, 1949, ch. 288, title I, § 104(a), 63 Stat. 381. On Dec. 11, 1949, the National Archives and Records Service, under the direction of the Archivist of the United States, was established by the Administrator of General Services to succeed the National Archives Establishment. The National Archives and Records Service of the General Services Administration was transferred to the National Archives and Records Administration, see section 2102 of Title 44, Public Printing and Documents, and sections 103 to 106 and 108 of Pub. L. 98-497, set out as notes under section 2102 of Title 44.

CHAPTER 8B—NAVY CLUB OF THE UNITED STATES OF AMERICA

Cross References

Navy Wives Clubs of America, see section 2801 et seq. of this title.

CHAPTER 9—NATIONAL OBSERVANCES

§ 146. Second Monday in October as Columbus Day

Christopher Columbus Quincentenary Jubilee Act

Pub. L. 98-375, Aug. 7, 1984, 98 Stat. 1257, provided for the creation of the Christopher Columbus Quincentenary Jubilee Commission, a 30-member commission appointed by the President, which was to prepare a comprehensive program for commemorating the quincentennial of the voyages of discovery of Columbus and to plan, encourage, coordinate, and conduct observances and activities. The Commission would submit a final report to Congress no later than Nov. 15, 1992, and would terminate as of that date.

CHAPTER 17—UNITED STATES OLYMPIC COMMITTEE

Chapter Referred to in Other Sections

This chapter is referred to in section 384 of this title; title 18 section 2320.

SUBCHAPTER I—CORPORATION

§ 380. Use of Olympic symbols, emblems, trademarks and names

Section Referred to in Other Sections

This section is referred to in title 15 sections 1116, 1117; title 18 section 2320.

CHAPTER 42—AUDITS OF FEDERALLY CHARTERED CORPORATIONS

Chapter Referred to in Other Sections

This chapter is referred to in title 16 section 3706.

§ 1101. "Private corporations established under Federal law" defined

The term "private corporations established under Federal law" as used in this chapter means the following organizations:

[*See main edition for text of* (*1*) *to* (*57*)]

(58) Polish Legion of American Veterans, U.S.A.

[*See main edition for text of* (59)]

(60) Catholic War Veterans of the United States of America, Incorporated.

(61) National Academy of Public Administration.

(62) Jewish War Veterans of the United States of America.

(63) American Gold Star Mothers, Incorporated.

(64) Women's Army Corps Veterans' Association.

(65) 369th Veterans' Association.

(66) National Society, Daughters of the American Colonists.

(67) Navy Wives Clubs of America.

(69)[1] Pearl Harbor Survivors Association.

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[1] So in original. There is no par. (68).

(70) Daughters of Union Veterans of the Civil War 1861-1865.

(As amended Pub. L. 98-257, § 11, Apr. 10, 1984, 98 Stat. 128; Pub. L. 98-314, § 11, June 12, 1984, 98 Stat. 239; Pub. L. 98-372, § 11, July 23, 1984, 98 Stat. 1240; Pub. L. 98-382, § 11, Aug. 17, 1984, 98 Stat. 1345; Pub. L. 98-391, § 11, Aug. 21, 1984, 98 Stat. 1360; Pub. L. 98-520, § 11, Oct. 19, 1984, 98 Stat. 2429; Pub. L. 98-561, § 12, Oct. 30, 1984, 98 Stat. 2912; Pub. L. 98-565, § 11, Oct. 30, 1984, 98 Stat. 2921; Pub. L. 98-584, § 11, Oct. 30, 1984, 98 Stat. 3098; Pub. L. 99-119, § 11, Oct. 7, 1985, 99 Stat. 500; Pub. L. 99-172, § 11, Dec. 9, 1985, 99 Stat. 1022.)

AMENDMENTS

1985—Par. (69). Pub. L. 99-119 added par. (69).
Par. (70). Pub. L. 99-172 added par. (70).
1984—Par. (58). Pub. L. 98-372 added par. (58).
Par. (60). Pub. L. 98-382 added par. (60).
Par. (61). Pub. L. 98-257 added par. (61).
Par. (62). Pub. L. 98-391 added par. (62).
Par. (63). Pub. L. 98-314 added par. (63).
Par. (64). Pub. L. 98-584 added par. (64).
Par. (65). Pub. L. 98-565 added par. (65).
Par. (66). Pub. L. 98-561 added par. (66).
Par. (67). Pub. L. 98-520 added par. (67).

CROSS REFERENCES

For treatment of the National Fish and Wildlife Foundation as a private corporation established under Federal law for purposes of this chapter, see section 3706(a) of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1711, 1811, 1911, 2011, 2111, 2211, 2311, 2411, 2511, 2611, 2711, 2811, 2912, 3011, 3711 of this title.

§ 1102. Audit of accounts; annual audit; independent audit; places of audit; availability of books, records, and other papers, things, or property; facilities for verification of transactions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1166, 1213, 1309, 3111, 3611 of this title.

CHAPTER 46—UNITED STATES HOLOCAUST MEMORIAL COUNCIL

Sec.
1409. Annual report.
1410. Audit by Comptroller General; access to records.

§ 1401. Establishment of United States Holocaust Memorial Council; functions

There is hereby established as an independent Federal establishment the United States Holocaust Memorial Council (hereinafter in this chapter referred to as the "Council"). The Council shall—

[*See main edition for text of* (*1*) *to* (*3*)]

(As amended Pub. L. 99-190, § 101(d) [title III, § 324(1)], Dec. 19, 1985, 99 Stat. 1224, 1267.)

AMENDMENTS

1985—Pub. L. 99-190 added "as an independent Federal establishment" after "established" in first sentence.

§ 1404. Administrative provisions

APPOINTMENT OF MEMBERS OF COMMITTEES ASSOCIATED WITH UNITED STATES HOLOCAUST MEMORIAL COUNCIL

Pub. L. 99-190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1262, provided: "That persons other than members of the United States Holocaust Memorial Council may be designated as members of committees associated with the United States Holocaust Memorial Council subject to appointment by the Chairman of the Council: *Provided further*, That any persons so designated shall serve without cost to the Federal Government."

§ 1407. Gifts, bequests, and devises of property; tax treatment

The Council may solicit, accept, hold, administer, invest, and use gifts, bequests, and devises of property, both real and personal, to aid or facilitate the construction, maintenance, and operation of the memorial. Property may be accepted pursuant to this section, and the property and the proceeds thereof used as nearly as possible in accordance with the terms of the gift, bequest, or devise donating such property. Funds donated to and accepted by the Council pursuant to this section are not to be regarded as appropriated funds and are not subject to any requirements or restrictions applicable to appropriated funds. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States.

(As amended Pub. L. 99-190, § 101(d) [title III, § 324(2)], Dec. 19, 1985, 99 Stat. 1224, 1267.)

AMENDMENTS

1985—Pub. L. 99-190 inserted "invest," after "administer," in first sentence, and added provisions relating to funds donated to and accepted by the Council not being regarded as appropriated funds.

§ 1409. Annual report

The Executive Director shall make a full report annually to the Congress of his stewardship of the authority to construct, operate, and maintain the Holocaust Museum, including an accounting of all financial transactions involving donated funds.

(Pub. L. 96-388, [§ 9], as added Pub. L. 99-190, § 101(d) [title III, § 324(3)], Dec. 19, 1985, 99 Stat. 1224, 1267.)

§ 1410. Audit by Comptroller General; access to records

Financial transactions of the Council, including those involving donated funds, shall be audited by the Comptroller General as requested by the Congress, in accordance with generally accepted auditing standards. In conducting any audit pursuant to this section, appropriate representatives of the Comptroller General shall have access to all books, accounts, financial records, reports, files and other papers, items or property in use by the Council, as necessary to facilitate such audit, and such representatives shall be afforded full facilities for verifying transactions with the balances.

(Pub. L. 96-388, [§ 10], as added Pub. L. 99-190, § 101(d) [title III, § 324(3)], Dec. 19, 1985, 99 Stat. 1224, 1267.)

CHAPTER 49—ITALIAN AMERICAN WAR VETERANS OF THE UNITED STATES

§ 1711. Annual report

REFERENCES IN TEXT

Section 1101(54) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 97-82, which amended section 1101 of this title to include the Italian American War Veterans of the United States within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

CHAPTER 50—UNITED STATES SUBMARINE VETERANS OF WORLD WAR II

§ 1811. Annual report

REFERENCES IN TEXT

Section 1101(55) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 97-83, which amended section 1101 of this title to include the United States Submarine Veterans of World War II within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

CHAPTER 51—AMERICAN COUNCIL OF LEARNED SOCIETIES

§ 1911. Annual report

REFERENCES IN TEXT

Section 1101(56) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 97-192, which amended section 1101 of this title to include the American Council of Learned Societies within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

CHAPTER 52—NATIONAL FEDERATION OF MUSIC CLUBS

§ 2011. Annual report

REFERENCES IN TEXT

Section 1101(53) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 97-231, which amended section 1101 of this title to include the National Federation of Music Clubs within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

CHAPTER 53—AMERICAN EX-PRISONERS OF WAR

§ 2111. Annual report

REFERENCES IN TEXT

Section 1101(57) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 97-234, which amended section 1101 of this title to include the American Ex-Prisoners of War within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

CHAPTER 54—FORMER MEMBERS OF CONGRESS

§ 2211. Annual report

REFERENCES IN TEXT

Section 1101(59) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 97-427, which amended section 1101 of this title to include the Former Members of Congress within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

CHAPTER 55—NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

Sec.
2301. Recognition as corporation and grant of Federal charter.
2302. Corporate powers.
2303. Objects and purposes of corporation.
2304. Service of process.
2305. Membership.
2306. Board of directors.
2307. Officers.
2308. Restrictions on corporate powers.
  (a) Distribution of corporate income or assets.
  (b) Loans.
  (c) Political activities.
  (d) Issuance of stock; dividends.
  (e) Claim of approval or authorization.
  (f) Retention of status under State laws.
2309. Liability for acts of officers and agents.
2310. Books and records; inspection.
2311. Annual report.
2312. Reservation of right to amend or repeal chapter.
2313. "State" defined.
2314. Tax-exempt status.
2315. Failure to comply with restrictions or provisions.
2316. Service to United States.

§ 2301. Recognition as corporation and grant of Federal charter

The National Academy of Public Administration, organized and incorporated under the laws of the District of Columbia, is hereby recognized as such and is granted a charter.

(Pub. L. 98-257, § 1, Apr. 10, 1984, 98 Stat. 127.)

§ 2302. Corporate powers

The National Academy of Public Administration (hereinafter referred to as the "academy" [1]) shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

(Pub. L. 98-257, § 2, Apr. 10, 1984, 98 Stat. 127.)

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[1] So in original. Probably should be "Academy".

§ 2303. Objects and purposes of corporation

The objects and purposes for which the Academy is organized shall be those provided in its articles of incorporation and shall include—

(1) evaluating the structure, administration, operation, and program performance of Federal and other governments and government agencies, anticipating, identifying, and analyzing significant problems and suggesting timely corrective action;

(2) foreseeing and examining critical emerging issues in governance, formulating practical approaches to their resolution;

(3) assessing the effectiveness, structure, administration, and implications for governance of present or proposed public programs, policies, and processes, recommending specific changes;

(4) advising on the relationship of Federal, State, regional, and local governments; increasing public officials', citizens', and scholars' understanding of requirements and opportunities for sound governance and how these can be effectively met; and

(5) demonstrating by the conduct of its affairs a commitment to the highest professional standards of ethics and scholarship.

(Pub. L. 98-257, § 3, Apr. 10, 1984, 98 Stat. 127.)

§ 2304. Service of process

With respect to service of process, the Academy shall comply with the laws of the State or States in which it is incorporated and the State or States in which it carries on its activities in furtherance of its corporate purposes.

(Pub. L. 98-257, § 4, Apr. 10, 1984, 98 Stat. 127.)

§ 2305. Membership

Eligibility for membership in the Academy and the rights and privileges of members shall be as provided in the bylaws of the corporation.

(Pub. L. 98-257, § 5, Apr. 10, 1984, 98 Stat. 127.)

§ 2306. Board of directors

The board of directors of the Academy and the responsibilities thereof shall be as provided in the articles of incorporation of the Academy and in conformity with the laws of the State or States in which it is incorporated.

(Pub. L. 98-257, § 6, Apr. 10, 1984, 98 Stat. 128.)

§ 2307. Officers

The officers of the Academy, and the election of such officers, shall be as is provided in the articles of incorporation of the Academy and in conformity with the laws of the State or States wherein it is incorporated.

(Pub. L. 98-257, § 7, Apr. 10, 1984, 98 Stat. 128.)

§ 2308. Restrictions on corporate powers

(a) Distribution of corporate income or assets

No part of the income or assets of the corporation shall inure to any member, officer, or director of the Academy or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers and members of the Academy or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) Loans

The Academy shall not make any loan to any officer, director, or employee of the corporation.

(c) Political activities

The Academy and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) Issuance of stock; dividends

The Academy shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) Claim of approval or authorization

The Academy shall not claim congressional approval or Federal Government authority for any of its activities, other than by mutual agreement.

(f) Retention of status under State laws

The Academy shall retain and maintain its status as a corporation organized and incorporated under the laws of the District of Columbia.

(Pub. L. 98-257, § 8, Apr. 10, 1984, 98 Stat. 128.)

§ 2309. Liability for acts of officers and agents

The Academy shall be liable for the acts of its officers and agents when acting within the scope of their authority.

(Pub. L. 98-257, § 9, Apr. 10, 1984, 98 Stat. 128.)

§ 2310. Books and records; inspection

The Academy shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the Academy involving any of its members, the board of directors, or any committee having authority under the board of directors. The Academy shall keep at its principal office a record of the names and addresses of all members having the right of [1] vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

(Pub. L. 98-257, § 10, Apr. 10, 1984, 98 Stat. 128.)

§ 2311. Annual report

The Academy shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 1101(61) of this title. The report shall not be printed as a public document.

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[1] So in original. Probably should be "to".

(Pub. L. 98-257, § 12, Apr. 10, 1984, 98 Stat. 129.)

REFERENCES IN TEXT

Section 1101(61) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 98-257, which amended section 1101 of this title to include the National Academy of Public Administration within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

§ 2312. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved to the Congress.

(Pub. L. 98-257, § 13, Apr. 10, 1984, 98 Stat. 129.)

§ 2313. "State" defined

For purposes of this chapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 98-257, § 14, Apr. 10, 1984, 98 Stat. 129.)

§ 2314. Tax-exempt status

The corporation shall maintain its status as an organization exempt from taxation as provided in title 26. If the corporation fails to maintain such status, the charter granted hereby shall expire.

(Pub. L. 98-257, § 15, Apr. 10, 1984, 98 Stat. 129.)

§ 2315. Failure to comply with restrictions or provisions

If the corporation shall fail to comply with any of the restrictions or provisions of this chapter[3] the charter granted hereby shall expire.

(Pub. L. 98-257, § 16, Apr. 10, 1984, 98 Stat. 129.)

§ 2316. Service to United States

The National Academy of Public Administration shall, whenever called upon by Congress, or the Federal Government, investigate, examine, experiment, and report upon any subject of government, the actual expense of such investigations, examinations, and reports to be paid by the Federal Government from appropriations available for such purpose.

(Pub. L. 98-257, § 17, Apr. 10, 1984, 98 Stat. 129.)

CHAPTER 56—AMERICAN GOLD STAR MOTHERS, INC.

Sec.

2401. Recognition as corporation and grant of Federal charter.
2402. Powers of corporation.
2403. Objects and purposes of corporation.
2404. Service of process.
2405. Membership.
2406. Board of directors.
2407. Officers.
2408. Restrictions.
    (a) Distribution of corporate income or assets.
    (b) Loans.
    (c) Issuance of stock; dividends.
    (d) Claim of approval or authorization.
    (e) Retention of status under State laws.
2409. Liability for acts of officers and agents.
2410. Books and records; inspection.
2411. Annual report.
2412. Reservation of right to amend or repeal chapter.
2413. "State" defined.
2414. Tax-exempt status.
2415. Failure to comply with restrictions or provisions.

§ 2401. Recognition as corporation and grant of Federal charter

American Gold Star Mothers, Incorporated, organized and incorporated under the laws of the District of Columbia, is hereby recognized as such and is granted a charter.

(Pub. L. 98-314, § 1, June 12, 1984, 98 Stat. 237.)

§ 2402. Powers of corporation

American Gold Star Mothers, Incorporated (hereinafter referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States which it is incorporated and subject to the laws of such State or States.

(Pub. L. 98-314, § 2, June 12, 1984, 98 Stat. 237.)

§ 2403. Objects and purposes of corporation

The objects and purposes for which the corporation is organized shall be those provided in its articles of incorporation and shall include a continuing commitment, on a national basis, to—

(a) keep alive and develop the spirit that promoted world services;

(b) maintain the ties of fellowship born of that service, and to assist and further all patriotic work;

(c) inculcate a sense of individual obligation to the community, State, and Nation;

(d) assist veterans of World War I, World War II, the Korean Conflict, Vietnam, and other strategic areas and their dependents in the presentation of claims to the Veterans' Administration, and to aid in any way in their power the men and women who served and died or were wounded or incapacitated during hostilities;

(e) perpetuate the memory of those whose lives were sacrificed in our wars;

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[3] So in original. Probably should be followed by a comma.

(f) maintain true allegiance to the United States of America;

(g) inculcate lessons of patriotism and love of country in the communities in which we live;

(h) inspire respect for the Stars and Stripes in the youth of America;

(i) extend needful assistance to all Gold Star Mothers and, when possible, to their descendants; and

(j) to promote peace and good will for the United States and all other Nations.

(Pub. L. 98-314, § 3, June 12, 1984, 98 Stat. 237.)

§ 2404. Service of process

With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

(Pub. L. 98-314, § 4, June 12, 1984, 98 Stat. 238.)

§ 2405. Membership

Eligibility for membership in the corporation and the rights and privileges of members shall, except as provided in this chapter, be as provided in the constitution and bylaws of the corporation, and terms of membership and requirements for holding office within the corporation shall not be discriminatory on the basis of race, color, religion, or national origin.

(Pub. L. 98-314, § 5, June 12, 1984, 98 Stat. 238.)

§ 2406. Board of directors

The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

(Pub. L. 98-314, § 6, June 12, 1984, 98 Stat. 238.)

§ 2407. Officers

The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States wherein it is incorporated.

(Pub. L. 98-314, § 7, June 12, 1984, 98 Stat. 238.)

§ 2408. Restrictions

(a) Distribution of corporate income or assets

No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) Loans

The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) Issuance of stock; dividends

The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(d) Claim of approval or authorization

The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(e) Retention of status under State laws

The corporation shall retain and maintain its status as a corporation organized and incorporated under the laws of the State or States wherein it is incorporated.

(Pub. L. 98-314, § 8, June 12, 1984, 98 Stat. 238.)

§ 2409. Liability for acts of officers and agents

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

(Pub. L. 98-314, § 9, June 12, 1984, 98 Stat. 238.)

§ 2410. Books and records; inspection

The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

(Pub. L. 98-314, § 10, June 12, 1984, 98 Stat. 238.)

§ 2411. Annual report

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 1101(63) of this title. The report shall not be printed as a public document.

(Pub. L. 98-314, § 12, June 12, 1984, 98 Stat. 239.)

REFERENCES IN TEXT

Section 1101(63) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 98-314, which amended section 1101 of this title to include the American Gold Star Mothers, Incorporated, within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

§ 2412. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved to the Congress.

(Pub. L. 98-314, § 13, June 12, 1984, 98 Stat. 239.)

§ 2413. "State" defined

For purposes of this chapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 98-314, § 14, June 12, 1984, 98 Stat. 239.)

§ 2414. Tax-exempt status

The corporation shall maintain its status as an organization exempt from taxation as provided in title 26. If the corporation fails to maintain such status, the charter granted hereby shall expire.

(Pub. L. 98-314, § 15, June 12, 1984, 98 Stat. 239.)

§ 2415. Failure to comply with restrictions or provisions

If the corporation shall fail to comply with any of the restrictions or provisions of this chapter[1] the charter granted hereby shall expire.

(Pub. L. 98-314, § 16, June 12, 1984, 98 Stat. 240.)

CHAPTER 57—POLISH LEGION OF AMERICAN VETERANS, U.S.A.

Sec.

2501. Recognition as corporation and grant of Federal charter.
2502. Powers of corporation.
2503. Objects and purposes of corporation.
2504. Service of process.
2505. Membership.
2506. Board of directors.
2507. Officers.
2508. Restrictions.
    (a) Distribution of corporate income or assets.
    (b) Loans.
    (c) Political activities.
    (d) Issuance of stock; dividends.
    (e) Claim of approval or authorization.
2509. Liability for acts of officers and agents.
2510. Books and records; inspection.
2511. Annual report.
2512. Reservation of right to amend or repeal chapter.
2513. "State" defined.
2514. Tax-exempt status.
2515. Failure to comply with restrictions or provisions.

§ 2501. Recognition as corporation and grant of Federal charter

The Polish Legion of American Veterans, U.S.A., a nonprofit corporation organized under the laws of the State of Illinois, is hereby recognized as such and is granted a charter.

(Pub. L. 98-372, § 1, July 23, 1984, 98 Stat. 1239.)

§ 2502. Powers of corporation

The Polish Legion of American Veterans, U.S.A. (hereinafter referred to as the "corporation"), shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

(Pub. L. 98-372, § 2, July 23, 1984, 98 Stat. 1239.)

§ 2503. Objects and purposes of corporation

The objects and purposes of the corporation are those provided in its articles of incorporation. The corporation shall function as a veterans' and patriotic organization as authorized by the laws of the State or States where it is incorporated.

(Pub. L. 98-372, § 3, July 23, 1984, 98 Stat. 1239.)

§ 2504. Service of process

With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

(Pub. L. 98-372, § 4, July 23, 1984, 98 Stat. 1239.)

§ 2505. Membership

Eligibility for membership in the corporation and the rights and privileges of members shall, except as provided in this chapter, be as provided in the constitution and bylaws of the corporation, and terms of membership and requirements for holding office within the corporation shall not be discriminatory on the basis of race, color, religion, or national origin.

(Pub. L. 98-372, § 5, July 23, 1984, 98 Stat. 1239.)

§ 2506. Board of directors

The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

(Pub. L. 98-372, § 6, July 23, 1984, 98 Stat. 1239.)

§ 2507. Officers

The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation of the corporatio and in conformity with the laws of the State o States wherein it is incorporated.

(Pub. L. 98-372, § 7, July 23, 1984, 98 Stat 1240.)

§ 2508. Restrictions

(a) Distribution of corporate income or assets

No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed t any such person during the life of this charte Nothing in this subsection shall be construed t prevent the payment of reasonable compens tion to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

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[1] So in original. Probably should be followed by a comma.

(b) Loans

The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) Political activities

The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) Issuance of stock; dividends

The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) Claim of approval or authorization

The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(Pub. L. 98-372, § 8, July 23, 1984, 98 Stat. 1240.)

§ 2509. Liability for acts of officers and agents

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

(Pub. L. 98-372, § 9, July 23, 1984, 98 Stat. 1240.)

§ 2510. Books and records; inspection

The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

(Pub. L. 98-372, § 10, July 23, 1984, 98 Stat. 1240.)

§ 2511. Annual report

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 1101(58) of this title. The report shall not be printed as a public document.

(Pub. L. 98-372, § 12, July 23, 1984, 98 Stat. 1240.)

REFERENCES IN TEXT

Section 1101(58) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 98-372, which amended section 1101 of this title to include the Polish Legion of American Veterans, U.S.A. within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

§ 2512. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved to the Congress.

(Pub. L. 98-372, § 13, July 23, 1984, 98 Stat. 1241.)

§ 2513. "State" defined

For purposes of this chapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 98-372, § 14, July 23, 1984, 98 Stat. 1241.)

§ 2514. Tax-exempt status

The corporation shall maintain its status as an organization exempt from taxation as provided in title 26. If the corporation fails to maintain such status, the charter granted hereby shall expire.

(Pub. L. 98-372, § 15, July 23, 1984, 98 Stat. 1241.)

§ 2515. Failure to comply with restrictions or provisions

If the corporation shall fail to comply with any of the restrictions or provisions of this chapter, the charter granted hereby shall expire.

(Pub. L. 98-372, § 16, July 23, 1984, 98 Stat. 1241.)

CHAPTER 58—CATHOLIC WAR VETERANS OF THE UNITED STATES OF AMERICA, INC.

Sec.

2601. Recognition as corporation and grant of Federal charter.
2602. Powers of corporation.
2603. Objects and purposes of corporation.
2604. Service of process.
2605. Membership.
2606. Board of directors.
2607. Officers.
2608. Restrictions.
  (a) Distribution of corporate income or assets.
  (b) Loans.
  (c) Issuance of stock; dividends.
  (d) Claim of approval or authorization.
2609. Liability for acts of officers and agents.
2610. Books and records; inspection.
2611. Annual report.
2612. Reservation of right to amend or repeal chapter.
2613. "State" defined.
2614. Tax-exempt status.
2615. Failure to comply with restrictions or provisions.

§ 2601. Recognition as corporation and grant of Federal charter

The Catholic War Veterans of the United States of America, Incorporated, organized and incorporated under the laws of the State of New York, is hereby recognized as such and is granted a charter.

(Pub. L. 98-382, § 1, Aug. 17, 1984, 98 Stat. 1343.)

§ 2602. Powers of corporation

The Catholic War Veterans of the United States of America, Incorporated, (hereinafter referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

(Pub. L. 98-382, § 2, Aug. 17, 1984, 98 Stat. 1343.)

§ 2603. Objects and purposes of corporation

The objects and purposes of the corporation are those provided in its articles of incorporation and shall include a continuing commitment, on a national basis, to—

(a) preserve, protect, and defend the Constitution of the United States and the laws of the several States;

(b) commemorate the wars, campaigns, and military actions of the United States in order to reflect profound respect, high honor, and great tribute on the glorious dead and the surviving veterans of those wars, campaigns, and actions and to give all Americans a greater understanding of and appreciation for the sacrifices of those who participated in them on behalf of all Americans;

(c) stimulate to the highest degree possible the interest of the entire Nation in the problems of veterans, their widows, and orphans;

(d) cooperate to the fullest extent and in a harmonious manner with all veterans' organizations in common projects designed to serve the interests of all veterans of all wars in which the United States of America has participated;

(e) collate, preserve, and encourage the study of historical episodes, chronicles, mementos, and events pertaining to the wars, campaigns, and military actions of the United States of America;

(f) inculcate an enduring love of country, a deep and abiding sense of patriotism, and a profound commitment to Americanism among all the people of the United States;

(g) encourage, among the youth of our Nation, respect for our national flag, anthem, and for the traditions of America;

(h) preserve the freedoms of all of the people, national peace, prosperity, tranquillity, good will, the permanence of free institutions, and the defense of the United States;

(i) foster the association of veterans of the Catholic faith who have served in the Armed Forces of the United States;

(j) encourage morality in government, labor, management, economic, social, fraternal, and all other phases of American life;

(k) promote the realization that the family is the basic unit of society;

(*l*) increase our love, honor, service to God, and to our fellow man without regard to race, creed, color, or national origin; and

(m) function as a veterans' and patriotic organization as authorized by the laws of the State or States where it is incorporated.

(Pub. L. 98-382, § 3, Aug. 17, 1984, 98 Stat. 1343.)

§ 2604. Service of process

With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

(Pub. L. 98-382, § 4, Aug. 17, 1984, 98 Stat. 1344.)

§ 2605. Membership

Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

(Pub. L. 98-382, § 5, Aug. 17, 1984, 98 Stat. 1344.)

§ 2606. Board of directors

The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

(Pub. L. 98-382, § 6, Aug. 17, 1984, 98 Stat. 1344.)

§ 2607. Officers

The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States wherein it is incorporated.

(Pub. L. 98-382, § 7, Aug. 17, 1984, 98 Stat. 1344.)

§ 2608. Restrictions

(a) Distribution of corporate income or assets

No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) Loans

The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) Issuance of stock; dividends

The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(d) Claim of approval or authorization

The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(Pub. L. 98-382, § 8, Aug. 17, 1984, 98 Stat. 1344.)

§ 2609. Liability for acts of officers and agents

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

(Pub. L. 98-382, § 9, Aug. 17, 1984, 98 Stat. 1345.)

§ 2610. Books and records; inspection

The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right of [1] vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

(Pub. L. 98-382, § 10, Aug. 17, 1984, 98 Stat. 1345.)

§ 2611. Annual report

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 1101(60) of this title. The report shall not be printed as a public document.

(Pub. L. 98-382, § 12, Aug. 17, 1984, 98 Stat. 1345.)

REFERENCES IN TEXT

Section 1101(60) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 98-382, which amended section 1101 of this title to include the Catholic War Veterans of the United States of America, Incorporated, within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

§ 2612. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved to the Congress.

(Pub. L. 98-382, § 13, Aug. 17, 1984, 98 Stat. 1345.)

§ 2613. "State" defined

For purposes of this chapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 98-382, § 14, Aug. 17, 1984, 98 Stat. 1345.)

§ 2614. Tax-exempt status

The corporation shall maintain its status as an organization exempt from taxation as provided in title 26. If the corporation fails to maintain such status, the charter granted hereby shall expire.

(Pub. L. 98-382, § 15, Aug. 17, 1984, 98 Stat. 1345.)

§ 2615. Failure to comply with restrictions or provisions

If the corporation shall fail to comply with any of the restrictions or provisions of this chapter [2] the charter granted hereby shall expire.

(Pub. L. 98-382, § 16, Aug. 17, 1984, 98 Stat. 1346.)

CHAPTER 59—JEWISH WAR VETERANS OF THE UNITED STATES OF AMERICA, INC.

Sec.
2701. Recognition as corporation and grant of Federal charter.
2702. Powers of corporation.
2703. Objects and purposes of corporation.
2704. Service of process.
2705. Membership.
2706. Board of directors.
2707. Officers.
2708. Restrictions.
  (a) Distribution of corporate income or assets.
  (b) Loans.
  (c) Issuance of stock; dividends.
  (d) Claim of approval or authorization.
2709. Liability for acts of officers and agents.
2710. Books and records; inspection.
2711. Annual report.
2712. Reservation of right to amend or repeal chapter.
2713. "State" defined.
2714. Tax-exempt status.
2715. Failure to comply with restrictions or provisions.

§ 2701. Recognition as corporation and grant of Federal charter

(a) The Jewish War Veterans of the United States of America, Incorporated, organized and incorporated as a nonprofit entity under the laws of the State of New York, is hereby recognized as such and is granted a Federal charter.

(b) The corporation shall retain and maintain its status as a corporation organized and incorporated under the laws of the State of New York.

(Pub. L. 98-391, § 1, Aug. 21, 1984, 98 Stat. 1358.)

§ 2702. Powers of corporation

The Jewish War Veterans of the United States of America, Incorporated (hereinafter referred to as the "corporation"), shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

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[1] So in original. Probably should be "to".

[2] So in original. Probably should be followed by a comma.

(Pub. L. 98-391, § 2, Aug. 21, 1984, 98 Stat. 1358.)

§ 2703. Objects and purposes of corporation

The objects and purposes of the corporation are those provided in its articles of incorporation and shall include a continuing commitment, on a national basis, to—

(1) maintain true allegiance to the United States of America;

(2) foster and perpetuate true Americanism;

(3) combat whatever tends to impair the efficiency and permanency of our free institutions;

(4) uphold the fair name of the Jew and fight his battles wherever unjustly assailed;

(5) encourage the doctrine of universal liberty, equal rights and full justice to all men;

(6) combat the powers of bigotry and darkness wherever originating and whatever the target;

(7) preserve the spirit of comradeship by mutual helpfulness to comrades and their families;

(8) cooperate with and support existing educational institutions and establish educational institutions, and foster the education of ex-servicemen and ex-servicewomen and members of the corporation in the ideals and principles of Americanism;

(9) instill love of country and flag and to promote sound minds and bodies in members of the corporation and their youth; and

(10) preserve the memories and records of patriotic service performed by the men and women of the Jewish faith and to honor their memory and shield from neglect the graves of our heroic dead.

(Pub. L. 98-391, § 3, Aug. 21, 1984, 98 Stat. 1358.)

§ 2704. Service of process

With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

(Pub. L. 98-391, § 4, Aug. 21, 1984, 98 Stat. 1359.)

§ 2705. Membership

Eligibility for membership in the corporation and the rights and privileges of members shall, except as provided in this chapter, be as provided in the bylaws and constitution of the corporation.

(Pub. L. 98-391, § 5, Aug. 21, 1984, 98 Stat. 1359.)

§ 2706. Board of directors

The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

(Pub. L. 98-391, § 6, Aug. 21, 1984, 98 Stat. 1359.)

§ 2707. Officers

The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States wherein it is incorporated.

(Pub. L. 98-391, § 7, Aug. 21, 1984, 98 Stat. 1359.)

§ 2708. Restrictions

(a) Distribution of corporate income or assets

No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) Loans

The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) Issuance of stock; dividends

The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(d) Claim of approval or authorization

The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(Pub. L. 98-391, § 8, Aug. 21, 1984, 98 Stat. 1359.)

§ 2709. Liability for acts of officers and agents

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

(Pub. L. 98-391, § 9, Aug. 21, 1984, 98 Stat 1359.)

§ 2710. Books and records; inspection

The corporation shall keep correct and com plete books and records of accounts and shal keep minutes of any proceeding of the corpora tion involving any of its members, the board o directors, or any committee having authorit under the board of directors. The corporatio shall keep at its principal office a record of th names and addresses of all members having th right to vote. All books and records of such co poration may be inspected by any membe having the right to vote, or by any agent or a torney of such member, for any proper pu pose, at any reasonable time. Nothing in th section shall be construed to contravene a applicable State law.

(Pub. L. 98-391, § 10, Aug. 21, 1984, 98 Stat. 1360.)

§ 2711. Annual report

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 1101(62) of this title. The report shall not be printed as a public document.

(Pub. L. 98-391, § 12, Aug. 21, 1984, 98 Stat. 1360.)

REFERENCES IN TEXT

Section 1101(62) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 98-391, which amended section 1101 of this title to include the Jewish War Veterans of the United States of America within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

§ 2712. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved to the Congress.

(Pub. L. 98-391, § 13, Aug. 21, 1984, 98 Stat. 1360.)

§ 2713. "State" defined

For purposes of this chapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 98-391, § 14, Aug. 21, 1984, 98 Stat. 1360.)

§ 2714. Tax-exempt status

The corporation shall maintain its status as an organization exempt from taxation as provided in title 26. If the corporation fails to maintain such status, the charter granted hereby shall expire.

(Pub. L. 98-391, § 15, Aug. 21, 1984, 98 Stat. 1361.)

§ 2715. Failure to comply with restrictions or provisions

If the corporation shall fail to comply with any of the restrictions or provisions of this chapter, the charter granted hereby shall expire.

(Pub. L. 98-391, § 16, Aug. 21, 1984, 98 Stat. 1361.)

CHAPTER 60—NAVY WIVES CLUBS OF AMERICA

Sec.
2801. Recognition as corporation and grant of Federal charter.
2802. Powers of corporation.
2803. Objects and purposes of corporation.
2804. Service of process.
2805. Membership.
2806. Board of directors.
2807. Officers.
2808. Restrictions.
  (a) Distribution of corporate income or assets.
  (b) Loans.
  (c) Political activities.
  (d) Issuance of stock; dividends.
  (e) Claim of approval or authorization.
  (f) Retention of status under State laws.
2809. Liability for acts of officers and agents.
2810. Books and records; inspection.
2811. Annual report.
2812. Reservation of right to amend or repeal chapter.
2813. "State" defined.
2814. Tax-exempt status.
2815. Failure to comply with restrictions or provisions.

CROSS REFERENCES

Navy Club of the United States of America, see section 140 et seq. of this title.

§ 2801. Recognition as corporation and grant of Federal charter

Navy Wives Clubs of America, organized and incorporated under the laws of the State of California, is hereby recognized as such and is granted a charter.

(Pub. L. 98-520, § 1, Oct. 19, 1984, 98 Stat. 2428.)

§ 2802. Powers of corporation

Navy Wives Clubs of America (hereinafter referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States which it is incorporated and subject to the laws of such State or States.

(Pub. L. 98-520, § 2, Oct. 19, 1984, 98 Stat. 2428.)

§ 2803. Objects and purposes of corporation

The objects and purposes for which the corporation is organized shall be those provided in its articles of incorporation and also shall be—

(1) to support the Constitution of the United States;

(2) to promote a friendly relationship between the wives of enlisted men who are serving in the active United States Navy, United States Marine Corps, or the United States Coast Guard or who are serving in the Active Reserves thereof; and

(3) to perform such charitable activities as provided by the constitution or bylaws of the corporation.

(Pub. L. 98-520, § 3, Oct. 19, 1984, 98 Stat. 2428.)

§ 2804. Service of process

With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

(Pub. L. 98-520, § 4, Oct. 19, 1984, 98 Stat. 2428.)

§ 2805. Membership

Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

(Pub. L. 98-520, § 5, Oct. 19, 1984, 98 Stat. 2428.)

§ 2806. Board of directors

The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

(Pub. L. 98-520, § 6, Oct. 19, 1984, 98 Stat. 2428.)

§ 2807. Officers

The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States wherein it is incorporated.

(Pub. L. 98-520, § 7, Oct. 19, 1984, 98 Stat. 2429.)

§ 2808. Restrictions

(a) Distribution of corporate income or assets

No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) Loans

The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) Political activities

The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) Issuance of stock; dividends

The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) Claim of approval or authorization

The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(f) Retention of status under State laws

The corporation shall retain and maintain its status as a corporation organized and incorporated under the laws of the State or States wherein it is incorporated.

(Pub. L. 98-520, § 8, Oct. 19, 1984, 98 Stat. 2429.)

§ 2809. Liability for acts of officers and agents

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

(Pub. L. 98-520, § 9, Oct. 19, 1984, 98 Stat. 2429.)

§ 2810. Books and records; inspection

The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

(Pub. L. 98-520, § 10, Oct. 19, 1984, 98 Stat. 2429.)

§ 2811. Annual report

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 1101(67) of this title. The report shall not be printed as a public document.

(Pub. L. 98-520, § 12, Oct. 19, 1984, 98 Stat. 2430.)

REFERENCES IN TEXT

Section 1101(67) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 98-520, which amended section 1101 of this title to include the Navy Wives Clubs of America within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

§ 2812. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved to the Congress.

(Pub. L. 98-520, § 13, Oct. 19, 1984, 98 Stat. 2430.)

§ 2813. "State" defined

For purposes of this chapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 98-520, § 14, Oct. 19, 1984, 98 Stat. 2430.)

§ 2814. Tax-exempt status

The corporation shall maintain its status as an organization exempt from taxation as provided in title 26. If the corporation fails to maintain such status, the charter granted hereby shall expire.

(Pub. L. 98-520, § 15, Oct. 19, 1984, 98 Stat. 2430.)

§ 2815. Failure to comply with restrictions or provisions

If the corporation shall fail to comply with any of the restrictions or provisions of this chapter[1] the charter granted hereby shall expire.

(Pub. L. 98-520, § 16, Oct. 19, 1984, 98 Stat. 2430.)

CHAPTER 61—NATIONAL SOCIETY, DAUGHTERS OF THE AMERICAN COLONISTS

Sec.
2901. Recognition as corporation and grant of Federal charter.
2902. Powers of corporation.
2903. Objects and purposes of corporation.
2904. Service of process.
2905. Membership.
2906. Board of directors.
2907. Officers.
2908. Restrictions.
  (a) Distribution of corporate assets or income.
  (b) Loans.
  (c) Political activities.
  (d) Issuance of stock; dividends.
  (e) Claim of approval or authorization.
  (f) Retention of status under State laws.
2909. Exclusive right to name, emblems, seals, and badges.
2910. Liability for acts of officers and agents.
2911. Books and records; inspection.
2912. Annual report.
2913. Reservation of right to amend or repeal chapter.
2914. "State" defined.
2915. Tax-exempt status.
2916. Failure to comply with restrictions or provisions.

§ 2901. Recognition as corporation and grant of Federal charter

National Society, Daughters of the American Colonists, organized and incorporated under the laws of the District of Columbia in 1921, is hereby recognized as such and is granted a charter.

(Pub. L. 98-561, § 1, Oct. 30, 1984, 98 Stat. 2910.)

§ 2902. Powers of corporation

National Society, Daughters of the American Colonists (hereinafter referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

(Pub. L. 98-561, § 2, Oct. 30, 1984, 98 Stat. 2910.)

§ 2903. Objects and purposes of corporation

The objects and purposes for which the corporation is organized shall be those provided in its articles of incorporation and shall include a continuing commitment, on a national basis, to—

(1) conduct research with respect to the history and deeds of the American colonists, and record and publish the results of such research;

(2) publish the memoirs of American colonists;

(3) erect memorials to commemorate the history and deeds of the American colonists;

(4) promote respect and admiration for the institutions, laws, and flag of the United States;

(5) engage in mutual improvement and educational activities; and

(6) establish scholarships to assist needy and deserving students and to promote the improvement of educational institutions, engage in volunteer service and make contributions to veterans hospitals, and perform such other charitable activities including the national presidents' projects as may be provided by the articles of incorporation or bylaws of the society.

(Pub. L. 98-561, § 3, Oct. 30, 1984, 98 Stat. 2910.)

§ 2904. Service of process

With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

(Pub. L. 98-561, § 4, Oct. 30, 1984, 98 Stat. 2910.)

§ 2905. Membership

Eligibility for membership in the corporation and the rights and privileges of members shall, except as provided in this chapter, be as provided in the constitution and bylaws of the corporation, and terms of membership and requirements for holding office within the corporation shall not be discriminatory on the basis of race, color, religion, or national origin.

(Pub. L. 98-561, § 5, Oct. 30, 1984, 98 Stat. 2911.)

§ 2906. Board of directors

The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation or bylaws of the corporation and in conformity with the laws of the State or States in which it is incorporated.

(Pub. L. 98-561, § 6, Oct. 30, 1984, 98 Stat. 2911.)

§ 2907. Officers

The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation or bylaws of the corporation and in conformity with the laws of the State or States wherein it is incorporated.

(Pub. L. 98-561, § 7, Oct. 30, 1984, 98 Stat. 2911.)

§ 2908. Restrictions

(a) Distribution of corporate assets or income

No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

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[1] So in original. Probably should be followed by a comma.

(b) Loans

The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) Political activities

The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) Issuance of stock; dividends

The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) Claim of approval or authorization

The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(f) Retention of status under State laws

The corporation shall retain and maintain its status as a corporation organized and incorporated under the laws of the State or States wherein it is incorporated.

(Pub. L. 98-561, § 8, Oct. 30, 1984, 98 Stat. 2911.)

§ 2909. Exclusive right to name, emblems, seals, and badges

Subject to established or vested rights, the corporation shall have the sole and exclusive right to have and to use, in carrying out its purposes, the name National Society, Daughters of the American Colonists and any emblem, seal, or badge adopted or used by the corporation.

(Pub. L. 98-561, § 9, Oct. 30, 1984, 98 Stat. 2911.)

§ 2910. Liability for acts of officers and agents

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

(Pub. L. 98-561, § 10, Oct. 30, 1984, 98 Stat. 2911.)

§ 2911. Books and records; inspection

The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

(Pub. L. 98-561, § 11, Oct. 30, 1984, 98 Stat. 2912.)

§ 2912. Annual report

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 1101(66) of this title. The report shall not be printed as a public document.

(Pub. L. 98-561, § 13, Oct. 30, 1984, 98 Stat. 2912.)

References in Text

Section 1101(66) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 98-561, which amended section 1101 of this title to include the National Society, Daughters of the American Colonists, within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

§ 2913. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved to the Congress.

(Pub. L. 98-561, § 14, Oct. 30, 1984, 98 Stat. 2912.)

§ 2914. "State" defined

For purposes of this chapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 98-561, § 15, Oct. 30, 1984, 98 Stat. 2912.)

§ 2915. Tax-exempt status

The corporation shall maintain its status as an organization exempt from taxation as provided in title 26. If the corporation fails to maintain such status, the charter granted hereby shall expire.

(Pub. L. 98-561, § 16, Oct. 30, 1984, 98 Stat. 2913.)

§ 2916. Failure to comply with restrictions or provisions

If the corporation shall fail to comply with any of the restrictions or provisions of this chapter, the charter granted hereby shall expire.

(Pub. L. 98-561, § 17, Oct. 30, 1984, 98 Stat. 2913.)

CHAPTER 62—369TH VETERANS' ASSOCIATION

Sec.
3001. Recognition as corporation and grant of Federal charter.
3002. Powers of corporation.
3003. Objects and purposes of corporation.
3004. Service of process.
3005. Membership.
3006. Board of directors.
3007. Officers.
3008. Restrictions.
  (a) Distribution of corporate income or assets.
  (b) Loans.
  (c) Political activities.
  (d) Issuance of stock; dividends.
  (e) Claim of approval or authorization.
3009. Liability for acts of officers and agents.

Sec.
3010. Books and records; inspection.
3011. Annual report.
3012. Reservation of right to amend or repeal chapter.
3013. "State" defined.
3014. Tax-exempt status.
3015. Exclusive right to name, emblems, seals, and badges.
3016. Failure to comply with restrictions or provisions.

§ 3001. Recognition as corporation and grant of Federal charter

The 369th Veterans' Association, a nonprofit corporation organized under the laws of the State of New York, is hereby recognized as such and is granted a charter.

(Pub. L. 98-565, § 1, Oct. 30, 1984, 98 Stat. 2920.)

§ 3002. Powers of corporation

369th Veterans' Association (hereinafter referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

(Pub. L. 98-565, § 2, Oct. 30, 1984, 98 Stat. 2920.)

§ 3003. Objects and purposes of corporation

The objects and purposes of the corporation are those provided in its articles of incorporation and shall include—

(1) to promote the principles of friendship and good will among its members;

(2) to engage in all forms of social and civic endeavors that will tend to enhance the welfare of its members, and to inculcate in them the true principles of good citizenship; and

(3) to memorialize, individually and collectively, the patriotic services of its members in the several units of the 369th antiaircraft artillery group and other units in the Armed Forces of the United States.

(Pub. L. 98-565, § 3, Oct. 30, 1984, 98 Stat. 2920.)

§ 3004. Service of process

With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

(Pub. L. 98-565, § 4, Oct. 30, 1984, 98 Stat. 2920.)

§ 3005. Membership

Eligibility for membership in the corporation and the rights and privileges of members shall, except as provided in this chapter, be as provided in the constitution and bylaws of the corporation, and terms of membership and requirements for holding office within the corporation shall not be discriminatory on the basis of race, color, religion, or national origin.

(Pub. L. 98-565, § 5, Oct. 30, 1984, 98 Stat. 2920.)

§ 3006. Board of directors

The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

(Pub. L. 98-565, § 6, Oct. 30, 1984, 98 Stat. 2921.)

§ 3007. Officers

The officers of the corporation, and the election of such officers shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States wherein it is incorporated.

(Pub. L. 98-565, § 7, Oct. 30, 1984, 98 Stat. 2921.)

§ 3008. Restrictions

(a) Distribution of corporate income or assets

No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) Loans

The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) Political activities

The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) Issuance of stock; dividends

The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) Claim of approval or authorization

The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(Pub. L. 98-565, § 8, Oct. 30, 1984, 98 Stat. 2921.)

§ 3009. Liability for acts of officers and agents

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

(Pub. L. 98-565, § 9, Oct. 30, 1984, 98 Stat. 2921.)

§ 3010. Books and records; inspection

The corporation shall keep correct and complete books and records of accounts and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agency or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

(Pub. L. 98-565, § 10, Oct. 30, 1984, 98 Stat. 2921.)

§ 3011. Annual report

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 1101(65) of this title. The report shall not be printed as a public document.

(Pub. L. 98-565, § 12, Oct. 30, 1984, 98 Stat. 2922.)

References in Text

Section 1101(65) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 98-565, which amended section 1101 of this title to include the 369th Veterans Association within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

§ 3012. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved to the Congress.

(Pub. L. 98-565, § 13, Oct. 30, 1984, 98 Stat. 2922.)

§ 3013. "State" defined

For purposes of this chapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 98-565, § 14, Oct. 30, 1984, 98 Stat. 2922.)

§ 3014. Tax-exempt status

The corporation shall maintain its status as an organization exempt from taxation as provided in title 26. If the corporation fails to maintain such status, the charter granted hereby shall expire.

(Pub. L. 98-565, § 15, Oct. 30, 1984, 98 Stat. 2922.)

§ 3015. Exclusive right to name, emblems, seals, and badges

The corporation shall have the sole and exclusive right to use the name "369th Veterans' Association", and such seals, emblems, and badges as the corporation may lawfully adopt. Nothing in this section shall be construed to interfere or conflict with established or vested rights.

(Pub. L. 98-565, § 16, Oct. 30, 1984, 98 Stat. 2922.)

§ 3016. Failure to comply with restrictions or provisions

If the corporation shall fail to comply with any of the restrictions or provisions of this chapter[1] the charter granted hereby shall expire.

(Pub. L. 98-565, § 17, Oct. 30, 1984, 98 Stat 2922.)

CHAPTER 63—WOMEN'S ARMY CORPS VETERANS' ASSOCIATION

Sec.
3101. Recognition as corporation and grant of Federal charter.
3102. Powers of corporation.
3103. Objects and purposes of corporation.
3104. Service of process.
3105. Membership.
3106. Board of directors.
3107. Officers.
3108. Restrictions.
  (a) Distribution of corporate income o assets.
  (b) Loans.
  (c) Political activities.
  (d) Issuance of stock; dividends.
  (e) Claim of approval or authorization.
3109. Liability for acts of officers and agents.
3110. Books and records; inspection.
3111. Annual report.
3112. Reservation of right to amend or repe chapter.
3113. "State" defined.
3114. Tax-exempt status.
3115. Failure to comply with restrictions or pro sions.

§ 3101. Recognition as corporation and grant of Fe eral charter

The Women's Army Corps Veterans' Associ tion, a nonprofit corporation organized und the laws of the District of Columbia, is reco nized as such and is granted a Federal chart

(Pub. L. 98-584, § 1, Oct. 30, 1984, 98 Stat. 309

§ 3102. Powers of corporation

The Women's Army Corp Veterans' Assoc tion (hereinafter in this chapter referred to the "corporation"), shall have only th powers granted to it through its bylaws and ticles of incorporation filed in the States which it is incorporated, and subject to the la of such States.

(Pub. L. 98-584, § 2, Oct. 30, 1984, 98 Stat. 309

§ 3103. Objects and purposes of corporation

The objects and purposes of the corporati are those provided in its articles of incorpo tion and shall include a continuing comm ment on a national basis to—

(1) promote the general welfare of all vet ans, especially women veterans, who h served or are serving in the United Sta Army, the Army Reserve, and the Army tional Guard;

(2) recognize outstanding women in coll ROTC units throughout the United Sta and

(3) provide services and support to pati in Veterans' Administration Hospi throughout the United States.

(Pub. L. 98-584, § 3, Oct. 30, 1984, 98 Stat. 30

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[1] So in original. Probably should be followed by a comma.

§ 3104. Service of process

With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and in which it carries on activities in furtherance of its corporate purposes.

(Pub. L. 98-584, § 4, Oct. 30, 1984, 98 Stat. 3097.)

§ 3105. Membership

Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the constitution and bylaws of the corporation.

(Pub. L. 98-584, § 5, Oct. 30, 1984, 98 Stat. 3097.)

§ 3106. Board of directors

The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the States in which it is incorporated.

(Pub. L. 98-584, § 6, Oct. 30, 1984, 98 Stat. 3097.)

§ 3107. Officers

The officers of the corporation and the election of such officers shall be as provided in the articles of incorporation of the corporation and shall be in conformity with the laws of the States in which it is incorporated.

(Pub. L. 98-584, § 7, Oct. 30, 1984, 98 Stat. 3098.)

§ 3108. Restrictions

(a) Distribution of corporate income or assets

No part of the income or assets of the corporation may inure to any member, officer, or director of the corporation or be distributed to any such individual during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual and necessary expenses in amounts approved by the board of directors.

(b) Loans

The corporation may not make any loan to any officer, director, or employee of the corporation.

(c) Political activities

Neither the corporation nor any officer or director thereof may contribute to, support, or otherwise participate in any political activity or attempt in any manner to influence legislation.

(d) Issuance of stock; dividends

The corporation shall have no power to issue any shares of stock or to declare or pay any dividends.

(e) Claim of approval or authorization

The corporation shall not claim the approval or authorization of the Federal Government for any of its activities.

(Pub. L. 98-584, § 8, Oct. 30, 1984, 98 Stat. 3098.)

§ 3109. Liability for acts of officers and agents

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

(Pub. L. 98-584, § 9, Oct. 30, 1984, 98 Stat. 3098.)

§ 3110. Books and records; inspection

The corporation shall keep correct and complete books and records of accounts and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote in any proceeding of the corporation. All books and records of such corporation may be inspected by any member having the right to vote in any corporation proceeding, or by any agent or attorney of such member, for any proper purpose at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

(Pub. L. 98-584, § 10, Oct. 30, 1984, 98 Stat. 3098.)

§ 3111. Annual report

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as the report of the audit of the corporation required by section 1102 of this title. The report shall not be printed as a public document.

(Pub. L. 98-584, § 12, Oct. 30, 1984, 98 Stat. 3099.)

§ 3112. Reservation of right to amend or repeal chapter

The right to amend or repeal this chapter is expressly reserved to the Congress.

(Pub. L. 98-584, § 13, Oct. 30, 1984, 98 Stat. 3099.)

§ 3113. "State" defined

For purposes of this chapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

(Pub. L. 98-584, § 14, Oct. 30, 1984, 98 Stat. 3099.)

§ 3114. Tax-exempt status

The corporation shall maintain its status as an organization exempt from taxation as provided in title 26. If the corporation fails to maintain such status, the charter granted by this chapter shall expire.

(Pub. L. 98-584, § 15, Oct. 30, 1984, 98 Stat. 3099.)

§ 3115. Failure to comply with restrictions or provisions

If the corporation fails to comply with any of the restrictions or provisions of this chapter, the charter granted by this chapter shall expire.

(Pub. L. 98-584, § 16, Oct. 30, 1984, 98 Stat. 3099.)

CHAPTER 64—AMERICAN CHEMICAL SOCIETY

Sec.
3201. Corporation created.
3202. Objects of corporation.
3203. Powers of corporation.
3204. Cooperation with military; title to inventions and discoveries.
3205. Acceptance of gifts.
3206. Omitted.
3207. Rights of creditors.
3208. Annual report.
3209. Reservation of right to amend or repeal chapter.

§ 3201. Corporation created

That the persons following: Robert T. Baldwin, Edward Bartow, Erle M. Billings, E. K. Bolton, Willard H. Dow, Gustavus J. Esselen, Arthur J. Hill, Townes R. Leigh, Thomas Midgely, Junior, Charles L. Parsons, R. E. Swain, E. R. Weidlein, Frank C. Whitmore, H. H. Willard, and R. E. Wilson, being persons who are now directors of the American Chemical Society, a corporation existing under the laws of the State of New York, their associates and successors duly chosen, and such other persons as now are or may hereafter be associated with them as officers or members of said American Chemical Society, are hereby incorporated and constituted and declared to be a body corporate by the name of American Chemical Society.

(Aug. 25, 1937, ch. 762, § 1, 50 Stat. 798.)

Effective Date

Section 10 of act Aug. 25, 1937, provided: "That this Act [enacting this chapter] shall date from the 1st day of January 1938. Approved, August 25, 1937."

§ 3202. Objects of corporation

That the objects of the incorporation shall be to encourage in the broadest and most liberal manner the advancement of chemistry in all its branches; the promotion of research in chemical science and industry; the improvement of the qualifications and usefulness of chemists through high standards of professional ethics, education, and attainments; the increase and diffusion of chemical knowledge; and by its meetings, professional contacts, reports, papers, discussions, and publications, to promote scientific interests and inquiry, thereby fostering public welfare and education, aiding the development of our country's industries, and adding to the material prosperity and happiness of our people.

(Aug. 25, 1937, ch. 762, § 2, 50 Stat. 798.)

§ 3203. Powers of corporation

That the American Chemical Society shall have power to make its own organization, including its constitution, bylaws, rules, and regulations; to fill all vacancies created by death, resignation, or otherwise; to provide for the election of members, their division into classes, and all other matters needful and useful to promote the objects of the society. It shall hold an annual meeting at such place in the United States as may from time to time be designated.

(Aug. 25, 1937, ch. 762, § 3, 50 Stat. 799.)

§ 3204. Cooperation with military; title to inventions and discoveries

That the American Chemical Society shall, whenever called upon by the Army, Air Force, or Navy Department, investigate, examine, experiment, and report upon any subject in pure or applied chemistry connected with the national defense, the actual expense of such investigations, examinations, experiments, and reports to be paid from appropriations which may have been made for that purpose by Congress, but the society shall receive no compensation whatever for any services to the Government of the United States: *Provided*, That the title to any and all inventions and discoveries made in the course of such investigations, examinations, and experiments that, in the opinion of the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of Army, involve the national defense, shall vest in the Government of the United States, and the Government of the United States shall have unlimited license under all other inventions and discoveries.

(Aug. 25, 1937, ch. 762, § 4, 50 Stat. 799.)

Change of Name

The Department and Secretary of the Air Force was inserted under the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, 502. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947 were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956 enacted "Title 10, Armed Forces", which in sections 3010 to 3013 and 8010 to 8013 continued the Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

§ 3205. Acceptance of gifts

That the American Chemical Society be, and the same is hereby, authorized and empowered to receive, by devise, bequest, donation, or otherwise, either real or personal property and to hold the same absolutely or in trust, and to invest, reinvest, and manage the same and to apply said property and the income arising therefrom to the objects of its creation.

(Aug. 25, 1937, ch. 762, § 5, 50 Stat. 799.)

§ 3206. Omitted

Codification

Section, act Aug. 25, 1937, ch. 762, § 6, 50 Stat. 799, related to the procedure for the completion of the organization of the corporation.

§ 3207. Rights of creditors

That the rights of the creditors of the said existing New York corporation known as the American Chemical Society shall not in any manner be impaired by the passage of this Act, or the transfer of the property hereinbefore mentioned, nor shall any liability or obligation for the payment of any sums due or to become due, or any claim or demand, in any manner or for any cause existing against the said New York corporation, be released or impaired; but such corporation hereby incorporated is declared to succeed to the obligations and liabilities and to be held liable to pay and discharge all of the debts, liabilities, and contracts of the said New York corporation so existing to the same effect as if such new corporation had itself incurred the obligation or liability to pay such debt or damages, and no such action or proceeding before any court or tribunal shall be deemed to have abated or been discontinued by reason of the passage of this chapter.

(Aug. 25, 1937, ch. 762, § 7, 50 Stat. 799.)

§ 3208. Annual report

That the corporation shall, on or before the 1st day of December in each year, transmit to Congress a report of its proceedings and activities for the preceding calendar year, including the full and complete statement of its receipts and expenditures. Such reports shall not be printed as public documents.

(Aug. 25, 1937, ch. 762, § 8, 50 Stat. 800.)

§ 3209. Reservation of right to amend or repeal chapter

That the right to alter, amend, or repeal this chapter is hereby expressly reserved.

(Aug. 25, 1937, ch. 762, § 9, 50 Stat. 800.)

CHAPTER 65—THE AMERICAN NATIONAL THEATER AND ACADEMY

Sec.
3301. Corporation created.
3302. Nonprofit and without capital stock; purposes of corporation.
3303. Powers of corporation.
3304. Nonpolitical nature of corporation.
3305. Exclusive right to name.
3306. Headquarters; place of holding meetings.
3307. Acquisition of property by devise, bequest, donation, or otherwise.
3308. Annual report.
3309. Service of process; local authorized agents.
3310. Reservation of right to amend or repeal chapter.

§ 3301. Corporation created

That Leopold Stokowski, of Philadelphia, Pennsylvania; Evelyn Price (Mrs. Eli Kirk Price), of Philadelphia, Pennsylvania; George W. Norris, of Philadelphia, Pennsylvania; Samuel S. Fleischer, of Philadelphia, Pennsylvania; Amory Hare Hutchinson, of Philadelphia, Pennsylvania; Ellen D. Cleveland (Mrs. Richard F. Cleveland), of Baltimore, Maryland; Otto T. Mallory, of Philadelphia, Pennsylvania; Roland S. Morris, of Philadelphia, Pennsylvania; Mrs. George H. Lorimer, of Philadelphia, Pennsylvania; Hugh Hampton Young, of Baltimore, Maryland; Richard F. Cleveland, of Baltimore, Maryland; J. Howard Reber, of Philadelphia, Pennsylvania; Mary Stewart French, of Philadelphia, Pennsylvania; Clara R. Mason, of Philadelphia, Pennsylvania; Katharine Dexter McCormick (Mrs. Stanley McCormick), of Chicago, Illinois; Evangeline Stokowski (Mrs. Leopold Stokowski), of New York, New York; Elsie Jenkins Symington (Mrs. Donald Symington), of Baltimore, Maryland; B. Howell Griswold, of Baltimore, Maryland; Ann Morgan, of New York, New York; John Hay Whitney, of New York, New York; Otto H. Kahn, of New York, New York; Harriet Barnes Pratt (Mrs. Harold I. Pratt), of New York, New York; Mrs. W. Murray Crane, of New York, New York; A. Conger Goodyear, of New York, New York; Alice Garrett (Mrs. John W. Garrett), of Baltimore, Maryland; John W. Garrett, of Baltimore, Maryland; Joy Montgomery Higgins, of New York, New York; Arthur Woods, of New York, New York; Helen Woods (Mrs. Arthur Woods), of New York, New York; C. Lawton Campbell, of New York, New York; John H. Finley, of New York, New York; Cass Canfield, of New York, New York; Katharine E. Canfield (Mrs. Cass Canfield), of New York, New York; William Rhinelander Stewart, of New York, New York; Dorothea Blagden (Mrs. Linzee Blagden), of New York, New York; John W. Davis, of New York, New York; Francis Anita Crane, of New York, New York; Frank L. Polk, of New York, New York; Edward M. M. Warburg, of New York, New York; William Green, of Washington, District of Columbia; Mary Chichester du Pont (Mrs. Felix du Point), of Wilmington, Delaware; Betty Hawley, of New York, New York; Isabelle Anderson (Mrs. Larz Anderson), of Washington, District of Columbia; Mabel Boardman, of Washington, District of Columbia; Huibertje Lansing Pryn Hamlin (Mrs. Charles Hamlin), of Washington, District of Columbia; their associates and successors, duly chosen, are hereby incorporated, constituted, and declared to be a body corporate. The name of this corporation shall be "The American National Theater and Academy."

(July 5, 1935, ch. 373, § 1, 49 Stat. 457.)

§ 3302. Nonprofit and without capital stock; purposes of corporation

The corporation shall be nonprofit and without capital stock. Its purposes shall embrace:

(a) The presentation of theatrical productions of the highest type;

(b) The stimulation of public interest in the drama as an art belonging both to the theater and to literature and thereby to be enjoyed both on the stage and in the study;

(c) The advancement of interest in the drama throughout the United States of America by furthering in the production of the best plays, interpreted by the best actors at a minimum cost;

(d) The further development of the study of drama of the present and past in our universities, colleges, schools, and elsewhere;

(e) The sponsoring, encouraging, and developing of the art and technique of the theater through a school within the National Academy.

(July 5, 1935, ch. 373, § 2, 49 Stat. 458.)

§ 3303. Powers of corporation

That the corporation created by this chapter shall have the following powers:

To have perpetual succession with power to sue and to be sued in the courts of law and equity; to receive, hold, own, use, mortgage, and dispose of such real estate and personal property as shall be necessary for its corporate purposes; to adopt a corporate seal and alter the same at pleasure; to adopt a constitution, bylaws, and regulations to carry out its purposes not inconsistent with the laws of the United States or any States; to establish and maintain offices and buildings for the conduct of its business; to establish State and Territorial organizations and local branches; and generally to do all such acts and things as may be necessary and proper in carrying into effect the purposes of the corporation.

(July 5, 1935, ch. 373, § 3, 49 Stat. 458.)

§ 3304. Nonpolitical nature of corporation

That the organization shall be nonpolitical, nonsectarian, as an organization shall not promote the candidacy of any persons seeking public office. There shall be no honorary members.

(July 5, 1935, ch. 373, § 4, 49 Stat. 458.)

§ 3305. Exclusive right to name

That said corporation and its State and local branches and subdivisions shall have the sole and exclusive right to have and to use in carrying out its purposes the name "The American National Theater and Academy."

(July 5, 1935, ch. 373, § 5, 49 Stat. 458.)

§ 3306. Headquarters; place of holding meetings

That said corporation be, and is hereby, authorized to have its headquarters and hold its meetings at such places within or without the District of Columbia as it from time to time may deem best.

(July 5, 1935, ch. 373, § 6, 49 Stat. 458.)

§ 3307. Acquisition of property by devise, bequest, donation, or otherwise

The corporation is hereby authorized and empowered to receive by devise, bequest, donation, or otherwise, either real or personal property, and to hold the same absolutely or in trust and to invest, reinvest, and manage the same in accordance with the provisions of its constitution and to apply said property and the income arising therefrom to the objects of its creation and according to the instructions of its donors.

(July 5, 1935, ch. 373, § 7, 49 Stat. 459.)

§ 3308. Annual report

That said corporation shall on or before the 1st day of January in each year make and transmit to Congress a report of its proceedings for the preceding calendar year, including a full and complete report of its receipts and expenditures: *Provided, however,* That said report shall not be printed as a public document.

(July 5, 1935, ch. 373, § 8, 49 Stat. 459.)

§ 3309. Service of process; local authorized agents

That as a condition precedent to the exercise of any power or privilege herein granted or conferred, "The American National Theater and Academy" shall file in the office of the Secretary or the properly designated officer of each State or Territory or the District of Columbia in which is located either its headquarters or branches or subdivisions thereof the name and post-office address of an authorized agent upon whom legal process or demand against "The American National Theater and Academy" may be served.

(July 5, 1935, ch. 373, § 9, 49 Stat. 459.)

§ 3310. Reservation of right to amend or repeal chapter

That the right to repeal, alter, or amend this chapter is hereby expressly reserved.

(July 5, 1935, ch. 373, § 10, 49 Stat. 459.)

CHAPTER 66—AMERICAN SYMPHONY ORCHESTRA LEAGUE

Sec.

3401. Corporation created.
3402. Completion of organization.
3403. Purposes of corporation.
3404. Powers of corporation.
3405. Principal office; territorial scope of activities; service of process; authorized agent in District of Columbia.
3406. Membership; voting rights.
3407. Board of directors.
  (a) Initial board.
  (b) Composition and term.
  (c) Governing period; duties.
3408. Officers; election; duties.
3409. Distribution of income or assets to members; loans.
3410. Nonpolitical nature of corporation.
3411. Liability for acts of officers or agents.
3412. Issuance of stock or payment of dividends prohibited.
3413. Books and records; inspection.
3414. Audit of financial transactions.
3415. Use of assets upon dissolution or liquidation.
3416. Exclusive right to name, emblems, seals, and badges.
3417. Acquisition of assets and liabilities of existing corporation.
3418. Reservation of right to amend or repeal chapter.

§ 3401. Corporation created

That the following persons—

Harold Gregory, Salt Lake City, Utah;
Samuel R. Rosenbaum, Philadelphia, Pennsylvania;
Mrs. Harry Fagg, Beaumont, Texas;
Frank E. Joseph, Shaker Heights, Ohio;
John D. Wright, Phoenix, Maryland;
Doctor George Szell, Cleveland, Ohio;
Henry Denecke, Cedar Rapids, Iowa;
Harry Levenson, Worcester, Massachusetts;

Theodore C. Russell, Jackson, Mississippi;
Stanley Williams, Milwaukee, Wisconsin;
Oliver M. Clegg, Magnolia, Arkansas;
R. Philip Hanes, Junior, Winston-Salem, North Carolina;
Mrs. Ben Hale Golden, Lookout Mountain, Tennessee;
Miles F. Portlock, Junior, Orkney Springs, Virginia;
Mrs. B. H. Littlefield, Bradenton, Florida;
Cecil W. Slocum, Omaha, Nebraska;
Max Rudolph, Cincinnati, Ohio;
Mrs. Ward T. Langstroth, Billings, Montana;
Elden Bayley, Springfield, Ohio;
George Barati, Honolulu, Hawaii;
Mrs. Albert C. Olsen, Buffalo, New York;
John Edwards, Pittsburg, Pennsylvania;
Mrs. Mignonne P. Ladin, New York, New York;
Leslie C. White, Doraville, Georgia;
Mrs. Fitzgerald Parker, Nashville, Tennessee;
Doctor Peter Paul Fuchs, Baton Rouge, Louisiana;
R. Wilton Billstein, Woodbury, New Jersey;
Mrs. Elizabeth S. Greene, West Hartford, Connecticut;
Gibson Morrissey, Roanoke, Virginia;
Alfred C. Connable, Kalamazoo, Michigan;
Mrs. Holmes Frederick, Greenville, South Carolina;
William Steinberg, Pittsburg, Pennsylvania;
Virginia Wartman, Allentown, Pennsylvania;
Robert L. Conn, Springfield, Illinois;
Paul O. Grammer, Essex Fells, New Jersey;
Henry Janiec, Spartanburg, South Carolina;
Charles B. Stacy, Charleston, West Virginia;
Doctor James Christian Pfohl, Charlotte, North Carolina;
Frederick I. Moyer, Castle Rock, Colorado;
Thomas D. Perry, Junior, Hingham, Massachusetts;
Carlos Moseley, New York, New York;
Mrs. G. Robert Herberger, Scottsdale, Arizona;
James P. Robertson, Wichita, Kansas;
Myron Levite, Brooklyn, New York;
Mrs. Leo R. Pflaum, Wayzata, Minnesota;

and their successors, are hereby created and declared to be a body corporate by the name of American Symphony Orchestra League (hereinafter referred to as the corporation) and by such name shall be known and have perpetual succession and the powers, limitations, and restrictions herein contained.

(Pub. L. 87-817, § 1, Oct. 15, 1962, 76 Stat. 929.)

Section Referred to in Other Sections

This section is referred to in section 3402 of this title.

§ 3402. Completion of organization

A majority of the persons named in section 3401 of this title are authorized to complete the organization of the corporation by the selection of officers and employees, the adoption of a constitution and bylaws not inconsistent with this chapter, and the doing of such other acts as may be necessary for such purpose.

(Pub. L. 87-817, § 2, Oct. 15, 1962, 76 Stat. 930.)

§ 3403. Purposes of corporation

The purposes of the corporation shall be to—

(1) serve as a coordinating, research and educational agency and clearinghouse for symphony orchestras in order to help strengthen the work in their local communities;

(2) assist in the formation of new symphony orchestras;

(3) through suitable means, encourage and recognize the work of America's musicians, conductors, and composers; and

(4) aid the expansion of the musical and cultural life of the United States through suitable educational and service activities.

(Pub. L. 87-817, § 3, Oct. 15, 1962, 76 Stat. 930.)

§ 3404. Powers of corporation

The corporation shall have power—

(1) to have succession by its corporate name;

(2) to sue and be sued, complain and defend in any court of competent jurisdiction;

(3) to adopt, use, and alter a corporate seal;

(4) to choose such officers, managers, agents, and employees as the business of the corporation may require;

(5) to adopt, amend, and alter a constitution and bylaws, not inconsistent with the laws of the United States or any State in which the corporation is to operate, for the management of its property and the regulation of its affairs;

(6) to contract and be contracted with;

(7) to take by lease, gift, purchase, grant, devise, or bequest from any private corporation, association, partnership, firm, or individual and to hold any property, real, personal, or mixed, necessary or convenient for attaining the objects and carrying into effect the purposes of the corporation, subject, however, to applicable provisions of law of any State (A) governing the amount or kind of property which may be held by, or (B) otherwise limiting or controlling the ownership of property by, a corporation operating in such State;

(8) to transfer, convey, lease, sublease, encumber, and otherwise alienate real, personal, or mixed property; and

(9) to borrow money for the purposes of the corporation, issue bonds therefor, and secure the same by mortgage, deed of trust, pledge, or otherwise, subject in every case to all applicable provisions of Federal and State laws.

(Pub. L. 87-817, § 4, Oct. 15, 1962, 76 Stat. 930.)

§ 3405. Principal office; territorial scope of activities; service of process; authorized agent in District of Columbia

(a) The principal office of the corporation shall be located in Charleston, West Virginia, or in such other place as may be later determined by the board of directors, but the activities of the corporation shall not be confined to that place, but may be conducted throughout the United States, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(b) The corporation shall have in the District of Columbia at all times a designated agent authorized to accept service of process for the corporation; and notice to or service upon such agent, or mailed to the business address of such agent, shall be deemed notice to or service upon the corporation.

(Pub. L. 87-817, § 5, Oct. 15, 1962, 76 Stat. 930.)

§ 3406. Membership; voting rights

(a) Eligibility for membership in the corporation and the rights, privileges, and designation of classes of members shall, except as provided in this chapter, be determined as the constitution and bylaws of the corporation may provide.

(b) Each member of the corporation, other than honorary, sustaining or associate members, shall have the right to one vote on each matter submitted to a vote at all meetings of the members of the corporation.

(Pub. L. 87-817, § 6, Oct. 15, 1962, 76 Stat. 931.)

§ 3407. Board of directors

(a) Initial board

Upon the enactment of this chapter the membership of the initial board of directors of the corporation shall consist of the following persons:

R. Wilton Billstein, Woodbury, New Jersey;
Igor Buketoff, Fort Wayne, Indiana;
Mrs. Ronald A. Dougan, Beloit, Wisconsin;
Mrs. J. W. Graham, Sioux City, Iowa;
Howard Harrington, Detroit, Michigan;
William Herring, Winston-Salem, North Carolina;
Harold Kendrick, New Haven, Connecticut;
Robert MacIntyre, Birmingham, Alabama;
Thomas Perry, Junior, Boston, Massachusetts;
Mrs. H. W. Roberts, Dallas, Texas;
Mrs. Jouett Shouse, Washington, District of Columbia;
Alan Watrous, Dallas, Texas;
John S. Edwards, Pittsburgh, Pennsylvania;
Mrs. Fred Lazarus III, Cincinnati, Ohio;
Charles W. Bonner, Fresno, California;
Alfred Connable, Kalamazoo, Michigan;
Victor Feldbrill, Winnipeg, Manitoba, Canada;
Mrs. Gerald S. Greene, West Hartford, Connecticut;
Mrs. G. Robert Herberger, Scottsdale, Arizona;
Thomas Iannaccone, Rochester, New York;
Dr. Richard Lert, Hollywood, California;
Mrs. Fitzgerald Parker, Nashville, Tennessee;
Mrs. Leo R. Pflaum, Wayzata, Minnesota;
Miss Helen Ryan, Orlando, Florida;
George Szell, Cleveland, Ohio;
Jackson Wiley, Springfield, Ohio;
George Irwin, Quincy, Illinois;
R. H. Wangerin, Louisville, Kentucky.

(b) Composition and term

Thereafter, the board of directors of the corporation shall consist of such number, shall be selected in such manner (including the filling of vacancies), and shall serve for such term as may be prescribed in the constitution and bylaws of the corporation.

(c) Governing period; duties

The board of directors shall be the governing board of the corporation and, during the intervals between the meetings of members, shall be responsible for the general policies and program of the corporation and for the control of all contributed funds as may be raised by the corporation.

(Pub. L. 87-817, § 7, Oct. 15, 1962, 76 Stat. 931.)

§ 3408. Officers; election; duties

(a) The officers of the corporation shall be a president, one or more vice presidents (as may be prescribed in the constitution and bylaws of the corporation), a secretary, and a treasurer, and one or more assistant secretaries and assistant treasurers as may be provided in the constitution and bylaws.

(b) The officers of the corporation shall be elected in such manner and for such terms and with such duties as may be prescribed in the constitution and bylaws of the corporation.

(Pub. L. 87-817, § 8, Oct. 15, 1962, 76 Stat. 932.)

§ 3409. Distribution of income or assets to members; loans

(a) No part of the income or assets of the corporation shall inure to any of its members, directors, or officers as such, or be distributable to any of them during the life of the corporation or upon its dissolution or final liquidation. Nothing in this subsection, however, shall be construed to prevent the payment of compensation to officers of the corporation in amounts approved by the board of directors of the corporation.

(b) The corporation shall not make loans to its officers, directors, or employees. Any director who votes for or assents to the making of a loan or advance to an officer, director, or employee of the corporation, and any officer who participates in the making of such loan or advance, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

(Pub. L. 87-817, § 9, Oct. 15, 1962, 76 Stat. 932.)

§ 3410. Nonpolitical nature of corporation

The corporation, and its officers and directors as such, shall not contribute to or otherwise support or assist any political party or candidate for public office.

(Pub. L. 87-817, § 10, Oct. 15, 1962, 76 Stat. 932.)

§ 3411. Liability for acts of officers or agents

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

(Pub. L. 87-817, § 11, Oct. 15, 1962, 76 Stat. 932.)

§ 3412. Issuance of stock or payment of dividends prohibited

The corporation shall have no power to issue any shares of stock or to declare or pay any dividends.

(Pub. L. 87-817, § 12, Oct. 15, 1962, 76 Stat. 932.)

§ 3413. Books and records; inspection

The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any authority under the board of directors; and it shall also keep at its principal office a record of the names and addresses of its members entitled to vote. All books and records of the corporation may be inspected by any member entitled to vote, or his agent or attorney, for any proper purpose, at any reasonable time.

(Pub. L. 87-817, § 13, Oct. 15, 1962, 76 Stat. 932.)

§ 3414. Audit of financial transactions

(a) The accounts of the American Symphony Orchestra League shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audit shall be conducted at the place or places where the accounts of the corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit shall be made available to the person or persons conducting the audit; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(b) A report of such audit shall be made by the corporation to the Congress not later than March 1 of each year. The report shall set forth the scope of the audit and shall include a verification by the person or persons conducting the audit of statements of (1) assets and liabilities, (2) capital and surplus or deficit, (3) surplus or deficit analysis, (4) income and expense, and (5) sources and application of funds. Such report shall not be printed as a public document.

(Pub. L. 87-817, § 14, Oct. 15, 1962, 76 Stat. 933.)

§ 3415. Use of assets upon dissolution or liquidation

Upon dissolution or final liquidation of the corporation, after discharge or satisfaction of all outstanding obligations and liabilities, the remaining assets, if any, of the corporation shall be distributed in accordance with the determination of the board of directors of the corporation and in compliance with the constitution and bylaws of the corporation and all Federal and State laws applicable thereto.

(Pub. L. 87-817, § 15, Oct. 15, 1962, 76 Stat. 933.)

§ 3416. Exclusive right to name, emblems, seals, and badges

The corporation shall have the sole and exclusive right to the name "American Symphony Orchestra League" and to have and to use in carrying out its purposes distinctive insignia, emblems and badges, descriptive or designating marks, and words or phrases as may be required in the furtherance of its functions. No powers or privileges hereby granted shall, however, interfere or conflict with established or vested rights.

(Pub. L. 87-817, § 16, Oct. 15, 1962, 76 Stat. 933.)

§ 3417. Acquisition of assets and liabilities of existing corporation

The corporation may acquire the assets of the American Symphony Orchestra League, Incorporated, a corporation organized under the laws of the States of Virginia and Michigan, upon discharging or satisfactorily providing for the payment and discharge of all of the liability of such corporation and upon complying with all laws of the States of Virginia and Michigan applicable thereto.

(Pub. L. 87-817, § 17, Oct. 15, 1962, 76 Stat. 933.)

§ 3418. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved.

(Pub. L. 87-817, § 18, Oct. 15, 1962, 76 Stat. 933.)

CHAPTER 67—GENERAL FEDERATION OF WOMEN'S CLUBS

Sec.
3501. Corporation created.
3502. Acquisition of property by devise, bequest, donation, or otherwise.
3503. Constitution; bylaws; headquarters.
3504. Territorial scope of activities.

§ 3501. Corporation created

That Mrs. Rebecca D. Lowe, Atlanta, Georgia; Mrs. Dimies T. S. Denison, New York, New York; Miss Margaret J. Evans, Northfield, Minnesota; Mrs. Emma A. Fox, Detroit, Michigan; Mrs. George W. Kendrick, junior, Philadelphia, Pennsylvania; Mrs. Emma M. Van Vechten, Cedar Rapids, Iowa; Mrs. George H. Noyes, Milwaukee, Wisconsin; Mrs. Edward L. Buchwalter, Springfield, Ohio; Mrs. William J. Christie, Butte, Montana; Mrs. William T. Coad, Rapid City, South Dakota; Mrs. Laura Rockwell Priddy, Wichita, Kansas; Mrs. Frank Sherwin Streeter, Concord, New Hampshire; Mrs. Anna D. West, Somerville, Massachusetts; Mrs. Charles W. Fairbanks, Indiana; Mrs. Lucia E. Blount, Washington, District of Columbia; Mrs. Ralph Trautman, New York; Mrs. John L. McNeil, Colorado; Mrs. Mary S. Lockwood, Washington, District of Columbia; Mrs. May Wright Sewall, Indiana; Mrs. J. C. Croly, New York; Miss Mary V. Temple, Tennessee; Mrs. Phoebe A. Hearst, California; Mrs. Kate Tannett Woods, Massachusetts; Mrs. Julia Plato Harvey, Illinois; Mrs. Jane O. Cooper, Colorado;

Mrs. Harriet H. Robinson, Massachusetts; Mrs. Ellen M. Henrotin, Illinois; Mrs. Mary E. Mumford, Pennsylvania; Mrs. C. P. Barnes, Kentucky; Mrs. Philip N. Moore, Missouri; Mrs. Alice Ives Breed, Massachusetts; Mrs. Frank Trumbull, Colorado; Miss Annie Laws, Ohio; Mrs. Sarah S. Platt-Decker, Colorado; Mrs. J. C. Royle, Utah; Josephine Bates, Mary Rogers, Octavia W. Bates, Fanny Purdy Palmer, Julia Ward Howe, Cordelia I. Sterling, Katherine Nobles, Mary D. Steele, and their associates and successors, are hereby created a body corporate and politic, of the District of Columbia, by the name, style, and title of the General Federation of Women's Clubs, and by that name shall have perpetual succession, for educational, industrial, philanthropic, literary, artistic, and scientific culture, and to bring into communication with one another the various Women's Clubs throughout the world, with power in said corporation to make and use a common seal, and to alter the same at pleasure.

(Mar. 3, 1901, ch. 860, § 1, 31 Stat. 1438.)

§ 3502. Acquisition of property by devise, bequest, donation, or otherwise

That the said corporation is authorized to acquire, by devise, bequest, or otherwise, hold, purchase, and convey such real and personal estate as shall or may be required for the purpose of its incorporation with authority in said corporation, should it be by it deemed necessary so to do, to mortgage or otherwise encumber the real estate which it may hereafter own or acquire and may give therefor such evidences of indebtedness as such corporation may decide upon.

(Mar. 3, 1901, ch. 860, § 2, 31 Stat. 1439; Apr. 6, 1922, ch. 121, 42 Stat. 490; June 7, 1934, ch. 425, 48 Stat. 925; Dec. 15, 1975, Pub. L. 94-151, § 1, 89 Stat. 809.)

AMENDMENTS

1975—Pub. L. 94-151 struck out "not exceeding $1,500,000," after "for the purpose of its incorporation".

1934—Act June 7, 1934, substituted "$1,500,000" for "$500,000".

1922—Act Apr. 6, 1922, substituted "$500,000" for "two hundred thousand dollars".

§ 3503. Constitution; bylaws; headquarters

That said corporation shall have a constitution and may adopt and make by-laws for the admission and qualifications of members, the management of its property, and the regulation of its affairs, and shall have the power to amend said constitution and by-laws at pleasure. Said corporation shall have its headquarters at Washington, in the District of Columbia.

(Mar. 3, 1901, ch. 860, § 3, 31 Stat. 1439.)

§ 3504. Territorial scope of activities

That said corporation be, and it is hereby, authorized to hold its meetings at such places outside of Washington, in the District of Columbia, as it from time to time may deem best.

(Mar. 3, 1901, ch. 860, § 4, as added Apr. 28, 1904, ch. 1790, 33 Stat. 542, and amended June 7, 1934, ch. 425, 48 Stat. 925.)

AMENDMENTS

1934—Act June 7, 1934, struck out "biennial" before "meetings".

CHAPTER 68—PEARL HARBOR SURVIVORS ASSOCIATION

Sec.

3601. Recognition as corporation and grant of Federal charter.
3602. Powers of corporation.
3603. Objects and purposes of corporation.
3604. Service of process.
3605. Membership.
3606. Board of directors.
3607. Officers.
3608. Restrictions.
    (a) Distribution of corporate income or assets.
    (b) Loans or advances.
    (c) Issuance of stock; dividends.
    (d) Political activities.
    (e) Claim of approval or authorization.
3609. Liability for acts of officers and agents.
3610. Books and records; inspection.
3611. Annual report.
3612. Reservation of right to amend or repeal chapter.
3613. "State" defined.
3614. Tax-exempt status.
3615. Exclusive right to name, seals, emblems, and badges.
3616. Failure to comply with restrictions or provisions.

§ 3601. Recognition as corporation and grant of Federal charter

The Pearl Harbor Survivors Association, a nonprofit corporation organized under the laws of the State of Missouri, is recognized as such and is granted a Federal charter.

(Pub. L. 99-119, § 1, Oct. 7, 1985, 99 Stat. 498.)

§ 3602. Powers of corporation

The Pearl Harbor Survivors Association (hereinafter in this chapter referred to as the "corporation") shall have those powers granted to it through its bylaws and articles of incorporation filed in the State in which it is incorporated and subject to the laws of such State, and such powers shall include the following:

(1) To sue and be sued, complain, and defend in any court of competent jurisdiction.

(2) To adopt, alter, and use a corporate seal.

(3) To take gifts, legacies, and devises which will further the corporate purposes.

(4) To adopt, alter, and amend a constitution and bylaws, not inconsistent with the laws of the United States or any State in which the corporation is to operate, for the management of its property and the regulation of its affairs.

(5) To charge and collect membership dues and subscription fees and to receive contributions or grants of money or property to be used to carry out its purposes.

(6) To establish, regulate, and maintain offices for the conduct of the affairs of the corporation.

(7) To promote the formation of auxiliaries, the membership requirements of which shall

be determined according to the constitution and the bylaws of the corporation.

(8) To publish a magazine or other publications.

(9) To adopt emblems and badges.

(10) To do any and all lawful acts and things necessary or desirable to carry out the objects and purposes of the corporation.

(Pub. L. 99-119, § 2, Oct. 7, 1985, 99 Stat. 498.)

§ 3603. Objects and purposes of corporation

The objects and purposes of the corporation are those provided in its articles of incorporation and shall include the following:

(1) To uphold and defend the Constitution of the United States.

(2) To collate, preserve, and encourage the study of historical episodes, chronicles, mementos, and events pertaining to "The Day of Infamy, 7 December 1941", and in particular those memories and records of patriotic service performed by the heroic Pearl Harbor survivors and nonsurvivors.

(3) To shield from neglect the graves, past and future, of those who served at Pearl Harbor on such day.

(4) To stimulate communities and political subdivisions into taking more interest in the affairs and future of the United States in order to keep our Nation alert.

(5) To fight unceasingly for our national security in order to protect the United States from enemies within and without our borders.

(6) To preserve the American way of life and to foster the spirit and practice of Americanism.

(7) To instill love of country and flag and to promote soundness of mind and body in the youth of our Nation.

(Pub. L. 99-119, § 3, Oct. 7, 1985, 99 Stat. 498.)

§ 3604. Service of process

With respect to service of process, the corporation shall comply with the laws of the State in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

(Pub. L. 99-119, § 4, Oct. 7, 1985, 99 Stat. 499.)

§ 3605. Membership

Eligibility for membership in the corporation and the rights and privileges of members of the corporation shall be as provided in the constitution and bylaws of the corporation, except that terms of membership and requirements for holding office within the corporation shall not be discriminatory on the basis of race, color, religion, or national origin.

(Pub. L. 99-119, § 5, Oct. 7, 1985, 99 Stat. 499.)

§ 3606. Board of directors

The composition of the board of directors of the corporation and the responsibilities of such board shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State in which it is incorporated.

(Pub. L. 99-119, § 6, Oct. 7, 1985, 99 Stat. 499.)

§ 3607. Officers

The positions of officers of the corporation and the election of members to such positions shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State in which it is incorporated.

(Pub. L. 99-119, § 7, Oct. 7, 1985, 99 Stat. 499.)

§ 3608. Restrictions

(a) Distribution of corporate income or assets

No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of the corporation or upon its dissolution or final liquidation. Nothing in this subsection shall be construed to prevent the payment of compensation to the officers of the corporation for services rendered to the corporation or to prevent their reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) Loans or advances

The corporation shall have no power to make loans or advances to any member, officer, director, or employee of the corporation.

(c) Issuance of stock; dividends

The corporation shall have no power to issue any shares of stock or to declare or pay any dividends.

(d) Political activities

The corporation and its officers, employees, and agents acting as such shall have no power to contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(e) Claim of approval or authorization

The corporation shall have no power to claim congressional approval or Federal Government authority for any of its activities.

(Pub. L. 99-119, § 8, Oct. 7, 1985, 99 Stat. 499.)

§ 3609. Liability for acts of officers and agents

The corporation shall be liable for the acts of its officers and agents when they have acted within the scope of their authority.

(Pub. L. 99-119, § 9, Oct. 7, 1985, 99 Stat. 500.)

§ 3610. Books and records; inspection

The corporation shall keep correct and complete books and records of accounts and shall keep minutes of any proceeding involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote in any proceeding of the corporation. All books and records of the corporation may be inspected by any member, or any agent or attorney of such member, for any proper purpose, at any reasonable time.

(Pub. L. 99-119, § 10, Oct. 7, 1985, 99 Stat. 500.)

§ 3611. Annual report

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as the report of the audit of the corporation required pursuant to section 1102 of this title. The report shall not be printed as a public document.

(Pub. L. 99-119, § 12, Oct. 7, 1985, 99 Stat. 500.)

§ 3612. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved to the Congress.

(Pub. L. 99-119, § 13, Oct. 7, 1985, 99 Stat. 500.)

§ 3613. "State" defined

For purposes of this chapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

(Pub. L. 99-119, § 14, Oct. 7, 1985, 99 Stat. 500.)

§ 3614. Tax-exempt status

The corporation shall maintain its status as an organization exempt from taxation as provided in title 26.

(Pub. L. 99-119, § 15, Oct. 7, 1985, 99 Stat. 500.)

§ 3615. Exclusive right to name, seals, emblems, and badges

The corporation and its regional districts and local branches shall have the sole and exclusive right to use in carrying out its purposes the name "Pearl Harbor Survivors Association", and such seals, emblems, and badges as the corporation may adopt.

(Pub. L. 99-119, § 16, Oct. 7, 1985, 99 Stat. 501.)

§ 3616. Failure to comply with restrictions or provisions

If the corporation shall fail to comply with any of the restrictions or provisions of this chapter, the charter granted by this chapter shall expire.

(Pub. L. 99-119, § 17, Oct. 7, 1985, 99 Stat. 501.)

CHAPTER 69—DAUGHTERS OF UNION VETERANS OF THE CIVIL WAR 1861-1865

Sec.
3701. Recognition as corporation and grant of Federal charter.
3702. Powers of corporation.
3703. Objects and purposes of corporation.
3704. Service of process.
3705. Membership.
3706. Board of directors.
3707. Officers.
3708. Restrictions.
  (a) Distribution of corporate income or assets.
  (b) Loans.
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3709. Liability for acts of officers and agents.
3710. Books and records; inspection.
3711. Annual report.
3712. Reservation of right to amend or repeal chapter.
3713. "State" defined.
3714. Tax-exempt status.
3715. Failure to comply with restrictions or provisions.

§ 3701. Recognition as corporation and grant of Federal charter

The Daughters of Union Veterans of the Civil War 1861-1865, a nonprofit corporation organized under the laws of the State of Ohio, is recognized as such and is granted a Federal charter.

(Pub. L. 99-172, § 1, Dec. 9, 1985, 99 Stat. 1020.)

§ 3702. Powers of corporation

The Daughters of Union Veterans of the Civil War 1861-1865 (hereinafter in this chapter referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

(Pub. L. 99-172, § 2, Dec. 9, 1985, 99 Stat. 1020.)

§ 3703. Objects and purposes of corporation

The objects and purposes of the corporation are those provided in its articles of incorporation and, for the purpose of perpetuating the memories of the fathers of the Daughters of Union Veterans of the Civil War 1861-1865, their loyalty to the Union, and their unselfish sacrifices for the preservation of the same, shall include the following:

(1) Encouraging the preservation of historic sites and the construction and preservation of monuments commemorating any aspect of the Civil War.

(2) Building and maintaining a Museum of Civil War History, admission to which shall be free and open to the public, in the city of Springfield, Illinois, as a repository of Civil War documents, artifacts, and cultural relics.

(3) Maintaining a library in connection with the Civil War museum, admission to which shall be open to the public, containing the official volumes of the War of the Rebellion Records, Civil War genealogical files, Adjutant General reports of the various States, military and biographical records and accounts of the individual service of Union soldiers, sailors, and marines, diaries, letters, relics, and other records.

(4) Promulgating and teaching American history, particularly the history of the Civil War period, through the establishment of scholarship programs at the National and State levels, the presentation of American flags to youth groups and newly naturalized citizens, and the sponsorship of contests of educational merit.

(5) Caring for veterans of all wars through volunteer programs in Veterans' Administra-

tion medical centers and in homes and other institutions maintained by the States for the welfare of American veterans.

(6) Participating, in a spirit of cooperation and reciprocity, in programs with other societies devoted to American history, veterans' affairs, or community interests.

The corporation shall function as a veterans' and patriotic organization as authorized by the laws of the State or States in which it is incorporated.

(Pub. L. 99-172, § 3, Dec. 9, 1985, 99 Stat. 1020.)

§ 3704. Service of process

With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

(Pub. L. 99-172, § 4, Dec. 9, 1985, 99 Stat. 1021.)

§ 3705. Membership

Eligibility for membership in the corporation and the rights and privileges of members of the corporation shall be as provided in the constitution and bylaws of the corporation.

(Pub. L. 99-172, § 5, Dec. 9, 1985, 99 Stat. 1021.)

§ 3706. Board of directors

The composition of the board of directors of the corporation and the responsibilities of such board shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

(Pub. L. 99-172, § 6, Dec. 9, 1985, 99 Stat. 1021.)

§ 3707. Officers

The positions of officers of the corporation and the election of members to such positions shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

(Pub. L. 99-172, § 7, Dec. 9, 1985, 99 Stat. 1021.)

§ 3708. Restrictions

(a) Distribution of corporate income or assets

No part of the income or assets of the corporation may inure to the benefit of any member, officer, or director of the corporation or be distributed to any such individual during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual and necessary expenses in amounts approved by the board of directors.

(b) Loans

The corporation may not make any loan to any officer, director, or employee of the corporation.

(c) Political activities

(1) The corporation may not contribute to, support, or otherwise participate in any political activity or attempt in any manner to influence legislation.

(2) No officer or director of the corporation, acting as such officer or director, may commit any act prohibited under paragraph (1) of this subsection.

(d) Issuance of stock; dividends

The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) Claim of approval or authorization

The corporation shall not claim congressional approval or the authorization of the Federal Government for any of its activities.

(Pub. L. 99-172, § 8, Dec. 9, 1985, 99 Stat. 1021.)

§ 3709. Liability for acts of officers and agents

The corporation shall be liable for the acts of its officers and agents whenever such officers and agents have acted within the scope of their authority.

(Pub. L. 99-172, § 9, Dec. 9, 1985, 99 Stat. 1022.)

§ 3710. Books and records; inspection

The corporation shall keep correct and complete books and records of account and minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep, at its principal office, a record of the names and addresses of all members having the right to vote in any proceeding of the corporation. All books and records of such corporation may be inspected by any member having the right to vote in any corporation proceeding, or by any agent or attorney of such member, for any proper purpose at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

(Pub. L. 99-172, § 10, Dec. 9, 1985, 99 Stat. 1022.)

§ 3711. Annual report

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as the report of the audit required by section 1101(70) of this title. The report shall not be printed as a public document.

(Pub. L. 99-172, § 12, Dec. 9, 1985, 99 Stat. 1022.)

REFERENCES IN TEXT

Section 1101(70) of this title, referred to in text, was in the original "section 11 of this Act", meaning section 11 of Pub. L. 99-172, which amended section 1101 of this title to include Daughters of Union Veterans of the Civil War 1861-1865 within the definition of "private corporations established under Federal law". Section 1103 of this title requires a report to Congress on the annual audit of private corporations established under Federal law.

§ 3712. Reservation of right to amend or repeal chapter

The right to alter, amend, or repeal this chapter is expressly reserved to the Congress.

(Pub. L. 99-172, § 13, Dec. 9, 1985, 99 Stat. 1022.)

§ 3713. "State" defined

For purposes of this chapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

(Pub. L. 99-172, § 14, Dec. 9, 1985, 99 Stat. 1022.)

§ 3714. Tax-exempt status

The corporation shall maintain its status as an organization exempt from taxation as provided in title 26. If the corporation fails to maintain such status, the charter granted by this chapter shall expire.

(Pub. L. 99-172, § 15, Dec. 9, 1985, 99 Stat. 1022.)

§ 3715. Failure to comply with restrictions or provisions

If the corporation shall fail to comply with any of the restrictions or provisions of this chapter, the charter granted by this chapter shall expire.

(Pub. L. 99-172, § 16, Dec. 9, 1985, 99 Stat. 1023.)

TITLE 37—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

This title was enacted by Pub. L. 87-649, § 1, Sept. 7, 1962, 76 Stat. 451

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 2 section 906; title 10 section 2005; title 42 section 204; title 50 section 403e.

CHAPTER 1—DEFINITIONS

§ 101. Definitions

In addition to the definitions in sections 1-5 of title 1, for the purposes of this title—

[*See main edition for text of* (*1*) *to* (*17*)]

(18) "active duty" means full-time duty in the active service of a uniformed service, and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary concerned;

[*See main edition for text of* (*19*) *to* (*25*)]

(As amended Pub. L. 98-525, title IV, § 414(c), Oct. 19, 1984, 98 Stat. 2520.)

AMENDMENTS

1984—Cl. (18). Pub. L. 98-525 inserted "full-time National Guard duty," after "annual training duty,".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 906; title 5 sections 3326, 3501, 5531; title 10 section 2774; title 20 section 238; title 26 section 6013; title 32 section 716; title 33 section 857-1; title 42 sections 665, 1973cc-21.

CHAPTER 3—BASIC PAY

Sec.	
202.	Pay grades: retired Coast Guard rear admirals (lower half).

AMENDMENTS

1985—Pub. L. 99-145, title V, § 514(d)(2)(C), Nov. 8, 1985, 99 Stat. 629, substituted "Pay grades: retired Coast Guard rear admirals (lower half)" for "Pay grade: retired Coast Guard commodores" in item 202.

1984—Pub. L. 98-557, § 25(b)(2)(B), Oct. 30, 1984, 98 Stat. 2872, substituted "Pay grade: retired Coast Guard commodores" for "Pay grades; commodores, retired list" in item 202.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 402, 406, 1003 of this title; title 10 section 1091; title 26 section 3121; title 42 section 409.

§ 201. Pay grades: assignment to; general rules

(a) For the purpose of computing their basic pay, commissioned officers of the uniformed services (other than commissioned warrant officers) are assigned by the grade or rank in which serving to the following pay grades:

Pay grade	Army, Air Force, and Marine Corps	Navy, Coast Guard, and National Oceanic and Atmospheric Administration	Public Health Service
O-10	General	Admiral	
O-9	Lieutenant general.	Vice admiral	Surgeon General.
O-8	Major general.	Rear admiral	Deputy Surgeon General. Assistant Surgeon General having rank of major general.
O-7	Brigadier general.	Rear admiral (lower half).	Assistant Surgeon General having rank of brigadier general.
O-6	Colonel	Captain	Director grade.
O-5	Lieutenant colonel.	Commander	Senior grade.
O-4	Major	Lieutenant commander.	Full grade.
O-3	Captain	Lieutenant	Senior assistant grade.
O-2	1st lieutenant.	Lieutenant (junior grade).	Assistant grade.
O-1	2d lieutenant.	Ensign	Junior assistant grade.

(b) For the purpose of computing their basic pay, warrant officers of the armed forces are assigned, by the warrant officer grade in which serving, to the following pay grades:

Pay Grade	Warrant Officer Grade
W-4	Chief Warrant Officer, W-4
W-3	Chief Warrant Officer, W-3
W-2	Chief Warrant Officer, W-2
W-1	Warrant Officer, W-1.

(c) An aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard is entitled to monthly basic pay at the rate of 50 percent of the basic pay of a commissioned officer in pay grade O-1 with two or less years of service computed under section 205 of this title.

(d) Unless he is entitled to the basic pay of a higher pay grade, an aviation pilot of the Naval Reserve, Marine Corps Reserve, or Coast Guard Reserve is entitled to monthly basic pay at the rate prescribed for pay grade E-5.

(e) Except as provided by subsections (c) and (d) of this section, enlisted members of the uniformed services shall, for the purpose of computing their basic pay, be distributed by the Secretary concerned in the various enlisted pay grades set forth in section 203 of this title. However, except as provided by section 307 of this title, an enlisted member may not be placed in pay grade E-8 or E-9 until he has completed at least 8 years or 10 years, respectively, of enlisted service computed under section 205 of this title.

[(f) Redesignated (e)]

(As amended Pub. L. 98-94, title IX, § 932(d), Sept. 24, 1983, 97 Stat. 650; Pub. L. 98-557, § 25(b)(1), Oct. 30, 1984, 98 Stat. 2872; Pub. L. 99-145, title V, § 514(d)(1), Nov. 8, 1985, 99 Stat. 629.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "Rear admiral (lower half)" for "Commodore" in third column of table in pay grade O-7.

1984—Subsec. (a). Pub. L. 98-557 substituted "Rear admiral" for "Rear admiral (Navy) and Rear admiral (upper half)(Coast Guard and National Oceanic and Atmospheric Administration)" in third column of table in pay grade O-8 and in pay grade O-7 substituted "Commodore" for "Commodore (Navy) and Rear admiral (lower half) and commodore (Coast Guard and National Oceanic and Atmospheric Administration)".

1983—Subsecs. (b) to (f). Pub. L. 98-94 struck out subsec. (b) which related to basic pay for contract surgeons, redesignated subsecs. (c) to (f) as (b) to (e), respectively, and in subsec. (e), as so redesignated, substituted "subsections (c) and (d)" for "subsections (d) and (e)".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 932(f) of Pub. L. 98-94, set out as an Effective Date note under section 1091 of Title 10, Armed Forces.

§ 202. Pay grades: retired Coast Guard rear admirals (lower half)

An officer of the Coast Guard holding a permanent appointment in the grade of rear admiral (lower half) on the retired list, and who in time of war or national emergency has served satisfactorily on active duty for two years in that grade or in a higher grade, is entitled when on active duty to the basic pay of a rear admiral.

(As amended Pub. L. 98-557, § 25(b)(2)(A), Oct. 30, 1984, 98 Stat. 2872; Pub. L. 99-145, title V, § 514(d)(2)(A), (B), Nov. 3, 1985, 99 Stat. 629.)

AMENDMENTS

1985—Pub. L. 99-145 substituted "Pay grades: retired Coast Guard rear admirals (lower half)" for "Pay grade: retired Coast Guard commodores" in section catchline, and substituted "rear admiral (lower half)" for "commodore" in text.

1984—Pub. L. 98-557 substituted "Pay grade: retired Coast Guard commodores" for "Pay grades: commodores, retired list" in section catchline.

§ 203. Rates

(a) The rates of monthly basic pay for members of the uniformed services within each pay grade are those prescribed in accordance with section 1009 of this title or as otherwise prescribed by law.

[*See main edition for text of* (b) *and* (c)]

(d) The basic pay of a commissioned officer who is in pay grade O-1, O-2, or O-3 and who is credited with a total of over four years' active service as a warrant officer or as a warrant officer and enlisted member shall be computed in the same manner as the basic pay of a commissioned officer in the same pay grade who has been credited with over four years' active service as an enlisted member.

(As amended Pub. L. 98-94, title IX, § 902(a), Sept. 24, 1983, 97 Stat. 635; Pub. L. 99-145, title XIII, § 1303(b)(1), Nov. 8, 1985, 99 Stat. 740.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 inserted "or as otherwise prescribed by law" after "this title".

1983—Subsec. (d). Pub. L. 98-94 substituted "the basic pay of a commissioned officer who is in pay grade O-1, O-2, or O-3 and who is credited with a total of over four years' active service as a warrant officer or as a warrant officer and enlisted member shall be computed in the same manner as the basic pay of a commissioned officer in the same pay grade who has been credited with over four years' active service as an enlisted member" for "the basic pay of commissioned officers who are in pay grades O-1, O-2, and O-3 and who are credited with over four years' active service as warrant officers shall be computed in the same manner as the basic pay of commissioned officers in the same pay grades who have been credited with over four years' active service as enlisted members".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 902(b) of Pub. L. 98-94 provided that: "The amendment made by subsection (a) [amending subsec. (d) of this section] shall take effect on October 1, 1983."

ADJUSTMENT OF PAY RATES

Monthly pay rates under subsec. (c) were adjusted by the following Executive orders:

Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, $480 effective Oct. 1, 1982.

Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, $461.40 effective Oct. 1, 1981.

Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, $419.40 effective Oct. 1, 1980.

Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 44 F.R. 16443, $375.60 effective Oct. 1, 1979.

Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, $351 effective Oct. 1, 1978.

Ex. Ord. No. 12010, Sept. 28, 1977, 42 F.R. 52365, $332.70 ($345 pursuant to Pub. L. 95-79), effective Oct. 1, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 209, 1009 of this title; title 2 section 906; title 10 section 1401a.

§ 204. Entitlement

[*See main edition for text of* (a) *to* (i)]

(j) A member of the uniformed services who is entitled to medical or dental care under section 1074a of title 10 is entitled to travel and transportation allowances, or a monetary allowance in place thereof, for necessary travel incident to such care, and return to his home upon discharge from treatment.

(As amended Pub. L. 98-94, title X, § 1012(b), Sept. 24, 1983, 97 Stat. 665.)

AMENDMENTS

1983—Subsec. (j). Pub. L. 98-94 added subsec. (j).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 applicable only in cases of injuries incurred or aggravated on or after Sept. 24, 1983, see section 1012(c) of Pub. L. 98-94, set out as an Effective Date note under section 1074a of Title 10, Armed Forces.

§ 205. Computation: service creditable

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Notwithstanding subsection (a) of this section, a period served by a member of a uniformed service in a reserve component under an enlistment under section 511 of title 10 before the member—

(1) begins service on active duty under subsection (b) of that section, or

(2) begins an initial period of active duty for training under subsection (d) of that section,

may not be counted under this section.

(As amended Pub. L. 98-525, title VI, § 607(a), Oct. 19, 1984, 98 Stat. 2538.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-525 added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 607(b) of Pub. L. 98-525 provided that: "The amendment made by subsection (a) [adding subsec. (e) of this section] shall apply to persons who enlist under section 511 of title 10, United States Code, on or after the first day of the third calendar month which begins after the date of the enactment of this Act [Oct. 19, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 203, 301a, 301c, 308 of this title; title 10 sections 1091, 2126; title 42 section 212.

§ 206. Reserves; members of National Guard: inactive-duty training

[*See main edition for text of* (*a*) *to* (*d*)]

(e) A member of the National Guard or of a reserve component of the uniformed services may not be paid under this section for more than four periods of equivalent training, instruction, duty, or appropriate duties performed during a fiscal year instead of the member's regular period of instruction or regular period of appropriate duty during that fiscal year.

(As amended Pub. L. 98-525, title XIV, § 1402(a), Oct. 19, 1984, 98 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (e) of this section were contained in the following prior appropriation acts:

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8020], Oct. 12, 1984, 98 Stat. 1904, 1927.

Pub. L. 98-212, title VII, § 722, Dec. 8, 1983, 97 Stat. 1442.

Pub. L. 97-377, title I, § 101(c) [title VII, § 725], Dec. 21, 1982, 96 Stat. 1833, 1855.

Pub. L. 97-114, title VII, § 725, Dec. 29, 1981, 95 Stat. 1583.

Pub. L. 96-527, title VII, § 726, Dec. 15, 1980, 94 Stat. 3086.

Pub. L. 96-154, title VII, § 726, Dec. 21, 1979, 93 Stat. 1157.

Pub. L. 95-457, title VIII, § 826, Oct. 13, 1978, 92 Stat. 1248.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-525 added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of Title 10, Armed Forces.

§ 209. Members of precommissioning programs

(a) Except when on active duty, a member of the Senior Reserve Officers' Training Corps who is selected for advance training under section 2104 of title 10 is entitled to a subsistence allowance of $100 a month beginning on the day he starts advanced training and ending upon the completion of his instruction under that section, but in no event shall any member receive such pay for more than 30 months. Subsistence allowance under this section may not be considered financial assistance requiring additional service within the meaning of the third sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1)).

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-94, title X, § 1003(a)(4), Sept. 24, 1983, 97 Stat. 656.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94 substituted "30 months" for "20 months".

CHAPTER 5—SPECIAL AND INCENTIVE PAYS

Sec.
302b. Special pay: dental officers of the armed forces.
306a. Special pay: members assigned to international military headquarters.
307. Special pay: special duty assignment pay for enlisted members.
[308d. Repealed.]
308g. Special pay: bonus for enlistment in elements of the Ready Reserve other than the Selected Reserve.
308h. Special pay: bonus for reenlistment, enlistment, or voluntary extension of enlistment in elements of the Ready Reserve other than the Selected Reserve.
308i. Special pay: prior service enlistment bonus.
310. Special pay: duty subject to hostile fire or imminent danger.
[311. Repealed.]

AMENDMENTS

1985—Pub. L. 99-145, title VI, §§ 639(e), 644(a)(2), Nov. 8, 1985, 99 Stat. 651, 653, substituted "dental officers of the armed forces" for "dentists" in item 302b, added item 308i, and struck out item 311 "Special pay: continuation pay for dentists in the armed forces".

1984—Pub. L. 98-525, title VI, § 623(b)(2), title XIV, § 1402(b)(2), Oct. 19, 1984, 98 Stat. 2542, 2621, substituted "special duty assignment pay for enlisted members" for "proficiency pay for enlisted members" in item 307, and added item 306a.

1983—Pub. L. 98-94, title IX, § 905(b)(2), title X, § 1011(b)(2), Sept. 24, 1983, 97 Stat. 664, struck out item 308d "Special pay: bonus for enlistment, reenlistment, or extension of enlistment in elements of the ready Reserve other than the Selected Reserve", added items 308g and 308h, and in item 310 added "or imminent danger".

§ 301. Incentive pay: hazardous duty

(a) Subject to regulations prescribed by the President, a member of a uniformed service who is entitled to basic pay is also entitled to incentive pay, in the amount set forth in subsection (b) or (c) of this section, for the performance of hazardous duty required by orders. For the purposes of this subsection, "hazardous duty" means duty—

(1) as a crew member, as determined by the Secretary concerned, involving frequent and regular participation in aerial flight;

[*See main edition for text of* (2)]

(3) involving parachute jumping as an essential part of military duty;

(4) involving the demolition of explosives as a primary duty, including training for that duty;

(5) inside a high- or low-pressure chamber;

(6) as a human acceleration or deceleration experimental subject;

(7) as a human test subject in thermal stress experiments;

(8) involving frequent and regular participation in flight operations on the flight deck of an aircraft carrier or of a ship other than an aircraft carrier from which aircraft are launched;

(9) involving frequent and regular exposure to highly toxic pesticides or involving laboratory work that utilizes live dangerous viruses or bacteria;

(10) involving (A) the servicing of aircraft or missiles with highly toxic fuels or propellants, (B) the testing of aircraft or missile systems (or components of such systems) during which highly toxic fuels or propellants are used, or (C) the handling of chemical munitions (or components of such munitions); or

(11) involving frequent and regular participation in aerial flight by an officer (other than a warrant officer) who is serving as an air weapons controller crew member (as defined by the Secretary concerned) aboard an airborne warning and control system aircraft (as designated by such Secretary) and who is not entitled to incentive pay under section 301a of this title.

(b) For the performance of hazardous duty described in clause (1) of subsection (a) of this section, a member is entitled to monthly incentive pay as follows:

Pay Grade	Monthly Rate
O-10	$110
O-9	110
O-8	110
O-7	110
O-6	250
O-5	250
O-4	225
O-3	175
O-2	150
O-1	125
W-4	250
W-3	175
W-2	150
W-1	125
E-9	200
E-8	200
E-7	200
E-6	175
E-5	150
E-4	125
E-3	110
E-2	110
E-1	110

(c)(1) For the performance of hazardous duty described in clauses (2) through (10) of subsection (a) of this section, a member is entitled to $110 a month. However, a member performing hazardous duty described in clause (3) of that subsection who also performs as an essential part of such duty parachute jumping at a high altitude with a low opening is entitled to $165 a month.

(2)(A) For the performance of hazardous duty described in clause (11) of subsection (a) of this section, an officer is entitled to monthly incentive pay based upon his years of service as an air weapons controller as follows:

Pay grade	Years of service as an air weapons controller							
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12
O-7 and above	$200	$200	$200	$200	$200	$200	$200	$200
O-6	225	250	300	325	350	350	350	350
O-5	200	250	300	325	350	350	350	350
O-4	175	225	275	300	350	350	350	350
O-3	125	156	188	206	350	350	350	350
O-2	125	156	188	206	250	300	300	300
O-1	125	156	188	206	250	250	250	250

Pay grade	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 25
O-7 and above	$200	$200	$200	$200	$200	$200	$110
O-6	350	350	350	300	250	250	225
O-5	350	350	350	300	250	250	225
O-4	350	350	350	300	250	250	225
O-3	350	350	300	275	250	225	200
O-2	300	300	275	245	210	200	180
O-1	250	250	245	210	200	180	150

[*See main edition for text of* (*B*); (*d*) *and* (*e*)]

(f)(1) Under regulations prescribed by the President and to the extent provided for by appropriations, when a member of a reserve component of a uniformed service, or of the National Guard, who is entitled to compensation under section 206 of this title, performs, under orders, any duty described in subsection (a) of this section for members entitled to basic pay, he is entitled to an increase in compensation equal to 1/30 of the monthly incentive pay authorized by subsection (b) or (c) of this section, as the case may be, for the performance of that hazardous duty by a member of a corresponding grade who is entitled to basic pay. He is entitled to the increase for as long as he is quali-

fied for it, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours, including that performed on a Sunday or holiday, or for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe under section 206(a) of this title. This subsection does not apply to a member who is entitled to basic pay under section 204 of this title for the entire month.

(2)(A) If in any calendar month a member performs duty as described in paragraph (1) of this subsection and while entitled to basic pay also performs hazardous duty as described in the same clause of subsection (a) as constitutes the predicate for his entitlement under paragraph (1) of this subsection, the earned units of measuring entitlement for incentive pay under this section shall be combined. If the sum of units determined under the preceding sentence equals or exceeds the minimum standard prescribed by the President for entitlement to pay specified under subsections (b) and (c) of this section for a member of corresponding grade who is entitled to basic pay for the entire relevant month, the member shall be entitled to an increase in compensation equal to 1/30 of the monthly incentive pay authorized by subsection (b) or (c) of this section for the performance of that hazardous duty by a member of corresponding grade who is entitled to basic pay for the entire month.

(B) A member who qualifies for entitlement under this paragraph is entitled to the increase for each day in the relevant month in which he is entitled to basic pay pursuant to section 204 of this title or to compensation under section 206 of this title.

(C) In this paragraph, "units" means the significant increments of performance prescribed as qualifying standards in regulations promulgated by the President pursuant to this section.

(As amended Pub. L. 98-94, title IX, § 903(a), Sept. 24, 1983, 97 Stat. 635; Pub. L. 98-525, title VI, § 624(a), Oct. 19, 1984, 98 Stat. 2542; Pub. L. 99-145, title VI, §§ 635(a), 647(a), title XIII, § 1303(b)(2), Nov. 8, 1985, 99 Stat. 647, 655, 740.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-145, § 635(a)(1)(A), substituted "a crew member" for "an enlisted crew member".

Subsec. (a)(10). Pub. L. 99-145, § 635(a)(1)(B), in amending cl. (10) generally, designated existing provisions as cls. (A) and (B) and added cl. (C).

Subsec. (b). Pub. L. 99-145, § 635(a)(2), amended table generally, so as to eliminate differentiation in pay rates based upon years of service and reflect an upward adjustment in the monthly incentive pay with respect to pay grades E-9 thorugh E-1, and added provisions relating to monthly incentive pay for pay grades O-10 through O-1 and W-4 through W-1, respectively.

Subsec. (c)(1). Pub. L. 99-145, § 1303(b)(2), directed the substitution of "(10)," for "(10),,". See amendment note below.

Pub. L. 99-145, § 635(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "For the performance of the hazardous duty described in clause (2), (3), (4), (5), (6), (7), (8), (9), or (10),, of subsection (a) of this section, an officer is entitled to $110 a month and an enlisted member is entitled to $83 a month."

Subsec. (f). Pub. L. 99-145, § 647(a), designated existing provisions as par. (1), inserted "for the entire month" after "section 204 of this title", and added par. (2).

1984—Subsec. (a)(3). Pub. L. 98-525, § 624(a)(1), redesignated cl. (4) as (3). Former cl. (3), relating to duty involving frequent and regular participation in glider flights, was struck out.

Subsec. (a)(4). Pub. L. 98-525, § 624(a)(1), redesignated cl. (6) as (4). Former cl. (4) redesignated (3).

Subsec. (a)(5). Pub. L. 98-525, § 624(a)(1), redesignated cl. (7) as (5). Former cl. (5), relating to duty involving intimate contact with persons afflicted with leprosy, was struck out.

Subsec. (a)(6) to (13). Pub. L. 98-525, § 624(a)(1), redesignated cls. (8) to (13) as (6) to (11), respectively.

Subsec. (c)(1). Pub. L. 98-525, § 624(a)(2), substituted "or (10)," for "(10), (11), or (12)".

Subsec. (c)(2). Pub. L. 98-525, § 624(a)(3), substituted "(11)" for "(13)".

1983—Subsec. (a)(12). Pub. L. 98-94 inserted "or the testing of aircraft or missile systems (or components of such systems) during which highly toxic fuels or propellants are used".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 635(b) of Pub. L. 99-145 provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 1985."

Section 647(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [amending this section] shall apply to payments of incentive pay for hazardous duty performed after September 30, 1985."

EFFECTIVE DATE OF 1983 AMENDMENT

Section 903(b) of Pub. L. 98-94 provided that: "The amendment made by subsection (a) [amending subsec. (a)(12) of this section] shall take effect on October 1, 1983."

PERSONS ENTITLED TO RECEIVE INCENTIVE PAY FOR DUTY INVOLVING CONTACT WITH PERSONS AFFLICTED WITH LEPROSY

Section 624(b) of Pub. L. 98-525 provided that: "A member of the uniformed services who is entitled on the day before the date of the enactment of this Act [Oct. 19, 1984] to receive incentive pay under section 301(a)(5) [subsec. (a)(5) of this section] (for the performance of duty involving intimate contact with persons afflicted with leprosy) shall continue to be entitled to such pay under such section as in effect on that day so long as the member continues (without a break) to be assigned to perform such duties on and after that day."

EX. ORD. NO. 11157. REGULATIONS RELATING TO INCENTIVE PAY, SPECIAL PAY, AND ALLOWANCES

Ex. Ord. No. 11157, June 22, 1964, 29 F.R. 7973, as amended by Ex. Ord. No. 11242, Aug. 28, 1965, 30 F.R. 11205; Ex. Ord. No. 11253, Oct. 20, 1965, 30 F.R. 13509; Ex. Ord. No. 11259, Dec. 3, 1965, 30 F.R. 15057; Ex. Ord. No. 11292, Aug. 1, 1966, 31 F.R. 10447; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 11424, Aug. 29, 1968, 33 F.R. 12361; Ex. Ord. No. 11473, June 14, 1969, 34 F.R. 9485; Ex. Ord. No. 11511, Feb. 27, 1970, 35 F.R. 3877; Ex. Ord. No. 11591, Apr. 23, 1971, 36 F.R. 7833; Ex. Ord. No. 11716, Apr. 26, 1973, 38 F.R. 10621; Ex. Ord. No. 11728, July 12, 1973, 38 F.R. 18861; Ex. Ord. No. 11897, Jan. 13, 1976, 41 F.R. 2071; Ex. Ord. No. 11929, July 26, 1976, 41 F.R. 31159; Ex. Ord. No. 11939, Sept. 30, 1976, 41 F.R. 43705; Ex. Ord. No. 12094, Nov. 1, 1978, 43 F.R. 51379; Ex. Ord. No. 12243, Oct. 3, 1980, 45 F.R. 66439; Ex. Ord. No. 12274, Jan. 16, 1981, 46 F.R. 5855; Ex. Ord. No. 12337, Jan. 11, 1982, 47 F.R. 1367, eff. Sept. 15, 1981; Ex. Ord. No. 12380, Aug. 18, 1982, 47 F.R. 36605, eff. Jan. 1, 1981; Ex. Ord. No. 12394, Nov. 18, 1982, 47 F.R. 52405, eff. Oct. 1, 1981; Ex. Ord. No. 12420, May 11, 1983, 48 F.R. 21525, eff. Oct. 1, 1981; Ex. Ord. No. 12488, Sept. 27, 1984, 49 F.R. 38525, eff. Oct. 1, 1983; Ex. Ord. No. 12494, Dec. 6, 1984, 49 F.R. 48175; Ex. Ord. No. 12541, Dec. 30, 1985, 51 F.R. 585, eff. Jan. 1, 1986, provided:

[*See main edition for text of first par.*]

PART I—INCENTIVE PAY FOR HAZARDOUS DUTY

[*See main edition for text of Secs. 101 to 108*]

SEC. 109. As used in section 301(a) of title 37 of the United States Code—

[*See main edition for text of* (a)]

(b) The term "duty involving the demolition of explosives" shall be construed to mean duty performed by members who, pursuant to competent orders and as a primary duty assignment (1) demolish by the use of explosives objects, obstacles, or explosives, or recover and render harmless, by disarming or demolition, explosives which have failed to function as intended or which have become a potential hazard; (2) participate as students or instructors in instructional training, including that in the field or fleet, for the duties described in clause (1) hereof, provided that live explosives are used in such training; (3) participate in proficiency training, including that in the field or fleet, for the maintenance of skill in the duties described in clause (1) hereof, provided that live explosives are used in such training; or (4) experiment with or develop tools, equipment, or procedures for the demolition and rendering harmless of explosives, provided that live explosives are used.

[*See main edition for text of* (c) *to* (*f*)]

(g) The term "duty involving the servicing of aircraft or missiles with highly toxic fuels or propellants or the testing of aircraft or missile systems (or components of such systems) during which highly toxic fuels or propellants are used" shall be construed to mean duty performed by members as a primary duty that requires (1) removal, replacement, and servicing of the emergency power unit of an aircraft with H-70 propellant (30 percent water, 70 percent hydrazine); (2) participation by those personnel performing duties described in (g)(1) who must also participate in an emergency response force, spill containment, or spill cleanup involving H-70 propellant (30 percent water, 70 percent hydrazine); (3) handling and maintaining the liquid propellants (liquid oxidizer-nitrogen tetroxide; unsymmetrical dimethyl hydrazine) used in the Titan weapon system, if such duty requires qualification in the use of the Rocket Fuel Handler's Clothing Outfit and involves (A) launch duct operations, including flow, pressurization, on-load, set-up or tear down involving propellant transfer operations; (B) set-up, installation or tear down for fuel/oxidizer flow; (C) decontamination of equipment, including, but not limited to, the Rocket Fuel Handler's Clothing Outfit; (D) venting or pressurizing missile fuel or oxidizer tanks; (E) removing or replacing missile components while missile fuel and oxidizer tanks are loaded with such propellants; (F) transferring propellants between commercial and military holding trailers, or between holding trailers and fuel/oxidizer pump rooms; or normal preventive maintenance activities including, but not limited to, seal changes; (4) handling and maintaining the propellants, unsymmetrical dimethyl hydrazine and inhibited red-fuming nitric acid, used in the LANCE missile system; (5) handling, transporting or working with toxic fuels/propellants by members assigned to the Air Force Rocket Propulsion Lab (AFRPL) who (A) directly manage and inspect the activities of crew members conducting operations involving experimental rocket propulsion systems and components; (B) directly monitor and set up measurement instruments in operational areas where contamination is suspected or may be physically present; (C) install and remove instrumentation devices from propulsion systems and components; (D) perform final test preparation and immediate safety inspection duties around pressurized, active systems during prerun and postrun test periods; or, (E) install and repair electrical systems; (6) handling, loading/unloading and transporting toxic fuels and oxidizers at the precision sled track while working with the liquid rocket sled, which uses JP-X (a mixture of jet fuel (JP-4) and unsymmetrical dimethyl hydrazine) and red-fuming nitric acid and a propulsion; or (7) involvement with other toxic substances contained in missile or aircraft weapon system fuels or propellants as determined by the Secretary concerned. The entitlement to the pay provided for in this subsection is based upon the performance of such duty which has the potential for accidental or inadvertent exposure to highly toxic fuels or propellants or related substances and not upon actual quantifiable exposure to such substances. Therefore, neither this construction of the term nor the receipt of the pay provided for in this subsection may be construed as indicating that any person entitled to such pay has been actually exposed to highly toxic fuels or propellants or related substances contrary to the provisions of any statute, Executive order, rule, or regulation relating to health or safety which is applicable to the uniformed services.

(h) The term "duty involving frequent and regular exposure to highly toxic pesticides" shall be construed to mean duty performed by members who, while under competent orders assigning such members to the entomology, pest control, pest management, or preventive medicine functions of a uniformed service for a period of 30 consecutive days or more, are required to perform in any calendar month a fumigation task utilizing (1) phosphine, sulfuryl fluoride, hydrogen cyanide, methyl bromide, or (2) a fumigant of comparable high acute toxicity and hazard potential.

(i) The term "duty involving laboratory work that utilizes live dangerous viruses or bacteria" shall be construed to mean primary duty performed by members who work with micro-organisms (1) that cause disease (A) with a high potential for mortality, and (B) for which effective therapeutic procedures are not available, and (2) for which no effective prophylactic immunization exists, while such members are assigned by competent orders for a period of 30 consecutive days or more to participate in or conduct applied or basic research that is characterized by a changing variety of techniques, procedures, equipment, and experiments.

[*See main edition for text of Secs. 110 to 114; Parts II and III*]

PART IV—BASIC ALLOWANCE FOR QUARTERS

SEC. 401. As used in this part:

[*See main edition for text of* (a) *and* (b)]

(c) The term "sea duty" shall mean service performed by either an officer or enlisted member in a self-propelled vessel that is in an active status, in commission or in service and is equipped with berthing and messing facilities. Duty for less than three months is not considered to be sea duty. Duty for more than three months under temporary orders which provide for return to the member's same permanent station is not considered sea duty.

[*See main edition for text of* (d) *and* (e)]

(f) [Deleted by Ex. Ord. No. 12541, Dec. 30, 1985, 51 F.R. 585]

[See main edition for text of Secs. 402 to 407; Part V]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 301b, 304, 310, 552, 907, 1012 of this title; title 38 section 2024.

§ 301b. Special pay: aviation career officers extending period of active duty

[See main edition for text of (a) to (d)]

(e) *[See main edition for text of (1)]*

(2) During the period beginning on October 1, 1984, and ending on September 30, 1987, only agreements executed by officers of the Navy may be accepted under this section.

(3) During the period beginning on October 1, 1983, and ending on September 30, 1987, only an agreement—

(A) that is executed by an officer who—

(i) has at least six but less than eleven years of active duty;

(ii) has completed the minimum service required for aviation training; and

(iii) has not previously been paid special pay authorized by this section; and

(B) that requires the officer to remain on active duty in aviation service for either three or four years;

may be accepted under this section. An officer from whom an agreement is accepted during such period may be paid an amount not to exceed $4,000 for each year covered by that agreement if that officer agrees to remain on active duty for three years or an amount not to exceed $6,000 for each year covered by that agreement if that officer agrees to remain on active duty for four years. An agreement that requires an officer to remain on active duty in aviation service for six years may also be accepted during such period if the officer meets the requirements of clause (A) of this paragraph and the officer has completed less than seven years of active duty. An officer from whom such an agreement is accepted may be paid an amount not to exceed $6,000 for each year covered by the agreement.

(4) An officer may not receive incentive pay under section 301 of this title for the performance of hazardous duty for any period of service which the officer is obligated to serve pursuant to an agreement entered into under this section.

(f) Special pay may not be paid under this section for an agreement that applies to a period of active duty that begins after September 30, 1987.

(As amended Pub. L. 98-94, title IX, § 904(a), Sept. 24, 1983, 97 Stat. 635; Pub. L. 98-525, title VI, § 622(a), Oct. 19, 1984, 98 Stat. 2540; Pub. L. 99-145, title VI, § 636, Nov. 8, 1985, 99 Stat. 648.)

AMENDMENTS

1985—Subsecs. (e)(2), (3), (f). Pub. L. 99-145 substituted "September 30, 1987" for "September 30, 1985".

1984—Subsec. (e)(2). Pub. L. 98-525, § 622(a)(1), substituted "During the period beginning on October 1, 1984, and ending on September 30, 1985, only agreements executed by officers of the Navy may be accepted under this section" for "During the period beginning on October 1, 1983, and ending on September 30, 1984, only agreements executed by officers of the Navy or Marine Corps who are pilots may be accepted under this section".

Subsec. (e)(3). Pub. L. 98-525, § 622(a)(2), substituted "September 30, 1985" for "September 30, 1984" in provisions preceding subpar. (A).

Subsec. (f). Pub. L. 98-525, § 622(a)(2), substituted "September 30, 1985" for "September 30, 1984".

1983—Subsec. (e)(2). Pub. L. 98-94, § 904(a)(1), substituted "during the period beginning on October 1, 1983, and ending on September 30, 1984, only agreements executed by officers of the Navy or Marine Corps who are pilots may be accepted under this section" for "during the period beginning on the date of the enactment of the Uniformed Services Pay Act of 1981 and ending on September 30, 1982, only agreements executed by officers of the Navy or Marine Corps may be accepted under this section".

Subsec. (e)(3), (4). Pub. L. 98-94, § 904(a)(1), added pars. (3) and (4).

Subsec. (f). Pub. L. 98-94, § 904(a)(2), substituted "September 30, 1984" for "September 30, 1982".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 636 of Pub. L. 99-145 provided in part that the amendment of this section by section 636 of Pub. L. 99-145 is effective Oct. 1, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 622(a) of Pub. L. 98-525 provided in part that the amendment of this section by section 622(a) of Pub. L. 98-525 is effective Oct. 1, 1984.

SPECIAL PAY AS INDUCEMENT TO REMAIN ON ACTIVE DUTY; REPORT TO CONGRESS

Section 904(b) of Pub. L. 98-94 provided that:

"(1) It is the sense of the Congress that eligibility for special pay for aviation career officers under section 301b of title 37, United States Code, should be made available only to officers who will likely be induced to remain on active duty in aviation service by receipt of the special pay.

"(2) The Secretary of the Navy shall submit to the Congress not later than July 1, 1984, a written report, approved by the Secretary of Defense, on the payment of special pay for aviation career officers under section 301b of title 37, United States Code, since the date of the enactment of this Act [Sept. 24, 1983]. Such report shall include—

"(A) a list of the specific aviation specialties by aircraft type determined to be critical for purposes of the payment of special pay under such section since the date of the enactment of this Act;

"(B) the number of officers within each critical aviation specialty who received the special pay under such section since the date of the enactment of this Act by grade, years of prior active service, and amounts of special pay received under such section;

"(C) an explanation and justification for the Secretary's designation of an aviation specialty as 'critical' and for the payment of special pay under section 301b of such title to officers who have more than eight years of prior active service and who are serving in pay grade O-4 or above, if payment of such pay was made to such officers; and

"(D) an evaluation of the progress made since the date of the enactment of this Act toward eliminating shortages of aviators in the aviation specialties designated by the Secretary as critical."

§ 301c. Incentive pay: submarine duty

[See main edition for text of (a)]

(b) A member who meets the requirements prescribed in subsection (a) of this section is entitled to monthly submarine duty incentive pay as follows:

[*See main edition for text of table for enlisted members*]

COMMISSIONED OFFICERS

Pay grade	Years of service computed under section 205						
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
O-10	$265	$265	$265	$265	$265	$265	$265
O-9	265	265	265	265	265	265	265
O-8	265	265	265	265	265	265	265
O-7	265	265	265	265	265	265	265
O-6	440	440	440	440	440	440	440
O-5	440	440	440	440	440	440	440
O-4	270	270	270	300	440	440	440
O-3	265	265	265	290	440	440	440
O-2	175	175	175	175	175	175	265
O-1	130	130	130	130	130	130	265
	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
O-10	$265	$265	$265	$265	$265	$265	$265
O-9	265	265	265	265	265	265	265
O-8	265	265	265	265	265	265	265
O-7	265	265	400	395	395	305	265
O-6	440	440	440	440	440	440	440
O-5	440	440	440	440	440	440	440
O-4	440	440	440	440	440	440	440
O-3	440	440	440	440	440	440	440
O-2	265	265	265	265	265	265	265
O-1	265	265	265	265	265	265	265

[*See main edition for text of table for warrant officers;* (*c*) *to* (*e*)]

(As amended Pub. L. 99-145, title VI, § 633(a), Nov. 8, 1985, 99 Stat. 646.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 amended table pertaining to commissioned officers generally, so as to reflect an upward adjustment in monthly incentive pay rates for persons in pay grades O-6 through O-3 having over 18, over 20, over 22, and over 26 years of service, respectively.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 633(b) of Pub. L. 99-145 provided that: "The amendment made by this section [amending this section] shall take effect on October 1, 1985."

§ 302. Special pay: medical officers of the armed forces

[*See main edition for text of* (*a*) *to* (*g*)]

(h)(1) Any reserve officer who is an officer of the Medical Corps of the Army or the Navy or an officer of the Air Force designated as a medical officer—

(A) who has served on active duty as a medical officer for not less than one year; and

(B) who is on active duty under a call or order to active duty for a period of not less than one year;

is entitled to special pay in accordance with this subsection.

[*See main edition for text of* (*2*)]

(i) A discharge in bankruptcy under title 11 that is entered less than 5 years after the termination of an agreement under this section does not discharge the person signing such agreement from a debt arising under such agreement or under paragraph (1) [1] of this subsection. This paragraph applies to any case commenced under title 11 after September 30, 1985.

(As amended Pub. L. 99-145, title VI, § 640, Nov. 8, 1985, 99 Stat. 652.)

AMENDMENTS

1985—Subsec. (h)(1)(B). Pub. L. 99-145, § 640(1), substituted "who is" for "is not".

Subsec. (i). Pub. L. 99-145, § 640(2), added subsec. (i).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 303a of this title; title 42 section 210.

§ 302b. Special pay: dental officers of the armed forces

(a)(1) An officer who—

(A) is an officer of the Dental Corps of the Army or the Navy or an officer of the Air Force designated as a dental officer; and

(B) is on active duty under a call or order to active duty for a period of not less than one year,

is entitled to special pay in accordance with this subsection.

(2) An officer described in paragraph (1) of this subsection who is serving in a pay grade below pay grade O-7 is entitled to variable special pay at the following rates:

(A) $1,200 per year, if the officer is undergoing dental internship training or has less than three years of creditable service.

(B) $2,000 per year, if the officer has at least three but less than six years of creditable service and is not undergoing dental internship training.

(C) $4,000 per year, if the officer has at least six but less than 10 years of creditable service.

(D) $6,000 per year, if the officer has at least 10 but less than 14 years of creditable service.

(E) $4,000 per year, if the officer has at least 14 but less than 18 years of creditable service.

(F) $3,000 per year, if the officer has 18 or more years of creditable service.

(3) An officer described in paragraph (1) of this subsection who is serving in a pay grade above pay grade O-6 is entitled to variable special pay at the rate of $1,000 per year.

(4) Subject to subsection (b) of this section, an officer entitled to variable special pay under paragraph (2) or (3) of this subsection is entitled to additional special pay for any 12-month period during which the officer is not undergoing dental internship or residency training. Such additional special pay shall be paid at the following rates:

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[1] So in original. There is no par. (1).

(A) $6,000 per year, if the officer has at least three but less than 14 years of creditable service.

(B) $8,000 per year, if the officer has at least 14 but less than 18 years of creditable service.

(C) $10,000 per year, if the officer has 18 or more years of creditable service.

(5) An officer who is entitled to variable special pay under paragraph (2) or (3) of this subsection and who is board certified is entitled to additional special pay at the following rates:

(A) $2,000 per year, if the officer has less than 12 years of creditable service.

(B) $3,000 per year, if the officer has at least 12 but less than 14 years of creditable service.

(C) $4,000 per year, if the officer has 14 or more years of creditable service.

(b)(1) An officer may not be paid additional special pay under subsection (a)(4) of this section for any 12-month period unless the officer first executes a written agreement under which the officer agrees to remain on active duty for a period of not less than one year beginning on the date the officer accepts the award of such special pay.

(2) Under regulations prescribed by the Secretary of Defense under section 303a(a) of this title, the Secretary of the military department concerned may terminate at any time an officer's entitlement to the special pay authorized by subsection (a)(4) of this section. If such entitlement is terminated, the officer concerned is entitled to be paid such special pay only for the part of the period on active duty that the officer served, and the officer may be required to refund any amount in excess of that entitlement.

(c) Regulations prescribed by the Secretary of Defense under section 303a(a) of this title shall include standards for determining—

(1) whether an officer is undergoing internship or residency training for purposes of subsections (a)(2)(A), (a)(2)(B), and (a)(4) of this section; and

(2) whether an officer is board certified for purposes of subsection (a)(5) of this section.

(d) Special pay payable to an officer under paragraphs (2), (3), and (5) of subsection (a) of this section shall be paid monthly. Special pay payable to an officer under subsection (a)(4) of this section shall be paid annually at the beginning of the 12-month period for which the officer is entitled to such payment.

(e) An officer who voluntarily terminates service on active duty before the end of the period for which a payment was made to such officer under subsection (a)(4) of this section shall refund to the United States an amount which bears the same ratio to the amount paid to such officer as the unserved part of such period bears to the total period for which the payment was made.

(f) A discharge in bankruptcy under title 11 shall not release a person from an obligation to reimburse the United States required under the terms of an agreement described in subsection (b) of this section if the final decree of the discharge in bankruptcy was issued within a period of five years after the last day of a period which such person had agreed to serve on active duty. This subsection applies to a discharge in bankruptcy in any proceeding which begins after September 30, 1985.

(g) For purposes of this section, creditable service of an officer is computed by adding—

(1) all periods which the officer spent in dental internship or residency training during which the officer was not on active duty; and

(2) all periods of active service in the Dental Corps of the Army or Navy, as an officer of the Air Force designated as a dental officer, or as a dental officer of the Public Health Service.

(As amended Pub. L. 99-145, title VI, § 639(a), Nov. 8, 1985, 99 Stat. 649.)

AMENDMENTS

1985—Pub. L. 99-145 amended section generally, substituting "Special pay: dental officers of the armed forces" for "Special pay: dentists" in section catchline and new text for former text which read as follows: "An officer of the Army or Navy in the Dental Corps, an officer of the Air Force who is designated as a dental officer, or a dental officer of the Public Health Service, who is on active duty for a period of at least one year is entitled to special pay at the following rates—

"(1) $100 a month for each month of active duty if he has not completed two years of active duty in the Dental Corps or as a dental officer;

"(2) $150 a month for each month of active duty if he has completed at least two years of active duty in the Dental Corps or as a dental officer;

"(3) $250 a month for each month of active duty if he has completed at least six years of active duty in the Dental Corps or as a dental officer; or

"(4) $350 a month for each month of active duty if he has completed at least ten years of active duty in the Dental Corps or as a dental officer."

EFFECTIVE DATE OF 1985 AMENDMENT

Section 639(f) of Pub. L. 99-145 provided that: "The amendments made by this section [amending this section, repealing section 311 of this title, and enacting provisions set out as notes under this section] take effect on October 1, 1985."

AUTHORITY FOR CERTAIN DENTAL OFFICERS TO EXECUTE NEW AGREEMENTS

Section 639(c) of Pub. L. 99-145 provided that:

"(1) Subject to paragraphs (2) and (3), a dental officer who on October 1, 1985, is performing obligated service under an agreement under section 311 of title 37, United States Code, that—

"(A) was executed after June 29, 1985; and

"(B) is affected by the limitation in section 8091 of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98-473),

may execute a new agreement under section 302b of such title (as amended by subsection (a)).

"(2) A dental officer may not execute a new agreement under paragraph (1) unless the amount that may be paid such officer under an agreement under section 302b of title 37, United States Code (as amended by subsection (a)), is greater than the amount to be paid the officer under the existing agreement of the officer under section 311 of such title.

"(3) In executing a written agreement under paragraph (1), the officer shall agree to remain on active duty for an additional length of time equal to or exceeding the length of time originally required by the existing agreement, beginning on the date the officer accepts the award of special pay under the new agreement.

"(4) If a new agreement is executed under this subsection, the existing agreement of the officer shall be canceled.

"(5) For the purposes of this section, the term 'dental officer' has the meaning given that term in section 101 of title 10, United States Code."

MINIMUM SPECIAL PAY

Section 639(d) of Pub. L. 99-145 provided that:

"(1) An officer described in paragraph (2) who, after September 30, 1985, is entitled to special pay under section 302b of title 37, United States Code (as amended by subsection (a)), shall be entitled to such pay in an annual amount that is not less than the total annual amount of dental continuation pay under section 311 of title 37, United States Code, and special pay for dental officers under section 302b of that title to which that officer was entitled on September 30, 1985.

"(2) Paragraph (1) applies to an officer who on September 30, 1985, is entitled to dental continuation pay under section 311 of title 37, United States Code; or to special pay for dental officers under section 302b of that title."

§ 303a. Special pay: health professionals; general provisions

REFERENCES IN TEXT

Section 311 of this title, referred to in subsecs. (a) and (c), was repealed by Pub. L. 99-145, title VI, § 639(b), Nov. 8, 1985, 99 Stat. 651.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 302b of this title.

§ 305a. Special pay: career sea pay

[See main edition for text of (a)]

(b) The monthly rates for special pay under subsection (a) of this section are as follows:

ENLISTED MEMBERS

Pay grade	Years of sea duty																
	1 or less	Over 1	Over 2	Over 3	Over 4	Over 5	Over 6	Over 7	Over 8	Over 9	Over 10	Over 11	Over 12	Over 13	Over 14	Over 16	Over 18
E-4	$50	$60	$125	$160	$175	$175	$175	$175	$175	$175	$175	$175	$175	$175	$175	$175	$175
E-5	60	70	140	175	185	190	205	220	220	220	220	220	220	220	220	220	220
E-6	125	135	170	190	210	215	225	235	245	255	265	265	280	295	310	325	340
E-7	135	145	215	235	255	260	265	265	270	275	280	300	310	330	350	370	390
E-8	165	180	225	255	265	270	280	285	290	300	310	310	320	340	360	380	400
E-9	175	195	235	265	280	290	310	310	310	310	320	330	350	370	390	410	410

WARRANT OFFICERS

Pay grade	Years of sea duty															
	1 or less	Over 1	Over 2	Over 3	Over 4	Over 5	Over 6	Over 7	Over 8	Over 9	Over 10	Over 11	Over 12	Over 14	Over 16	Over 18	Over 20
W-1	$130	$135	$140	$150	$170	$175	$200	$250	$270	$275	$280	$290	$300	$300	$300	$300	$300
W-2	150	150	150	150	170	260	265	265	270	275	280	290	310	330	350	370	390
W-3	150	150	150	150	170	270	280	285	290	300	310	310	330	350	370	390	410
W-4	150	150	150	150	170	290	310	310	310	310	320	330	350	370	390	410	410

COMMISSIONED OFFICERS

Pay grade	Years of sea duty													
	Over 3	Over 4	Over 5	Over 6	Over 7	Over 8	Over 9	Over 10	Over 11	Over 12	Over 14	Over 16	Over 18	Over 20
O-1	$150	$160	$185	$190	$195	$205	$215	$225	$225	$240	$250	$260	$270	$280
O-2	150	160	185	190	195	205	215	225	225	240	250	260	270	280
O-3	150	160	185	190	195	205	215	225	225	240	260	270	280	290
O-4	185	190	200	205	215	215	220	225	225	240	270	280	290	300
O-5	225	225	225	225	230	245	250	260	265	265	285	300	315	340
O-6	225	230	230	240	255	265	280	290	300	310	325	340	355	380

[See main edition for text of (c) and (d)]

(As amended Pub. L. 98-525, title VI, § 623(a), Oct. 19, 1984, 98 Stat. 2541; Pub. L. 99-145, title VI, § 634(a), Nov. 8, 1985, 99 Stat. 647.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 amended the table for warrant officers for pay grade W-3 by substituting "330" for "310" in the column for "Over 12", and for pay grade W-4, substituted "320" for "310" in the column for "Over 10", substituted "330" for "310" in the column for "Over 11", and "350" for "310" in the column for "Over 12", added columns for "Over 14", "Over 16", "Over 18", and "Over 20", and in the table for commissioned officers added columns for "Over 14", "Over 16", "Over 18", and "Over 20", and struck out the subscript qualifier for pay grades O-1 and O-2, which read: "Commissioned officers with at least four years of active service as enlisted members or as noncommissioned warrant officers".

1984—Subsec. (b). Pub. L. 98-525 amended the table relating to rates of pay for enlisted members by substituting "265" for "255" and "320" for "310" in the column for "Over 10", "265" for "255" and "330" for "310" in the column for "Over 11", "280" for "255", "320" for "310", and "350" for "310" in the column for "Over 12", and added columns for "Over 13", "Over 14", "Over 16", and "Over 18".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 634(b) of Pub. L. 99-145 provided that: "The amendment made by this section [amending this section] shall take effect on October 1, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 623(c) of Pub. L. 98-525 provided that: "The amendments made by this section [amending sections 305a(b) and 307 of this title] shall take effect on October 1, 1984."

§ 306a. Special pay: members assigned to international military headquarters

Not more than nine members of the armed forces, including members detailed to international military headquarters, may be paid pay and allowances at rates referred to in section 625(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2385(d)).

(Added Pub. L. 98-525, title XIV, § 1402(b)(1), Oct. 19, 1984, 98 Stat. 2621.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriations acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8005], 98 Stat. 1904, 1922.

Dec. 8, 1983, Pub. L. 98-212, title VII, § 708, 97 Stat. 1438.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 708], 96 Stat. 1833, 1850.

Dec. 29, 1981, Pub. L. 97-114, title VII, § 708, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96-527, title VII, § 708, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96-154, title VII, § 708, 93 Stat. 1152.

Oct. 13, 1978, Pub. L. 95-457, title VIII, § 808, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95-111, title VIII, § 807, 91 Stat. 899.

Sept. 22, 1976, Pub. L. 94-419, title VII, § 707, 90 Stat. 1291.

Feb. 9, 1976, Pub. L. 94-212, title VII, § 707, 90 Stat. 168.

Oct. 8, 1974, Pub. L. 93-437, title VIII, § 807, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93-238, title VII, § 707, 87 Stat. 1038.

Oct. 26, 1972, Pub. L. 92-570, title VII, § 707, 86 Stat. 1196.

Dec. 18, 1971, Pub. L. 92-204, title VII, § 707, 85 Stat. 727.

Jan. 11, 1971, Pub. L. 91-668, title VIII, § 807, 84 Stat. 2030.

Dec. 29, 1969, Pub. L. 91-171, title VI, § 607, 83 Stat. 480.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of Title 10, Armed Forces.

§ 307. Special pay: special duty assignment pay for enlisted members

(a) An enlisted member who is entitled to basic pay and is performing duties which have been designated under subsection (b) of this section as extremely difficult or as involving an unusual degree of responsibility in a military skill may, in addition to other pay or allowances to which he is entitled, be paid special duty assignment pay at a monthly rate not to exceed $275.

(b) The Secretary concerned shall determine which enlisted members under his jurisdiction are to be paid special duty assignment pay under subsection (a) of this section. He shall also designate those skills within each armed force under his jurisdiction for which special duty assignment pay is authorized and shall prescribe the criteria under which members of that armed force are eligible for special duty assignment pay in each skill. He may increase, decrease, or abolish such pay for any skill.

(c) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(As amended Pub. L. 98-525, title VI, § 623(b)(1), Oct. 19, 1984, 98 Stat. 2541.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "special duty assignment pay for enlisted members" for "proficiency pay for enlisted members" in section catchline.

Subsec. (a). Pub. L. 98-525 substituted provisions directing that an enlisted member who is entitled to basic pay and is performing duties which have been designated under subsection (b) of this section as extremely difficult or as involving an unusual degree of responsibility in a military skill may, in addition to other pay or allowances to which he is entitled, be paid special duty assignment pay at a monthly rate not to exceed $275, for provisions which directed that an enlisted member of a uniformed service who was entitled to basic pay and was designated as being specially proficient in a military skill of the uniformed service concerned could (1) be advanced to an enlisted pay grade that was higher than his pay grade at the time of his designation and be entitled to the basic pay and special or incentive pay of that higher grade, or (2) in addition to other pay or allowances to which he was entitled under this title, be paid proficiency pay at a monthly rate that was not more than the rate prescribed in a table for the proficiency rating to which he was assigned, setting maximum monthly rates of $50, $100, or $150.

Subsec. (b). Pub. L. 98-525 redesignated subsec. (c) as (b), and in subsec. (b) as so redesignated, substituted references to special duty assignment pay for former references to proficiency pay and struck out provisions which had authorized the Secretary to elect one of two methods formerly set out in subsecs. (a)(1) and (a)(2) for paying each uniformed service under his jurisdiction, with a proviso that if he elected to have proficiency pay paid under former subsec. (a)(1) of this section, enlisted members in a military grade or rank assigned to pay grade E-8 or E-9 could be paid proficiency pay at a monthly rate that is not more than the highest rate prescribed by subsection (a)(2) of this section, but if he elected to have proficiency pay paid under subsection (a)(2) of this section, he could prescribe, within the limitations set forth in that subsection, the pay for each proficiency rating prescribed therein. Former subsec. (b), which had provided that an enlisted member who had less than 8 or 10 years, as the case might be, of enlisted service computed under section 205 of this title and who had been advanced under subsection (a)(1) of this section to pay grade E-8 or E-9, respectively, was entitled to the minimum amount of basic pay and special or incentive pay prescribed for that pay grade until his years of service computed under that section entitled him to a higher rate of those pays, was struck out.

Subsecs. (c), (d). Pub. L. 98-525 redesignated subsec. (d) as (c) and in subsec. (c), as so redesignated, substituted "armed forces under his jurisdiction" for "uniformed services under his jurisdiction". Former subsec. (c) redesignated (b) and amended.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Oct. 1, 1984, see section 623(c) of Pub. L. 98-525, set out as a note under section 305a of this title.

MEMBERS ENTITLED TO SPECIAL PAY AS OF SEPTEMBER 30, 1984

Section 623(b)(3) of Pub. L. 98-525 provided that: "A member of the uniformed services who, on September 30, 1984, was entitled to special pay under section 307 of title 37, United States Code [this section], as in effect on such date, may continue to be paid the special pay authorized by such section as though the amendments made by this subsection [amending this section] had not been made. However, a member may not be paid the special pay authorized by such section as in effect on September 30, 1984, and the special pay authorized by such section as amended by this section."

§ 308. Special pay: reenlistment bonus

(a)(1) A member of a uniformed service who—

[*See main edition for text of* (*A*) *to* (*D*)]

may be paid a bonus, not to exceed six months of the basic pay to which he was entitled at the time of his discharge or release, multiplied by the number of years, or the monthly fractions thereof, of additional obligated service, not to exceed six years, or $30,000, whichever is the lesser amount. Obligated service in excess of sixteen years will not be used for bonus computation.

[*See main edition for text of* (*2*)]

(b)(1) Not less than 75 percent of the amount of a bonus under this section shall be paid in a lump sum at the beginning of the period for which the bonus is paid, with any remaining amount paid in equal annual installments.

(2) Of the bonuses paid under this section to members of a uniformed service during a fiscal year, not more than 10 percent may exceed $20,000.

[*See main edition for text of* (*c*) *to* (*f*)]

(g) No bonus shall be paid under this section with respect to any reenlistment, or voluntary extension of an active-duty enlistment, in the armed forces entered into after September 30, 1987.

(As amended Pub. L. 98-14, § 1, Mar. 30, 1983, 97 Stat. 55; Pub. L. 98-525, title VI, § 621, Oct. 19, 1984, 98 Stat. 2540; Pub. L. 99-145, title VI, § 631(a), Nov. 8, 1985, 99 Stat. 643.)

AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99-145 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Bonus payments authorized under this section may be paid in either a lump sum or in installments."

1984—Subsec. (a)(1). Pub. L. 98-525, § 621(b)(1), substituted "$30,000" for "$20,000" in provisions following subpar. (D).

Subsec. (b). Pub. L. 98-525, § 621(b)(2), designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 98-525, § 621(a), substituted "September 30, 1987" for "September 30, 1984".

1983—Subsec. (g). Pub. L. 98-14 substituted "September 30, 1984" for "March 31, 1983".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 631(b) of Pub. L. 99-145 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to bonuses paid for reenlistments or extensions of enlistment effective after September 30, 1986."

§ 308a. Special pay: enlistment bonus

[*See main edition for text of* (*a*) *and* (*b*)]

(c) No bonus shall be paid under this section with respect to any enlistment or extension of an initial period of active duty in the armed forces made after September 30, 1987.

(As amended Pub. L. 98-14, § 1, Mar. 30, 1983, 97 Stat. 55; Pub. L. 98-525, title VI, § 621(a), Oct. 19, 1984, 98 Stat. 2540.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-525 substituted "September 30, 1987" for "September 30, 1984".

1983—Subsec. (c). Pub. L. 98-14 substituted "September 30, 1984" for "March 31, 1983".

§ 308b. Special pay: reenlistment bonus for members of the Selected Reserve

[*See main edition for text of* (*a*)]

(b) The bonus to be paid under subsection (a) shall be—

(1) an initial payment of—

(A) an amount not to exceed $1,250, in the case of a member who reenlists or voluntarily extends his enlistment for a period of three years; or

(B) an amount not to exceed $2,500, in the case of a member who reenlists or voluntarily extends his enlistment for a period of six years; and

(2) a subsequent payment of not to exceed $416.66 upon the completion of each year of the period of such reenlistment or extension of enlistment during which such member has satisfactorily participated in training with his unit.

(c) No member shall be paid more than one bonus under this section.

(d) A member who fails to participate satisfactorily in training with his unit during a term of enlistment for which a bonus is being paid to him under this section shall refund an amount equal to the amount by which the amount of such bonus exceeds the product of—

(1) the number of months during that term of enlistment during which such member participated satisfactorily in training with his unit; and

(2) $69.44.

[*See main edition for text of* (*e*) *and* (*f*)]

(g) No bonus may be paid under this section to any enlisted member who, after September

30, 1987, reenlists or voluntarily extends his enlistment in a reserve component.

(As amended Pub. L. 99-145, title VI, § 643(a), Nov. 8, 1985, 99 Stat. 652.)

AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99-145, § 643(a)(1)(A), substituted "$1,250" for "$450" in subpar. (A) and "$2,500" for "$900" in subpar. (B).

Subsec. (b)(2). Pub. L. 99-145, § 643(a)(1)(B), substituted "$416.66" for "$150".

Subsec. (d)(2). Pub. L. 99-145, § 643(a)(2), substituted "$69.44" for "$25".

Subsec. (g). Pub. L. 99-145, § 643(a)(3), substituted "September 30, 1987" for "September 30, 1985".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 643(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1985."

§ 308c. Special pay: bonus for enlistment in the Selected Reserve

[*See main edition for text of* (*a*) *to* (*e*)]

(f) No bonus may be paid under this section to any enlisted member who, after September 30, 1987, enlists in the Selected Reserve of the Ready Reserve of an armed force.

(As amended Pub. L. 99-145, title VI, § 642, Nov. 8, 1985, 99 Stat. 652.)

AMENDMENTS

1985—Subsec. (f). Pub. L. 99-145 substituted "September 30, 1987" for "September 30, 1985".

[§ 308d. Repealed. Pub. L. 98-94, title X, § 1011(b)(1), Sept. 24, 1983, 97 Stat. 664]

Section, added Pub. L. 96-342, title VIII, § 805(a)(1), Sept. 8, 1980, 94 Stat. 1092, related to special pay and to a bonus for enlistment, reenlistment, or extension of enlistment in elements of the Ready Reserve other than the Selected Reserve. See sections 308g and 308h of this title.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 98-94 effective Oct. 1, 1983, see section 1101(c) of Pub. L. 98-94, set out as an Effective Date note under section 308g of this title.

§ 308e. Special pay: bonus for reserve affiliation agreement

[*See main edition for text of* (*a*) *and* (*b*)]

(c)(1) The amount of the bonus paid to any person under this section shall be an amount determined by multiplying up to $50 as determined by the Secretary concerned times the number of months of reserve obligation such person has remaining or, if such person is on active duty, will have remaining at the time of his discharge or release from active duty.

[*See main edition for text of* (*2*); (*d*)]

(e) No bonus may be paid under this section to any person for a reserve obligation agreement entered into after September 30, 1987.

(As amended Pub. L. 99-145, title VI, § 645(a), Nov. 8, 1985, 99 Stat. 654.)

AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99-145, § 645(a)(1), substituted "up to $50 as determined by the Secretary concerned" for "$25".

Subsec. (e). Pub. L. 99-145, § 645(a)(2), substituted "September 30, 1987" for "September 30, 1985".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 645(b) of Pub. L. 99-145 provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 1985."

§ 308f. Special pay: bonus for enlistment in the Army

[*See main edition for text of* (*a*) *and* (*b*)]

(c) No bonus may be paid under this section with respect to an enlistment in the Army after September 30, 1987.

(As amended Pub. L. 98-14, § 2, Mar. 30, 1983, 97 Stat. 55; Pub. L. 98-525, title VI, § 621(a), Oct. 19, 1984, 98 Stat. 2540.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-525 substituted "September 30, 1987" for "September 30, 1984".

1983—Subsec. (c). Pub. L. 98-14 substituted "September 30, 1984" for "September 30, 1983".

§ 308g. Special pay: bonus for enlistment in elements of the Ready Reserve other than the Selected Reserve

(a) An eligible person who enlists in a combat or combat support skill of an element (other than the Selected Reserve) of the Ready Reserve of an armed force for a term of enlistment of not less than six years, and who has not previously served in an armed force, may be paid a bonus as provided in subsection (b) of this section.

(b) Eligibility for and the amount and method of payment of a bonus under this section shall be determined in accordance with regulations prescribed under subsection (g) of this section, except that the amount of such a bonus may not exceed $1,000 and shall be paid in equal annual increments.

(c) A bonus may not be paid under this section for a term of enlistment to any person who fails to complete satisfactorily initial active duty for training or who, upon completion of initial active duty for training, elects to serve the remainder of the term of enlistment in the Selected Reserve or in an active component of an armed force.

(d) A person who receives a bonus payment under this section and who fails during the period for which the bonus was paid to serve satisfactorily in the element of the Ready Reserve with respect to which the bonus was paid shall refund to the United States an amount which bears the same ratio to the amount of the bonus paid to such person as the period which such person failed to serve satisfactorily bears to the total period for which the bonus was paid.

(e) An obligation to reimburse the United States imposed under subsection (d) of this section is, for all purposes, a debt owed to the United States.

(f) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an enlistment for which a bonus was paid under this section does not discharge the person receiving such bonus payment from the debt arising under subsection (d) of this section. This subsection applies to any case commenced under title 11 after September 24, 1983.

(g) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Transportation for the Coast Guard when it is not operating as a service in the Navy.

(h) A bonus may not be paid under this section to any person for an enlistment after September 30, 1987.

(Added Pub. L. 98-94, title X, § 1011(a), Sept. 24, 1983, 97 Stat. 663, and amended Pub. L. 98-525, title V, § 552(f)(2), Oct. 19, 1984, 98 Stat. 2532; Pub. L. 99-145, title VI, § 646(a)(1), title XIII, § 1303(b)(3), Nov. 8, 1985, 99 Stat. 654, 740.)

AMENDMENTS

1985—Subsec. (f). Pub. L. 99-145, § 1303(b)(3), substituted "September 24, 1983" for "the date of the enactment of the Department of Defense Authorization Act, 1984".

Subsec. (h). Pub. L. 99-145, § 646(a)(1), substituted "September 30, 1987" for "September 30, 1985".

1984—Subsec. (b). Pub. L. 98-525 inserted provision for payment in equal annual increments.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 646(a)(1) of Pub. L. 99-145 effective Oct. 1, 1985, see section 646(d) of Pub. L. 99-145, set out as a note under section 308h of this title.

EFFECTIVE DATE

Section 1011(c) of Pub. L. 98-94 provided that: "The amendments made by subsections (a) and (b) [enacting sections 308g and 308h of this title and repealing section 308d of this title] shall take effect on October 1, 1983."

INDIVIDUAL READY RESERVE REENLISTMENT BONUSES

Section 552(f)(1) of Pub. L. 98-525 provided that: "In order to encourage members of the Armed Forces whose military service obligation is expiring and who do not choose to reenlist or otherwise extend their service on active duty or in active elements of reserve components to remain in the Armed Forces as members of the Individual Ready Reserve, the Secretary of Defense shall consider making greater use of the authority provided under section 308h of title 37, United States Code, to pay bonuses to persons reenlisting for periods of not less than three years in the Individual Ready Reserve."

COAST GUARD; RESERVE FORCES READINESS PROVISIONS INAPPLICABLE

Reserve Forces Readiness provisions, including amendment of subsec. (b) of this section by Pub. L. 98-525 and Individual Ready Reserve Reenlistment Bonuses note above inapplicable to Coast Guard, see section 552(g) of Pub. L. 98-525, set out as a Reserve Forces Readiness note under section 261 of Title 10, Armed Forces.

§ 308h. Special pay: bonus for reenlistment, enlistment, or voluntary extension of enlistment in elements of the Ready Reserve other than the Selected Reserve

(a)(1) An eligible person who is or has been a member of an armed force and who reenlists, enlists, or voluntarily extends an enlistment in a combat or combat support skill of an element (other than the Selected Reserve) of the Ready Reserve of an armed force for a period of three years, or for a period of six years, beyond any other period the person is obligated to serve may be paid a bonus as provided in subsection (b) of this section.

(2) A bonus may not be paid under this section to a person who has failed to complete satisfactorily any original term of enlistment in the armed forces.

(b)(1) Eligibility for and the amount and method of payment of a bonus under this section shall be determined under regulations to be prescribed under subsection (f) of this section.

(2) The amount of a bonus under this section—

(A) may not exceed $1,500, in the case of a person who enlists for a period of six years; and

(B) may not exceed $750 in the case of a person who enlists for a period of three years.

(3) A bonus paid under this section shall be paid as follows:

(A) In the case of a bonus under paragraph (2)(A) of this subsection—

(i) $500 shall be paid at the time of the reenlistment, enlistment, or extension of enlistment for which the bonus is paid; and

(ii) the remainder shall be paid in equal annual increments.

(B) In the case of a bonus under paragraph (2)(B) of this subsection, the amount of the bonus shall be paid in equal annual increments.

(c) A person who receives a bonus payment under this section and who fails during the period for which the bonus was paid to serve satisfactorily in the Ready Reserve shall refund to the United States an amount which bears the same ratio to the amount of the bonus paid to such person as the period which such person failed to serve satisfactorily bears to the total period for which the bonus was paid.

(d) An obligation to reimburse the United States imposed under subsection (c) of this section is, for all purposes, a debt owed to the United States.

(e) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of a reenlistment, enlistment, or extension for which a bonus was paid under this section does not discharge the person receiving such bonus payment from the debt arising under subsection (c) of this section. This subsection applies to any case commenced under title 11 after September 24, 1983.

(f)(1) This section shall be administered under regulations to be prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Transportation for the Coast Guard when it is not operating as a service in the Navy.

(2) Regulations under this section may require that as a condition of receiving a bonus under this section the person receiving the bonus agree to participate in an annual muster of the Reserves, or in active duty for training, as may be required by the Secretary concerned.

(g) A bonus may not be paid under this section to any person for a reenlistment, enlistment, or voluntary extension of an enlistment after September 30, 1987.

(Added Pub. L. 98-94, title X, § 1011(a), Sept. 24, 1983, 97 Stat. 663, and amended Pub. L. 98-525, title V, § 552(f)(2), Oct. 19, 1984, 98 Stat. 2532; Pub. L. 99-145, title VI, § 646(a)-(c), title XIII, § 1303(b)(3), Nov. 8, 1985, 99 Stat. 654, 740.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-145, § 646(b)(1), substituted "for a period of three years, or for a period of six years," for "for a period of not less than three years".

Subsec. (b). Pub. L. 99-145, § 646(b)(2), designated existing provisions as par. (1), struck out therein ", except that the amount of such a bonus may not exceed $900 and shall be paid in equal annual increments", and added pars. (2) and (3).

Subsec. (e). Pub. L. 99-145, § 1303(b)(3), substituted "September 24, 1983" for "the date of the enactment of the Department of Defense Authorization Act, 1984".

Subsec. (f). Pub. L. 99-145, § 646(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 99-145, § 646(a), substituted "September 30, 1987" for "September 30, 1985".

1984—Subsec. (b). Pub. L. 98-525 inserted provision for payment in equal annual increments.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 646(d) of Pub. L. 99-145 provided that: "The amendments made by this section [amending sections 308g and 308h of this title] shall take effect on October 1, 1985."

EFFECTIVE DATE

Section effective Oct. 1, 1983, see section 1011(c) of Pub. L. 98-94, set out as a note under section 308g of this title.

INDIVIDUAL READY RESERVE REENLISTMENT BONUSES

Section 552(f)(1) of Pub. L. 98-525 provided that: "In order to encourage members of the Armed Forces whose military service obligation is expiring and who do not choose to reenlist or otherwise extend their service on active duty or in active elements of reserve components to remain in the Armed Forces as members of the Individual Ready Reserve, the Secretary of Defense shall consider making greater use of the authority provided under section 308h of title 37, United States Code, to pay bonuses to persons reenlisting for periods of not less than three years in the Individual Ready Reserve."

COAST GUARD; RESERVE FORCES READINESS PROVISIONS INAPPLICABLE

Reserve Forces Readiness provisions, including amendment of subsec. (b) of this section by Pub. L. 98-525 and Individual Ready Reserve Reenlistment Bonuses note above, inapplicable to Coast Guard, see section 552(g) of Pub. L. 98-525, set out as a Reserve Forces Readiness note under section 261 of Title 10, Armed Forces.

§ 308i. Special pay: prior service enlistment bonus

(a)(1) A person who is a former enlisted member of an armed force who enlists in the Selected Reserve of the Ready Reserve of an armed force for a period of three or six years in a critical military skill designated for such a bonus by the Secretary concerned and who meets the requirements of paragraph (2) may be paid a bonus as prescribed in subsection (b).

(2) A bonus may only be paid under this section to a person who—

(A) has completed his military service obligation but has less than 10 years of total military service;

(B) has received an honorable discharge at the conclusion of military service;

(C) is not being released from active service for the purpose of enlistment in a reserve component; and

(D) has not previously been paid a bonus for enlistment, reenlistment, or extension of enlistment in a reserve component.

(b) The bonus to be paid under subsection (a) shall be—

(1) an initial payment of—

(A) an amount not to exceed $1,250, in the case of a member who enlists for a period of three years; or

(B) an amount not to exceed $2,500 in the case of a member who enlists for a period of six years; and

(2) a subsequent payment of an amount not to exceed $416.66 upon the completion of each year of the period of such reenlistment or extension of enlistment during which such member has satisfactorily participated in unit training.

(c) A member may not be paid more than one bonus under this section.

(d) A person who receives a bonus payment under this section and who fails during the period for which the bonus was paid to serve satisfactorily in the element of the Selected Reserve of the Ready Reserve with respect to which the bonus was paid shall refund to the United States an amount that bears the same relation to the amount of the bonus paid to such person as the period that such person failed to serve satisfactorily bears to the total period for which the bonus was paid.

(e) An obligation to reimburse the United States imposed under subsection (d) of this section is, for all purposes, a debt owed to the United States.

(f) Under regulations prescribed pursuant to subsection (h) of this section, the Secretary concerned may remit or cancel the whole or any part of an obligation to reimburse the United States imposed under subsection (d) of this section.

(g) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an enlistment for which a bonus was paid under this section shall not discharge the person receiving such bonus payment from the debt arising under subsection (d) of this section. This subsection applies to any case commenced under title 11 after September 30, 1985.

(h) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(i) No bonus may be paid under this section to any person for an enlistment after September 30, 1987.

(Added Pub. L. 99-145, title VI, § 644(a)(1), Nov. 8, 1985, 99 Stat. 652.)

Effective Date

Section 644(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [enacting this section] shall take effect on October 1, 1985."

§ 310. Special pay: duty subject to hostile fire or imminent danger

(a) Except in time of war declared by Congress, and under regulations prescribed by the Secretary of Defense, a member of a uniformed service may be paid special pay at the lowest rate for hazardous duty incentive pay specified in section 301(c)(1) of this title for any month in which he was entitled to basic pay and in which he—

(1) was subject to hostile fire or explosion of hostile mines;

(2) was on duty in an area in which he was in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period he was on duty in that area, other members of the uniformed services were subject to hostile fire or explosion of hostile mines;

(3) was killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action; or

(4) was on duty in a foreign area in which he was subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions.

A member covered by clause (3) who is hospitalized for the treatment of his injury or wound may be paid special pay under this section for not more than three additional months during which he is so hospitalized.

[*See main edition for text of* (b) *to* (d)]

(As amended Pub. L. 98-94, title IX, § 905(a), (b)(1), Sept. 24, 1983, 97 Stat. 636, 637; Pub. L. 99-145, title VI, § 638(a), Nov. 8, 1985, 99 Stat. 649.)

Amendments

1985—Subsec. (a). Pub. L. 99-145 substituted "at the lowest rate for hazardous duty incentive pay specified in section 301(c)(1) of this title" for "at the rate of $65 a month" in provisions preceding cl. (1).

1983—Pub. L. 98-94, § 905(b)(1), added "or imminent danger" in section catchline.

Subsec. (a)(4). Pub. L. 98-94, § 905(a), added cl. (4).

Effective Date of 1985 Amendment

Section 638(b) of Pub. L. 99-145 provided that: "The amendment made by this section [amending this section] shall take effect on October 1, 1985."

Effective Date of 1983 Amendment

Section 905(c) of Pub. L. 98-94 provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 1983."

[§ 311. Repealed. Pub. L. 99-145, title VI, § 639(b), Nov. 8, 1985, 99 Stat. 651]

Section, added Pub. L. 90-207, § 1(2)(A), Dec. 16, 1967, 81 Stat. 651, and amended Pub. L. 90-603, § 1, Oct. 18, 1968, 82 Stat. 1187; Pub. L. 90-623, § 3(5), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 93-274, § 1(3), May 6, 1974, 88 Stat. 95; Pub. L. 93-394, § 1, Aug. 29, 1974, 88 Stat. 792; Pub. L. 96-284, § 4(d)(1)-(3), June 28, 1980, 94 Stat. 591, 592; Pub. L. 96-513, title IV, § 414(b), title V, § 516(7), Dec. 12, 1980, 94 Stat. 2906, 2938, provided for continuation pay for dentists in the armed forces. See section 302b of this title.

Effective Date of Repeal

Repeal effective Oct. 1, 1985, see section 639(f) of Pub. L. 99-145, set out as an Effective Date of 1985 Amendment note under section 302b of this title.

§ 312. Special pay: nuclear-qualified officers extending period of active service

(a) Under regulations to be prescribed by the Secretary of the Navy, an officer of the naval service who—

(1) is entitled to basic pay;

(2) has the current technical qualificatio
for duty in connection with supervision, operation, and maintenance of naval nuclear propulsion plants; and

(3) executes a written agreement to remai
on active duty in connection with supervision
operation, and maintenance of naval nuclea
propulsion plants for a period of three, four
or five years, so long as the new period of ob
ligated active service does not extend beyon
the end of 26 years of commissioned service
in addition to any other period of obligate
active service,

may, upon the acceptance by the Secretary o
his designee of the written agreement, in addi
tion to all other compensation to which he
entitled, be paid a sum of money not to excee
$12,000 for each year of the active-servic
agreement. The Secretary of the Navy shall de
termine annually the necessity for continuanc
of the special pay and the rate of special pa
per year for such active-service agreements a
cepted within each 12-month period. Upon a
ceptance of the agreement by the Secretary
his designee, the total amount payable shall b
paid in equal annual installments over th
length of the contract, commencing at the exp
ration of any existing period of obligated acti
service. The Secretary (or his designee) ma
accept an active service agreement under th
section not more than one year in advance
the end of an officer's existing period of ob
gated active service under such an agreemen
In such a case, the amount of the special p
may be paid commencing with the date of
ceptance of the agreement, with the number

installments being equal to the number of years covered by the contract plus one.

(b) Pursuant to regulations prescribed by the Secretary of the Navy and subject to such exceptions as may be prescribed in those regulations, refunds, on a pro rata basis, of sums paid pursuant to this section may be required if the officer having received the payment fails to complete the full period of active duty in connection with supervision, operation, and maintenance of naval nuclear propulsion plants which he agreed to serve.

(c) Nothing in this section shall alter or modify the obligation of a regular officer to perform active service at the pleasure of the President. Completion of the additional period of active service under this section shall in no way obligate the President to accept a resignation submitted by a regular officer.

(d)(1) An officer who is performing obligated service under an agreement under subsection (a) of this section may, if the amount that may be paid under such subsection is higher than at the time the officer executed such agreement, execute a new agreement under that subsection. The period of such an agreement shall be a period equal to or exceeding the original period of the officer's existing agreement, so long as the period of obligated active service under the new agreement does not extend beyond the end of 26 years of commissioned service. If a new agreement is executed under this subsection, the existing active-service agreement shall be cancelled, effective on the day before an anniversary date of that agreement after the date on which the amount that may be paid under this section is increased.

(2) This subsection shall be carried out under regulations prescribed by the Secretary of the Navy.

(e) The provisions of this section shall be effective only in the case of officers who, on or before September 30, 1990, execute the required written agreement to remain in active service.

(As amended Pub. L. 99-145, title VI, § 632(a), Nov. 8, 1985, 99 Stat. 643.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145, § 632(a)(1)(D), in provisions following the numbered clauses, substituted "$12,000" for "$7,000", "annually" for "semiannually", "12-month period" for "six-month period", and "shall be paid in equal annual installments over the length of the contract, commencing at the expiration of any existing period of obligated active service. The Secretary (or his designee) may accept an active service agreement under this section not more than one year in advance of the end of an officer's existing period of obligated active service under such an agreement. In such a case, the amount of the special pay may be paid commencing with the date of acceptance of the agreement, with the number of installments being equal to the number of years covered by the contract plus one" for "shall become fixed and shall be paid in four equal yearly installments, commencing at the expiration of the initial obligated service; except, the Secretary or his designee may accept the active-service agreement not more than one year in advance of the expiration of the initial obligated active service and the amount may then be paid in five yearly installments, not to exceed $5,600 per year, commencing with the date of acceptance of the agreement".

Subsec. (a)(2) to (4). Pub. L. 99-145, § 632(a)(1)(A)-(C), inserted "and" at the end of cl. (2), redesignated cl. (4) as (3) and substituted "for a period of three, four, or five years, so long as the new period of obligated active service does not extend beyond the end of 26 years of commissioned service," for "for one period of four years", and struck out former cl. (3) which related to an officer of the naval service who had not completed ten years of commissioned service.

Subsec. (b). Pub. L. 99-145, § 632(a)(2), (3), redesignated subsec. (c) as (b), struck out "of four years" after "complete the full period", and struck out former subsec. (b) which provided that no more than one agreement for each officer would be accepted under this section.

Subsec. (c). Pub. L. 99-145, § 632(a)(4), redesignated subsec. (d) as (c), and substituted "additional period of active service under this section shall in no way obligate the President to accept a resignation submitted by a regular officer." for "additional period of four years' active service under this section shall in no way obligate the President to accept a resignation submitted by a regular officer at the end of the four-year period." Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 99-145, § 632(a)(5), added subsec. (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 99-145, § 632(a)(6), substituted "September 30, 1990" for "September 30, 1987".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 632(d) of Pub. L. 99-145 provided that: "The amendments made by this section [amending sections 312, 312b, and 312c of this title] shall take effect on October 1, 1985."

§ 312b. Special pay: nuclear career accession bonus

(a)(1) Under regulations prescribed by the Secretary of the Navy, an individual who is selected for officer naval nuclear power training and who executes a written agreement to participate in a program of training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants may be paid a bonus not to exceed $8,000 upon acceptance by the Secretary of the written agreement. Upon acceptance of the agreement by the Secretary, the amounts payable upon selection for training and upon completion of training, respectively, as determined under subsection (b) of this section, shall become fixed.

[*See main edition for text of (2)*]

(b) The Secretary of the Navy shall determine annually the total amount of the bonus to be paid under this section and of that amount the portions that are to be paid—

(1) upon selection for officer naval nuclear power training; and

(2) upon successful completion, as a commissioned officer, of training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants.

(c) The Secretary of the Navy shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report containing data to monitor the effectiveness of the bonus authorized by subsections (a) and (b) of this section.

(d) The provisions of this section shall be effective only in the case of officers who, on or before September 30, 1990, have been accepted for training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants.

(As amended Pub. L. 99-145, title VI, § 632(b), title XIII, § 1303(b)(4), Nov. 8, 1985, 99 Stat. 644, 740.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-145, § 632(b)(1), substituted "not to exceed $8,000" for "of $3,000", and added provision that upon acceptance of the agreement by the Secretary, the amounts payable upon selection for training and upon completion of training, respectively, as determined under subsection (b) of this section, shall become fixed.

Subsec. (b). Pub. L. 99-145, § 632(b)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Under regulations prescribed by the Secretary of the Navy, an officer of the naval service who—

"(1) is entitled to basic pay;

"(2) has not completed five years of commissioned service; and

"(3) has, as a commissioned officer, received training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants;

may, upon successful completion of that training, in addition to all other compensation to which he is entitled, be paid a bonus in an amount not to exceed $3,000."

Subsec. (c). Pub. L. 99-145, § 1303(b)(4), substituted "submit to the Committees on Armed Services of the Senate and House of Representatives an annual report" for "make an annual report to the House and Senate Armed Services Committees".

Subsec. (d). Pub. L. 99-145, § 632(b)(3), substituted "September 30, 1990" for "September 30, 1987".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 effective Oct. 1, 1985, see section 632(d) of Pub. L. 99-145, set out as a note under section 312 of this title.

§ 312c. Special pay: nuclear career annual incentive bonus

(a)(1) Under regulations prescribed by the Secretary of the Navy, an officer of the naval service who—

(A) is entitled to basic pay;

(B) is not above the pay grade O-6;

(C) has completed his initial obligated active service as an officer;

(D) has, as a commissioned officer, successfully completed training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants; and

(E) has the current technical qualifications for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants;

may, in addition to all other compensation to which he is entitled, be paid an annual bonus in an amount not to exceed $10,000 for each nuclear service year ending before October 1, 1990.

(2) In order to be eligible for an annual bonus for any nuclear service year in accordance with this subsection, an otherwise technically qualified officer must have been on active duty on the last day of that nuclear service year.

(3) The amount of the annual bonus to which an officer would otherwise be entitled for a nuclear service year in accordance with this subsection shall be reduced on a pro rata basis for each day of that nuclear service year on which he—

(A) was not on active duty;

(B) was not technically qualified for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants;

(C) was performing obligated service as the result of an active-service agreement executed under section 312 of this title; or

(D) was entitled to receive aviation career incentive pay in accordance with section 301a while serving in a billet other than a billet that required the officer—

(i) be technically qualified for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants; and

(ii) be qualified for the performance of operational flying duties.

(b)(1) Under regulations prescribed by the Secretary of the Navy, an officer of the naval service who—

(A) is entitled to basic pay;

(B) is not above the pay grade O-6;

(C) has, as an enlisted member, received training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants; and

(D) has the current technical qualifications for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants;

may, in addition to all other compensation to which he is entitled, be paid an annual bonus in an amount not to exceed $4,500 for each nuclear service year ending before October 1, 1990.

(2) In order to be eligible for an annual bonus for any nuclear service year in accordance with this subsection, an otherwise technically qualified officer must have been on active duty on the last day of that nuclear service year.

(3) The amount of the annual bonus to which an officer would otherwise be entitled in accordance with this subsection shall be reduced on a pro rata basis for each day of that nuclear service year on which he—

(A) was not in an assignment involving the direct supervision, operation, or maintenance of naval nuclear propulsion plants;

(B) was performing obligated service as the result of an active-service agreement executed under section 312 of this title; or

(C) was entitled to receive aviation career incentive pay in accordance with section 301a while serving in a billet other than a billet—

(i) involving the direct supervision, operation, or maintenance of naval nuclear propulsion plants; and

(ii) that required the officer be qualified for the performance of operational flying duties.

[See main edition for text of (c) and (d)]

(e) For the purposes of this section, a "nuclear service year" is any fiscal year beginning before October 1, 1990.

(As amended Pub. L. 99-145, title VI, § 632(c), Nov. 8, 1985, 99 Stat. 645.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145, § 632(c)(1), designated first sentence as par. (1), redesignated cls. (1) to (5) as (A) to (E), respectively, struck out ", but has completed less than twenty-six years of commissioned service" after "officer" in cl. (C), and substituted "$10,000" and "October 1, 1990" for "$6,000" and "October 1, 1987", respectively; designated second sentence as par. (2) and inserted "technically" before "qualified"; designated third sentence as par. (3) and substituted cls. (A) to (D) for provision that the annual bonus be reduced pro rata each day of a nuclear service year that an officer was not on active duty; was not qualified for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants; was performing obligated service as the result of an active-service agreement executed under section 312 of this title; or was entitled to receive aviation career incentive pay in accordance with section 301a of this title; and struck out fourth sentence relating to conditions authorizing a further pro rata reduction in the amount of the annual bonus in the case of an officer with more than ten, but not more than eighteen, years of commissioned service, an officer with more than eighteen, but not more than twenty-five, years of commissioned service, and an officer with more than twenty-five, but not more than twenty-six, years of commissioned service.

Subsec. (b). Pub. L. 99-145, § 632(c)(2), designated first sentence as par. (1), redesignated cls. (1) to (4) as cls. (A) to (D), respectively, and in provision following cl. (D) substituted "$4,500" and "October 1, 1990" for "$3,500" and "October 1, 1987", respectively; designated second sentence as par. (2) and inserted "technically" before "qualified"; designated third sentence as par. (3) and substituted cls. (A) to (D) for provision that the annual bonus be reduced pro rata for each day of a nuclear service year that an officer was not in an assignment involving the direct supervision, operation, or maintenance of naval nuclear propulsion plants; was performing obligated service as the result of an active service agreement executed under section 312 of this title; or was entitled to receive aviation career incentive pay in accordance with section 301a of this title.

Subsec. (e). Pub. L. 99-145, § 632(c)(3), substituted "October 1, 1990" for "October 1, 1987".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 effective Oct. 1, 1985, see section 632(d) of Pub. L. 99-145, set out as a note under section 312 of this title.

§ 314. Special pay: qualified enlisted members extending duty at designated locations overseas

(a) Under regulations prescribed by the Secretary concerned, an enlisted member of an armed force who—

[*See main edition for text of* (*1*) *to* (*4*)]

is entitled, upon acceptance of the agreement providing for such extension by the Secretary concerned, to special pay for duty performed during the period of the extension at a rate of not more than $80 per month, as prescribed by the Secretary concerned.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 99-145, title VI, § 641(a), Nov. 8, 1985, 99 Stat. 652.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "$80" for "$50" in provision following par. (4).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 641(b) of Pub. L. 99-145 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1985."

§ 315. Special pay: engineering and scientific career continuation pay

(a) In this section, "engineering or scientific duty" means service performed by an officer—

(1) that requires an engineering or science degree; and

(2) that requires a skill designated (under regulations prescribed by the Secretary of Defense for the armed forces, by the Secretary of Commerce for the National Oceanic and Atmospheric Administration, or by the Secretary of Health and Human Services for the Public Health Service) as critical and as a skill in which there is a critical shortage of officers in the uniformed service concerned.

(b) Under regulations prescribed by the Secretary concerned, an officer of a [3] uniformed service who—

[*See main edition for text of* (*1*) *to* (*6*)]

may, upon acceptance of the written agreement by the Secretary concerned, be paid, in addition to all other compensation to which the officer is entitled, an amount not to exceed $3,000 multiplied by the number of years, or monthly fraction thereof, of obligated service to which the officer agrees under the agreement. The total amount payable may be paid in a lump sum or in equal periodic installments, as determined by the Secretary concerned.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 99-145, title VI, § 637(a), Nov. 8, 1985, 99 Stat. 648.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145, § 637(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "In this section, the term 'engineering or scientific duty' means service performed by an officer that requires an engineering or science degree and that requires a skill designated under regulations prescribed by the Secretary of Defense as critical and as a skill in which there is a critical shortage of officers in the armed force concerned."

Subsec. (b). Pub. L. 99-145, § 637(a)(2), in provision preceding par. (1), substituted "prescribed by the Secretary concerned" for "prescribed by the Secretary of Defense" and "officer of a uniformed service" for "officer of an armed force".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 637(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1985."

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[3] So in original. Probably should be "an".

CHAPTER 7—ALLOWANCES

Sec.
403. Basic allowance for quarters.
403a. Variable housing allowance.
404. Travel and transportation allowances: general.
405a. Travel and transportation allowances: departure allowances.
406b. Travel and transportation allowances: members of the uniformed services attached to a ship overhauling or inactivating.
411d. Travel and transportation allowances: transportation incident to personal emergencies for certain members and dependents.
411f. Travel and transportation allowances: transportation for survivors of deceased member to attend the member's burial ceremonies.
[421. Repealed.]
425. United States Navy Band; United States Marine Band: allowances while on concert tour.
430. Travel and transportation: dependent children of members stationed overseas.
431. Benefits for certain members assigned to the Defense Intelligence Agency.

AMENDMENTS

1985—Pub. L. 99-145, title VI, §§ 616(c)(2), 620(a)(2), title XIII, §§ 1302(b)(2), 1303(b)(7), Nov. 8, 1985, 99 Stat. 641, 643, 738, 740, substituted "allowances:" for "allowances;" in item 404 and "departure" for "evacuation" in item 405a, struck out "away from home port" after "inactivating" in item 406b, added item 411f, substituted "allowances" for "allowance" in item 425, and added item 431.

1984—Pub. L. 98-525, title VI, §§ 602(d)(2), 612(a)(2), Oct. 19, 1984, 98 Stat. 2536, 2539, struck out "; variable housing allowance" after "Basic allowance for quarters" in item 403, and added item 403a, and substituted "personal emergencies for certain members and dependents" for "certain emergencies for members performing temporary duty" in item 411d.

1983—Pub. L. 98-94, title IX, §§ 910(a)(2), 932(e)(2), Sept. 24, 1983, 97 Stat. 639, 650, struck out item 421 "Contract surgeons" and added item 430.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 907 of this title; title 10 section 1091.

§ 401. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 411f of this title; title 10 section 2002.

§ 402. Basic allowance for subsistence

[*See main edition for text of* (a)]

(b) An enlisted member is entitled to the basic allowance for subsistence, on a daily basis, of one of the following types—

[*See main edition for text of* (1) *to* (3)]

The allowance to an enlisted member, when authorized, may be paid in advance for a period of not more than three months. An enlisted member is entitled to the allowance while on an authorized leave of absence, while confined in a hospital, or while performing travel under orders away from his designated post of duty other than field duty or sea duty. The allowance for an enlisted member who is authorized to receive the basic allowance for subsistence under this subsection is at the rate prescribed in accordance with section 1009 of this title or as otherwise prescribed by law. Unless he is entitled to basic pay under chapter 3 of this title, an enlisted member of a reserve component of a uniformed service, or of the National Guard, is entitled, in the discretion of the Secretary concerned, to rations in kind, or a part thereof, when the instruction or duty periods, described in section 206(a) of this title, total at least eight hours in a calendar day. The Secretary concerned may provide an enlisted member who could be provided rations in kind under the preceding sentence with a commutation when rations in kind are not available.

[*See main edition for text of* (c)]

(d) Under regulations and in areas prescribed by the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, an enlisted member who is granted permission to mess separately, and whose duties require him to buy at least one meal from other than a messing facility of the United States, is entitled to not more than the pro rata allowance authorized for each such meal for an enlisted member when rations in kind are not available.

(e)(1) The President may prescribe regulations for the administration of this section, including definitions of the terms "field duty" and "sea duty" for purposes of the third sentence of subsection (b) of this section.

(2) For purposes of subsection (b) of this section, a member shall not be considered to be performing travel under orders away from his designated post of duty if such member—

(A) is an enlisted member serving his first tour of active duty;

(B) has not actually reported to a permanent duty station pursuant to orders directing such assignment; and

(C) is not actually traveling between stations pursuant to orders directing a change of station.

(As amended Pub. L. 98-94, title IX, § 908(a), Sept. 24, 1983, 97 Stat. 637; Pub. L. 98-525, title VI, § 605, Oct. 19, 1984, 98 Stat. 2537; Pub. L. 98-557, § 17(d), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 99-145, title XIII, § 1303(b)(5), Nov. 8, 1985, 99 Stat. 740.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 inserted "or as otherwise prescribed by law" after "title" at end of fourth sentence.

1984—Subsec. (b). Pub. L. 98-525 added: "The Secretary concerned may provide an enlisted member who could be provided rations in kind under the preceding sentence with a commutation when rations in kind are not available."

Subsec. (d). Pub. L. 98-557 added provisions relating to Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

1983—Subsec. (e). Pub. L. 98-94 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 605 of Pub. L. 98-525 provided in part that the amendment of this section by section 605 of Pub. L. 98-525 is effective Oct. 1, 1984.

§ 403. Basic allowance for quarters

(a) Except as otherwise provided by law, a member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for quarters at the monthly rates prescribed in accordance with section 1009 of this title or as otherwise prescribed by law, according to the pay grade in which he is assigned or distributed for basic pay purposes. The allowance authorized by this section may be paid in advance.

[*See main edition for text of* (*b*)]

(c)(1) A member of a uniformed service without dependents who makes a permanent change of station for assignment to a unit conducting field operations is not entitled to a basic allowance for quarters while on that initial field duty unless his commanding officer certifies that the member was necessarily required to procure quarters at his expense.

(2) A member of a uniformed service without dependents who is in a pay grade below pay grade E-7 is not entitled to a basic allowance for quarters while he is on sea duty. A member of a uniformed service without dependents who is in a pay grade above E-6 who is assigned to sea duty under a permanent change of station is not entitled to a basic allowance for quarters if the unit to which the member is ordered is deployed and the permanent station of the unit is different than the permanent station from which the member is reporting.

(3) Repealed. Pub. L. 99-145, title VI, § 605(a)(3), Nov. 8, 1985, 99 Stat. 638

[*See main edition for text of* (*d*) *to* (*i*)]

(j) [*See main edition for text of* (*1*)]

(2) The Secretary concerned may deny the right to make an election under subsection (b) of this section if he determines that the exercise of such an election would adversely affect a training mission, military discipline, or military readiness.

(k) Parking facilities (including utility connections) provided members of the uniformed services for house trailers and mobile homes not owned by the Government shall not be considered to be quarters for the purposes of this section or any other provision of law. Any fee established by the Government for the use of such a facility shall be established in an amount sufficient to cover the cost of maintenance, services, and utilities and to amortize the cost of construction of the facility over the 25-year period beginning with the completion of such construction.

(*l*)(1) The Secretary of Defense, or the Secretary of Transportation in the case of the Coast Guard when not operating as a service in the Navy, may allow the dependents of a member of the Armed Forces who dies in line of duty and whose dependents are occupying family housing provided by the Department of Defense, or by the Department of Transportation in the case of the Coast Guard, other than on a rental basis on the date of the member's death to continue to occupy such housing without charge for a period of 90 days.

(2) The Secretary concerned may pay an allowance for quarters to the dependents of a member of the uniformed services who dies in line of duty and whose dependents are not occupying a housing facility under the jurisdiction of a uniformed service on the date of the member's death or are occupying such housing on a rental basis on such date, or whose dependents vacate such housing sooner than 90 days after the date of the member's death. The amount of the allowance for quarters shall be the same amount that would be payable to the deceased member under sections 403, 403a, and 405 of this title if the member had not died. The payment of an allowance for quarters under this subsection shall terminate 90 days after the date of the member's death.

(As amended Pub. L. 98-94, title IX, § 907(a), Sept. 24, 1983, 97 Stat. 637; Pub. L. 98-525, title VI, §§ 602(c), 604(a), Oct. 19, 1984, 98 Stat. 2534, 2537; Pub. L. 99-145, title VI, §§ 604(a), 605(a), title VIII, § 809(b), title XIII, § 1303(b)(6), Nov. 8, 1985, 99 Stat. 638, 681, 740; Pub. L. 99-227, § 1, Dec. 28, 1985, 99 Stat. 1745.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145, § 1303(b)(6), added "or as otherwise prescribed by law" after "of this title".

Pub. L. 99-145, § 604(a), inserted provision permitting the allowance authorized by this section to be paid in advance.

Subsec. (c)(1). Pub. L. 99-145, § 605(a)(1), substituted "who makes a permanent change of station for assignment to a unit conducting field operations is not entitled to a basic allowance for quarters while on that initial field duty" for "is not entitled to a basic allowance for quarters while he is on field duty".

Subsec. (c)(2). Pub. L. 99-145, § 605(a)(2), substituted "who is assigned to sea duty under a permanent change of station is not entitled to a basic allowance for quarters if the unit to which the member is ordered is deployed and the permanent station of the unit is different than the permanent station from which the member is reporting" for "and who is on sea duty is not entitled to a basic allowance for quarters while the unit to which he is assigned is deployed for a period in excess of 90 days".

Subsec. (c)(3). Pub. L. 99-145, § 605(a)(3), struck out par. (3) which provided that for purposes of this subsection, duty for a period of less than three months was not considered to be field duty or sea duty.

Subsec. (k). Pub. L. 99-145, § 809(b), substituted "25-year period" for "15-year period".

Subsec. (*l*). Pub. L. 99-227 added subsec. (*l*).

1984—Pub. L. 98-525, § 602(c)(2), struck out "; variable housing allowance" in section catchline.

Subsec. (a). Pub. L. 98-525, § 602(c)(1), struck out designation for par. (1) preceding "Except as otherwise provided by law" and struck out par. (2) which had related to variable housing allowances. See section 403a of this title.

Subsec. (j)(2). Pub. L. 98-525, § 604(a), inserted reference to training missions.

1983—Subsec. (a)(2)(A), (D). Pub. L. 98-94 substituted "Except as provided in subparagraph (D) of this paragraph, a member" for "A member" at beginning of subpar. (A), and added subpar. (D).

Effective Date of 1985 Amendments

Section 2 of Pub. L. 99-227 provided that: "The amendments made by section 1 of this Act [amending this section] shall take effect December 12, 1985, and shall apply only with respect to housing for and payment of an allowance for quarters to dependents of members of the uniformed services who died on or after that date."

Section 604(c) of Pub. L. 99-145 provided that: "The amendments made by this section [amending sections 403 and 403a of this title] shall take effect on October 1, 1985."

Section 605(b) of Pub. L. 99-145 provided that:

"(1) The amendments made by paragraphs (1) and (2) of subsection (a) [amending this section] shall take effect on October 1, 1985.

"(2) The amendment made by paragraph (3) of subsection (a) [amending this section] shall take effect on January 1, 1986."

Amendment by section 809(b) of Pub. L. 99-145 effective Oct. 1, 1985, see section 813 of Pub. L. 99-145, set out in a Military Family Policy and Programs note under section 133 of Title 10, Armed Forces.

Effective Date of 1984 Amendment

Amendment of subsec. (a) of this section by section 602(c) of Pub. L. 98-525 effective Jan. 1, 1985, with exceptions, see section 602(f) of Pub. L. 98-525, as amended, set out as an Effective Date note under section 403a of this title.

Section 604(b) of Pub. L. 98-525 provided that: "The amendment made by subsection (a) [amending subsec. (j)(2) of this section] shall apply only with respect to members making an election under section 403(b) of title 37, United States Code, after September 30, 1984."

Effective Date of 1983 Amendment

Section 907(b) of Pub. L. 98-94 provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to members called or ordered to active duty after September 30, 1983."

Minimum Rate of Quarters Allowance Set at Rate as of December 31, 1984

Pub. L. 99-190, § 101(b) [title VIII, § 8088], Dec. 19, 1985, 99 Stat. 1185, 1216, provided that: "During the current fiscal year, effective January 1, 1985, the rate of the basic allowance for quarters authorized by section 403(a) of title 37, United States Code, which is payable to a member of the uniformed services who was entitled to that allowance on December 31, 1984, shall not be less than the rate of the basic allowance for quarters that was in effect for that member on December 31, 1984 (unless the member holds a lower grade than he held on that date or has had a change in dependent status from a 'with dependents' status to a 'without dependents' status)."

Basic Allowance for Quarters and Variable Housing Allowance

Section 602(a) of Pub. L. 98-525 provided that:

"(1) Effective on January 1, 1985, the rates of the basic allowance for quarters authorized by section 403(a)(1) of title 37, United States Code, are as follows:

" 'Pay Grade	Without Dependents		With Dependents
	Full Rate	Partial Rate [1]	
Commissioned officers:			
O-10	$537.30	$50.70	$660.90
O-9	537.30	50.70	660.90
O-8	537.30	50.70	660.90
O-7	537.30	50.70	660.90
O-6	493.20	39.60	599.40
O-5	465.30	33.00	552.30
O-4	426.60	26.70	504.90
O-3	345.30	22.20	420.90
O-2	278.10	17.70	360.90
O-1	238.50	13.20	323.70
Warrant officers:			
W-4	391.20	25.20	453.90
W-3	330.30	20.70	405.90
W-2	297.00	15.90	379.50
W-1	251.40	13.80	330.90
Enlisted members:			
E-9	315.30	18.60	429.90
E-8	292.20	15.30	400.50
E-7	249.30	12.00	372.60
E-6	221.40	9.90	337.80
E-5	204.90	8.70	300.30
E-4	177.60	8.10	259.50
E-3	172.50	7.80	238.50
E-2	146.40	7.20	238.50
E-1	133.50	6.90	238.50'.

" '[1] Payable to a member without dependents who under section 403(b) or (c) of title 37, United States Code, is not entitled to receive a basic allowance for quarters.'

"(2) During the period beginning on January 1, 1985, and ending on the date on which any change is made by law in any of the rates of basic allowance for quarters for members of the uniformed services prescribed in paragraph (1), the rate of the basic allowance for quarters authorized by section 403(a)(1) of title 37, United States Code, which is payable to a member of the uniformed services who is entitled to that allowance on or after January 1, 1985, and before the date of any such change and who was entitled to that allowance on December 31, 1984, shall not be less than the rate of the basic allowance for quarters that was in effect for that member on December 31, 1984 (unless the member holds a lower grade than he held on that date or has had a change in dependent status from a 'with dependents' status to a 'without dependents' status)."

Freeze of Variable Housing Allowance at Fiscal Year 1983 Rates

Section 906 of Pub. L. 98-94, as amended by Pub. L. 98-525, title VI, § 602(b)(2), Oct. 19, 1984, 98 Stat. 2534, provided that: "During the period beginning on October 1, 1983, and ending on January 1, 1985, the rates at which the variable housing allowance under section 403(a)(2) of title 37, United States Code, is paid shall be the same as the rates in effect on September 30, 1983."

Section Referred to in Other Sections

This section is referred to in sections 407, 419, 1003, 1009 of this title; title 32 section 107; title 50 App. section 454.

§ 403a. Variable housing allowance

(a)(1) Except as provided in subsection (b) of this section, a member of a uniformed service entitled to basic allowance for quarters is entitled to a variable housing allowance under this section whenever assigned to duty in an area of the United States which is a high housing cost area with respect to that member. A member with dependents who is assigned to an unaccompanied tour of duty outside the United States is entitled to a variable housing allowance while serving that tour of duty for any period during which the member's dependents reside in an area of the United States where, if the member were assigned to duty in that area, the member would be entitled to receive a variable housing allowance. The allowance authorized by this section may be paid in advance.

(2) In the case of a member with dependents—

(A) who is assigned to duty inside the United States the location or the circumstances of which make it necessary that his dependents reside at another location; and

(B) whose dependents reside in an area of the United States where, if the member were assigned to duty in that area, the member would be entitled to receive a variable housing allowance at a rate other than the rate to which the member is entitled (if at all) in the area of his duty assignment,

the member may be paid a variable housing allowance as if he were assigned to duty in the area in which his dependents reside if the Secretary concerned determines (under regulations prescribed under subsection (e) of this section) that it would be inequitable to base the member's entitlement to, and amount of, variable housing allowance on the area to which the member is assigned.

(3) In the case of a member with dependents—

(A) who is assigned to an unaccompanied tour of duty in Alaska or Hawaii; and

(B) who would, if his duty station were outside the United States, be entitled to a family separation allowance under section 427(a) of this title,

the member may be paid a variable housing allowance at the rate applicable to a member without dependents serving in the same grade and at the same location. Payment of a variable housing allowance under this paragraph shall be in addition to any allowance or per diem to which the member otherwise may be entitled under this title.

(4) In the case of a member with dependents—

(A) who is assigned to duty inside the United States;

(B) who is authorized to receive the basic allowance for quarters at the rate established for a member with dependents solely by reason of the payment of child support by the member; and

(C) who is not assigned to a housing facility under the jurisdiction of a uniformed service,

the member may be paid a variable housing allowance at the rate applicable to a member without dependents serving in the same grade and at the same location.

(b) A member of a uniformed service may not be paid a variable housing allowance—

(1) in the case of a member who makes a change in permanent duty station, for the number of days that travel is authorized between permanent duty stations (under regulations prescribed under subsection (e) of this section);

(2) in the case of a member with dependents who is authorized the basic allowance for quarters at the rate established for a member with dependents solely by reason of the payment of child support by the member, if—

(A) the member is assigned to a housing facility under the jurisdiction of a uniformed service; or

(B) the member (i) is assigned to duty outside the United States or in Alaska or Hawaii, and (ii) is authorized a station housing allowance under section 405 of this title; or

(3) in the case of a member of a reserve component, while on active duty under a call or order to active duty specifying a period of less than 140 days.

(c)(1) The monthly amount of a variable housing allowance under this section for a member of a uniformed service with respect to an area is the difference between (A) the median monthly cost of housing in that area for members of the uniformed services serving in the same pay grade and with the same dependency status as that member, and (B) 80 percent of the median monthly cost of housing in the United States for members of the uniformed services serving in the same pay grade and with the same dependency status as that member.

(2) The rates of variable housing allowance shall be reduced as necessary to comply with subsection (d) of this section.

(3) The effective date of any adjustment in rates of variable housing allowance because of a redetermination of median monthly costs of housing under this subsection shall be the same as the effective date of the next increase after such redetermination in the basic allowances for quarters.

(4) For the purposes of this section, an area shall be considered to be a high housing cost area with respect to a member of a uniformed service whenever the median monthly cost of housing in that area for members of the uniformed services serving in the same pay grade and with the same dependency status as that member exceeds 80 percent of the median monthly cost of housing in the United States for members of the uniformed services serving in the same pay grade and with the same dependency status as that member.

(5) Any reduction required under paragraph (2) of this subsection and any determination of median monthly costs of housing under this subsection shall be made under regulations prescribed under subsection (e) of this section.

(6)(A) The monthly variable housing allowance that would otherwise be paid to a member under this section shall be reduced by an amount equal to one-half of the amount (if any) by which—

(i) the total monthly housing allowance prescribed for members of the same grade as such member who are assigned to duty in the same area as such member (or in the same area in which the dependents of the member reside, as appropriate), exceeds

(ii) the monthly housing costs of the member in the area in which the member is assigned to duty (or in the area in which the dependents of the member reside, as appropriate).

(B) In subparagraph (A), "total monthly housing allowance" means, in the case of any member, the sum of—

(i) the monthly basic allowance for quarters to which the member is entitled; and

(ii) the monthly variable housing allowance prescribed for the same grade as such member for the area in which the member is assigned to duty (or in the area in which the dependents of the member reside, as appropriate).

(d)(1) The total amount that may be paid for a fiscal year for the variable housing allowance authorized members of the uniformed services by this section is the product of—

(A) the total amount authorized to be paid for such allowance for the preceding fiscal year (as adjusted under paragraph (3) of this subsection); and

(B) a fraction—

(i) the numerator of which is the military housing cost index for October of the preceding fiscal year; and

(ii) the denominator of which is the military housing cost index for October of the fiscal year before the preceding fiscal year.

(2) The military housing cost index is the housing component of the Consumer Price Index (as determined by the Bureau of Labor Statistics of the Department of Labor), as adjusted under regulations prescribed under subsection (e) of this section. Such regulations may assign weights to the elements of that housing component other than those assigned by the Secretary of Labor in order more appropriately to reflect the distribution of elements of housing costs of members of the uniformed services.

(3) In making a determination under paragraph (1) of this subsection for a fiscal year, the amount authorized to be paid for the preceding fiscal year for the variable housing allowance shall be adjusted to reflect changes during the year for which the determination is made in the number, grade distribution, and dependency status of members of the uniformed services entitled to variable housing allowance from the number of such members during the preceding fiscal year. Adjustments under this paragraph shall be made in accordance with regulations prescribed under subsection (e) of this section.

(e)(1) The President may prescribe regulations for the administration of this section.

(2) Any regulations prescribed under paragraph (1) may not allow—

(A) an increase in the variable housing allowance rate for a pay grade in a survey area solely to prevent the variable housing allowance rate for a lower pay grade in the survey area from exceeding such rate; or

(B) a failure to lower the variable housing allowance rate for a pay grade in a survey area in accordance with a decrease in housing costs for such pay grade in such area reported on the variable housing allowance survey.

(3) Paragraph (2) shall not apply to regulations prescribed with respect to any pay grade in a survey area for which available data describe fewer than 50 persons in the pay grade.

(Added Pub. L. 98-525, title VI, § 602(d)(1), Oct. 19, 1984, 98 Stat. 2534, and amended Pub. L. 99-145, title VI, §§ 602(a)-(d), 604(b), Nov. 8, 1985, 99 Stat. 636-638.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-145, § 604(b), added provision that the allowance authorized by this section may be paid in advance.

Subsec. (a)(4). Pub. L. 99-145, § 602(a), added par. (4).

Subsec. (b). Pub. L. 99-145, § 602(b)(1), substituted "may not be paid" for "is not entitled to" in provisions preceding par. (1).

Subsec. (b)(2). Pub. L. 99-145, § 602(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "in the case of a member with dependents, if the member (A) is assigned to unaccompanied personnel housing of the United States (or an unaccompanied personnel housing facility under the jurisdiction of a uniformed service) appropriate to his grade, rank, or rating and adequate for himself, and (B) is authorized the basic allowance for quarters at the rate established for a member with dependents solely by reason of a court order requiring the member to pay support for dependents; or"

Subsec. (c)(1), (4). Pub. L. 99-145, § 602(c)(1), inserted "and with the same dependency status" after "in the same pay grade" wherever appearing.

Subsec. (c)(6). Pub. L. 99-145, § 602(c)(2), added par. (6).

Subsec. (e)(1). Pub. L. 99-145, § 602(d), designated existing provisions as par. (1) and added pars. (2) and (3).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 602(f) of Pub. L. 99-145 provided that:

"(1) The amendments made by subsections (a), (b), and (d) [amending subsecs. (a), (b), and (e) of this section] shall take effect on October 1, 1985.

"(2) The amendments made by subsection (c)(1) [amending subsec. (c)(1) and (4) of this section] shall apply as if included in the enactment of section 403a of title 37, United States Code, by section 602(d) of the Department of Defense Authorization Act, 1985 (Public Law 98-525).

"(3) The amendment made by subsection (c)(2) [enacting subsec. (c)(6) of this section] shall take effect on the first day of the first month beginning 90 days or more after the date of the enactment of this Act [Nov. 8, 1985]."

Amendment by section 604(b) of Pub. L. 99-145 effective Oct. 1, 1985, see section 604(c) of Pub. L. 99-145, set out as a note under section 403 of this title.

EFFECTIVE DATE

Section 602(f) of Pub. L. 98-525, as amended by Pub. L. 99-145, title VI, § 603(b), Nov. 8, 1985, 99 Stat. 637, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section, amending sections 403, 403 note, and 405 of this title and section 7572 of Title 10, Armed Forces, and enacting provisions set out as a note under section 403 of this title] shall take effect on January 1, 1985.

"(2)(A) A member shall be entitled to receive a station housing allowance under section 405 of title 37, United States Code, as if the amendments made by subsection (e) [amending section 405 of this title] had not been enacted, if the member, on the date of the enactment of the Department of Defense Authorization Act, 1986 [Nov. 8, 1985]—

"(i) is assigned to a permanent duty station in Alaska or Hawaii; and "(ii) is entitled to payment of a temporary lodging allowance or a station housing allowance under section 405 of such title.

"(B) A member who is entitled to a station housing allowance by reason of subparagraph (A) shall only be entitled to such allowance until the earlier of—

"(i) the date on which the member departs that station as a result of a permanent change of duty station; or

"(ii) the expiration of the four-year period beginning on the date of the enactment of the Department of Defense Authorization Act, 1986 [Nov. 8, 1985].

"(C) Any member who is entitled to a station housing allowance by reason of subparagraph (A) shall not be entitled to a variable housing allowance under paragraph (1) or (2) of section 403a of such title (as added by subsection (d)).

"(3) For the period beginning on January 1, 1985, and ending on September 30, 1985, the limitation applicable under subsection (d)(1) of section 403a of title 37, United States Code (as added by subsection (d)), on the total amount that may be paid during a fiscal year for the variable housing allowance authorized members of the uniformed services by that section shall be 15 percent of the median annual costs of housing in the United States for members of the uniformed services as measured during fiscal year 1984. In determining for the purposes of clause (A) of such subsection the total amount authorized to be paid for such allowance for fiscal year 1985, such amount shall be determined as if the amendments made by this section took effect on October 1, 1984."

SAVINGS PROVISION; 1985 AMENDMENT

Section 602(e) of Pub. L. 99-145 provided that: "A member described in paragraph (4) of section 403a(a) of title 37, United States Code, as added by subsection (a), who on September 30, 1985, is receiving variable housing allowance at the rate applicable to a member with dependents shall continue to be entitled to variable housing allowance at the appropriate rate applicable to a member with dependents until the member departs his duty station as a result of a permanent change of station."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 403 of this title; title 2 section 906; title 10 section 7572.

§ 404. Travel and transportation allowances: general

(a) Except as provided in subsection (f) of this section and under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed or to be performed under orders, without regard to the comparative costs of the various modes of transportation—

[*See main edition for text of (1) and (2)*]

(3) upon separation from the service, placement on the temporary disability retired list, release from active duty, or retirement, from his last duty station to his home or the place from which he was called or ordered to active duty, whether or not he is or will be a member of a uniformed service at the time the travel is or will be performed;

(4) when away from home to perform duty, including duty by a member of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, in his status as a member of the National Guard, for which he is entitled to, or has waived, pay under this title; and

(5) when not on active duty, if assigned to a Reserve school, and attending a reserve training meeting for the purpose of performing duties as an instructor at such meeting, if such meeting is 100 or more miles from the site at which the member would attend paid drills of the Reserve school to which he is assigned.

[*See main edition for text of (b)*]

(c)(1) Under uniform regulations prescribed by the Secretaries concerned and as provided in paragraph (2) of this subsection, a member who—

(A) is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10; or

(B) is retired with pay under any other law, or, immediately following at least eight years of continuous active duty with no single break therein or more than 90 days, is discharged with separation pay or severance pay or is involuntarily released from active duty with separation pay or readjustment pay;

may, not later than one year from the date he is so retired, placed on that list, discharged, or released, except as prescribed in regulations by the Secretaries concerned, select his home for the purposes of the travel and transportation allowances authorized by subsection (a) of this section.

[*See main edition for text of (2)*]

(d)(1) The travel and transportation allowances authorized for each kind of travel may not be more than one of the following:

(A) Transportation in kind, reimbursement therefor, or, under regulations prescribed by the Secretaries concerned, when travel by privately-owned conveyance is authorized or approved as more advantageous to the Government, a monetary allowance in place of the cost of transportation, at the rates provided in section 5704 of title 5, based on distances established over the shortest usually traveled route, under mileage tables prepared under the direction of the Secretary of the Army.

(B) Transportation in kind, reimbursement therefor, or a monetary allowance as provided in subparagraph (A) of this paragraph, plus a per diem in place of subsistence in an amount not more than $50 determined by the Secretaries concerned to be sufficient to meet normal and necessary expenses in the area to which travel is to be performed.

(C) A mileage allowance at a rate per mile prescribed by the Secretaries concerned and based on distances established under clause (1) of this subsection.

(2) Under regulations prescribed by the Secretaries concerned, when either travel is to an area designated as a high cost area in those regulations or the per diem of paragraph (1)(B) of this subsection is less than the amount of the actual and necessary expenses required by the

unusual circumstances of the travel assignment, reimbursement may be authorized for actual and necessary expenses, but not for more than $75 for each day in a travel status.

[See main edition for text of (e)]

(f) *[See main edition for text of (1) and (2)]*

(3) For purposes of entitlement to per diem in place of subsistence under subsection (d)(2) of this section, a member shall not be considered under subsection (a)(1) of this section to be performing travel under orders away from his designated post of duty if such member—

(A) is an enlisted member serving his first tour of active duty;

(B) has not actually reported to a permanent duty station pursuant to orders directing such assignment; and

(C) is not actually traveling between stations pursuant to orders directing a change of station.

(g) In the case of an enlisted member who is in a travel status and not entitled to receive per diem in lieu of subsistence for any day (or portion of a day) because the member is furnished meals in a Government mess, the member may not be paid a basic allowance for subsistence for such day (or portion of such day) that the member is furnished meals in a Government mess.

(As amended Pub. L. 98-94, title IX, § 908(b), Sept. 24, 1983, 97 Stat. 637; Pub. L. 98-525, title V, § 533(g), title VI, § 613(a), title XIV, § 1402(c), Oct. 19, 1984, 98 Stat. 2528, 2539, 2621; Pub. L. 99-145, title VI, § 612(a), Nov. 8, 1985, 99 Stat. 639.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (g) of this section were contained in the following prior appropriations acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8053], 98 Stat. 1904, 1933.

Dec. 8, 1983, Pub. L. 98-212, title VII, § 761, 97 Stat. 1449.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 767], 96 Stat. 1833, 1861.

Dec. 29, 1981, Pub. L. 97-114, title VII, § 771, 95 Stat. 1590.

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-145 substituted par. (1) for first sentence, designated second sentence as par. (2), and in par. (2) substituted "paragraph (1)(B)" for "clause (2)". Prior to amendment, first sentence read as follows: "The travel and transportation allowances authorized for each kind of travel may not be more than one of the following—

"(1) transportation in kind, reimbursement therefor, or a monetary allowance in place of the cost of transportation at a rate per mile prescribed by the Secretaries concerned and based on distances established, over the shortest usually traveled route, under mileage tables prepared under the direction of the Secretary of the Army;

"(2) transportation in kind, reimbursement therefor, or a monetary allowance as provided by clause (1) of this subsection plus a per diem in place of subsistence in an amount sufficient to meet actual and necessary expenses, but in no event more than $50 a day; or

"(3) a mileage allowance at a rate per mile prescribed by the Secretaries concerned and based on distances established under clause (1) of this subsection."

1984—Subsec. (a)(5). Pub. L. 98-525, § 613(a), added par. (5).

Subsec. (c)(1)(B). Pub. L. 98-525, § 533(g), inserted "separation pay or" before "severance pay" and before "readjustment pay".

Subsec. (g). Pub. L. 98-525, § 1402(c), added subsec. (g).

1983—Subsec. (f)(3). Pub. L. 98-94 added par. (3).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 612(c) of Pub. L. 99-145 provided that: "The amendments made by this section [amending sections 404 and 406 of this title] shall apply to travel performed after September 30, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 613(b) of Pub. L. 98-525 provided that: "The amendments made by subsection (a) [enacting par. (5) of subsec. (a) of this section] shall apply with respect to travel performed after September 30, 1984."

Enactment of subsec. (g) by section 1402(c) of Pub. L. 98-525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of Title 10, Armed Forces.

INCREASE IN RATE PER MILE FOR MILEAGE ALLOWANCE

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8113], Oct. 12, 1984, 98 Stat. 1904, 1944, provided that: "The Secretaries concerned (as defined in section 101(5) of title 37, United States Code), under uniform regulations prescribed by them and to the extent that funds are available within the permanent change of station travel account, may increase the rate per mile for mileage allowance under section 404(d)(2) of title 37, United States Code, to 15 cents per mile."

§ 404a. Travel and transportation allowances: temporary lodging expenses

(a) Under regulations prescribed by the Secretaries concerned, a member of a uniformed service who is ordered to make a change of permanent station—

[See main edition for text of (1) and (2)]

shall be paid or reimbursed for subsistence expenses actually incurred by the member and the member's dependents while occupying temporary quarters incident to that change of permanent station. In the case of a change of permanent station described in clause (1) of this subsection, the period for which such expenses are to be paid or reimbursed may not exceed four days. In the case of a change of permanent station described in clause (2) of this subsection, the period for which such expenses are to be paid or reimbursed may not exceed two days and such payment or reimbursement may be provided only for expenses incurred before leaving the United States (other than Hawaii or Alaska).

[See main edition for text of (b) and (c)]

(As amended Pub. L. 99-145, title VI, § 613(a), Nov. 8, 1985, 99 Stat. 640.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "shall" for "may" in first sentence, and substituted "are to" for "may" the first place it appears in second and third sentences.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 613(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1985."

§ 405. Travel and transportation allowances: per diem while on duty outside the United States or in Hawaii or Alaska

(a) Without regard to the monetary limitations of this title, the Secretaries concerned may authorize the payment of a per diem, considering all elements of the cost of living to members of the uniformed services under their jurisdiction and their dependents, including the cost of quarters, subsistence, and other necessary incidental expenses, to such a member who is on duty outside of the United States or in Hawaii or Alaska, whether or not he is in a travel status. However, dependents may not be considered in determining the per diem allowance for a member in a travel status.

(b) A station housing allowance may be prescribed under this section for a member who is on duty outside of the United States without regard to costs other than housing costs and may consist of the difference between basic allowance for quarters and applicable housing cost. A station housing allowance may not be prescribed under this section for a member who is on duty in Hawaii or Alaska. A station housing allowance prescribed under this section may be paid in advance.

(c) Housing cost and allowance may be disregarded in prescribing a station cost of living allowance under this section.

(As amended Pub. L. 98-525, title VI, § 602(e), Oct. 19, 1984, 98 Stat. 2536; Pub. L. 99-145, title XIII, § 1303(b)(8), Nov. 8, 1985, 99 Stat. 741.)

AMENDMENTS

1985—Pub. L. 99-145 inserted "the" after "outside" in section catchline.

1984—Subsec. (a). Pub. L. 98-525, § 602(e)(1), designated first two sentences of existing section as subsec. (a).

Subsec. (b). Pub. L. 98-525, § 602(e)(2), (3), designated third and fourth sentences of existing section as subsec. (b), in such third sentence as so designated inserted "for a member who is on duty outside of the United States" after "under this section", and added after such third sentence: "A station housing allowance may not be prescribed under this section for a member who is on duty in Hawaii or Alaska."

Subsec. (c). Pub. L. 98-525, § 602(e)(4), designated last sentence of existing section as subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Jan. 1, 1985, with exceptions, see section 602(f) of Pub. L. 98-525, as amended, set out as an Effective Date note under section 403a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403, 403a, 406, 411, 419, 1003 of this title; title 2 section 906; title 5 section 4109; title 36 section 121.

§ 406. Travel and transportation allowances: dependents; baggage and household effects

(a)(1) Except as provided in paragraph (2) of this subsection, a member of a uniformed service who is ordered to make a change of permanent station is entitled to transportation in kind, reimbursement therefor, or a monetary allowance in place of the cost of transportation, plus a per diem, for the member's dependents at rates prescribed by the Secretaries concerned, but not more than the rate authorized under section 404(d) of this title.

[See main edition for text of (2) and (3)]

(b)(1)(A) Except as provided in paragraph (2) of this subsection, in connection with a change of temporary or permanent station, a member is entitled to transportation (including packing, crating, drayage, temporary storage, and unpacking) of baggage and household effects, or reimbursement therefor, within such weight allowances prescribed by the Secretaries concerned, without regard to the comparative costs of the various modes of transportation. Temporary storage in excess of 180 days may be authorized.

(B) Subject to uniform regulations prescribed by the Secretaries concerned, in the case of a permanent change of station in which the Secretary concerned has authorized transportation of a motor vehicle under section 2634 of title 10 (except when such transportation is authorized from the old duty station to the new duty station), the member is entitled to a monetary allowance for transportation of that motor vehicle—

(i) from the old duty station to—

(I) the customary port of embarkation which is nearest the old duty station if delivery of the motor vehicle to the port of embarkation is not made in conjunction with the member's travel to the member's port of embarkation; or

(II) the customary port of embarkation which is nearest to the member's port of embarkation if delivery of the motor vehicle to the port of embarkation is made in conjunction with the member's travel to the member's port of embarkation;

whichever is most cost-effective for the Government considering all operational, travel, and transportation requirements incident to such change of station; and

(ii) from the customary port of debarkation which has been designated by the Government as most cost-effective for the Government considering all operational, travel, and transportation requirements incident to such change of station to the new duty station.

Such monetary allowance shall be established at a rate per mile that does not exceed the rate established under section 404(d)(1) of this title.

[See main edition for text of (2); (c) to (j)]

(k)(1) Appropriations available to the Department of Defense for providing transportation of household effects of members of the armed forces under subsection (b) of this section are available to pay a monetary allowance to a member when the member participates in a program in which baggage and household effects of the member are transported by a privately owned or rental vehicle or in which a member provides all or a part of the labor in connection with the transportation of the baggage and household effects of the member (including packing, crating, and loading) under regulations of the Secretary of the military department concerned. The allowance is not limited to reimbursement for actual expenses and may be paid in advance of the transportation of the baggage and household effects. However, the amount of the allowance shall provide a savings to the United States when the total cost of the transportation is compared with the cost that would be incurred under subsection (b) of this section.

(2) The Secretary concerned may prescribe in any regulations authorizing the payment of a monetary allowance to a member who participates in a program in which the member provides all or a part of the labor in connection with the transportation of the baggage and household effects of the member—

(A) the extent to which payment to the member will be made for such labor, and

(B) the manner in which liability will be allocated among the member, the United States, and the common carriers involved in the event of loss of or damage to any baggage or household effects packed, crated, or loaded by the member.

(*l*) For the purposes of this section, the residence of a dependent of a member who is a student not living with the member while at school shall be considered to be the permanent duty station of the member or the designated residence of dependents of the member if the member's dependents are not authorized to reside with the member.

(As amended Pub. L. 98-94, title IX, § 909, Sept. 24, 1983, 97 Stat. 638; Pub. L. 99-145, title VI, §§ 612(b), 614(a), 617(a), title XIII, § 1303(b)(9), Nov. 8, 1985, 99 Stat. 639-641, 741.)

Amendments

1985—Subsec. (a)(1). Pub. L. 99-145, § 612(b), substituted ", reimbursement therefor, or a monetary allowance in place of the cost of transportation, plus a per diem, for the member's dependents at rates prescribed by the Secretaries concerned" for "for his dependents, to reimbursement therefor, or to a monetary allowance in place of that transportation in kind at a rate to be prescribed".

Subsec. (k). Pub. L. 99-145, § 1303(b)(9), substituted "for providing transportation of household effects of members of the armed forces under subsection (b)" for "to carry out subsection (b)".

Pub. L. 99-145, § 614(a), designated existing provisions as par. (1) and inserted "or in which a member provides all or a part of the labor in connection with the transportation of the baggage and household effects of the member (including packing, crating, and loading)", and added par. (2).

Subsec. (*l*). Pub. L. 99-145, § 617(a), added subsec. (*l*).

1983—Subsec. (b)(1). Pub. L. 98-94 designated existing provisions as subpar. (A), struck out provisions relating to a monetary allowance for transportation of a motor vehicle on change of permanent station from subpar. (A) as so designated, and added subpar. (B) relating to a monetary allowance for transportation of a motor vehicle on permanent change of station.

Effective and Termination Dates of 1985 Amendment

Amendment by section 612(b) of Pub. L. 99-145 applicable to travel performed after Sept. 30, 1985, see section 612(c) of Pub. L. 99-145, set out as an Effective Date of 1985 Amendment note under section 404 of this title.

Section 614(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [amending subsec. (k) of this section] shall expire on September 30, 1989."

Section 617(b) of Pub. L. 99-145 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to orders to change a permanent station that are effective after September 30, 1985."

Prohibition on Retroactive Payments Under 1985 Amendment

Section 614(c) of Pub. L. 99-145 provided that: "No allowance may be paid to any member of a uniformed service by virtue of the amendments made by subsection (a) [amending subsec. (k) of this section] in connection with the transportation of the baggage and household effects provided the member before the date of the enactment of this Act [Nov. 8, 1985]."

Allowances for Labor in Connection With Transportation of Members' Baggage and Effects; Report to Congress

Section 614(d) of Pub. L. 99-145 provided that: "The Secretary of Defense shall submit a report to the Congress not later than September 30, 1988, regarding the operation of any program carried out by the military departments under which payment of a monetary allowance is made to a member who provides all or a part of the labor in connection with the transportation of the baggage and household effects of the member and shall include in such report such recommendations for legislative action the Secretary considers appropriate."

Section Referred to in Other Sections

This section is referred to in sections 406a, 406b, 409, 411, 419, 427, 1003 of this title; title 5 section 4109; title 10 section 2634; title 14 section 512.

§ 406b. Travel and transportation allowances: members of the uniformed services attached to a ship overhauling or inactivating

(a) Under regulations prescribed by the Secretary concerned, a member of the uniformed services who is on permanent duty aboard a ship which is being overhauled or inactivated away from its home port and whose dependents are residing at the home port of the ship is entitled to transportation, transportation in kind, reimbursement for personally procured transportation, or an allowance for transportation as provided in section 404(d)(3) of this title for round trip travel from the port of overhaul or inactivation to the home port on or after after the thirty-first calendar day, and every sixtieth calendar day after the thirty-first calendar day after the date on which the ship enters the overhaul or inactivation port or after the date on which the member becomes permanently attached to the ship, whichever date is later. However, in no event shall the amount of reimbursement for personally procured transportation or allowance for transportation exceed the cost of Government-procured commercial round trip air travel.

(b) Transportation in kind, reimbursement for personally procured transportation, or a monetary allowance in place of the cost of transportation as provided in section 404(d)(1) of this title may be provided, in lieu of the member's entitlement to transportation, for the member's dependents from the location that was the home port of the ship before commencement of overhaul or inactivation to the port of overhaul or inactivation. The total reimbursement for transportation for the member's dependents may not exceed the cost of Government-procured commercial roundtrip travel.

(c) A member of the uniformed services on permanent duty aboard a ship which undergoes a change of home port to the overhaul or inactivation port and the member's dependents may be provided the transportation allowances prescribed in subsections (a) and (b) of this section in lieu of the transportation authorized by section 406 of this title and section 2634 of title 10.

(d) Section 420 of this title does not apply with respect to transportation or allowances provided under this section.

(As amended Pub. L. 99-145, title VI, § 616(a), (c)(1), Nov. 8, 1985, 99 Stat. 641.)

AMENDMENTS

1985—Pub. L. 99-145, § 616(c)(1), struck out "away from home port" in section catchline.

Subsecs. (a) to (d). Pub. L. 99-145, § 616(a), designated existing provisions as subsec. (a), substituted "calendar day, and every sixtieth calendar day after the thirty-first calendar day" for ", ninety-first, and one hundred and fifty-first calendar day", and added subsecs. (b) to (d).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 616(b) of Pub. L. 99-145 provided that: "The travel allowances authorized by the amendments made by this section [amending this section] are payable only for travel that commences after September 30, 1985, but may be paid for members assigned to vessels being overhauled or inactivated away from home port on the date of the enactment of this Act [Nov. 8, 1985]."

§ 407. Travel and transportation allowances: dislocation allowance

(a) Except as provided by subsections (b) and (c) of this section, under regulations prescribed by the Secretary concerned, a member of a uniformed service—

[*See main edition for text of (1) to (3)*]

is entitled to a dislocation allowance equal to his basic allowance for quarters for two months as provided for a member of his pay grade and dependency status in section 403 of this title. For the purposes of this subsection, a member whose dependents may not make an authorized move in connection with a change of permanent station is considered a member without dependents. An allowance payable under this section may be paid in advance.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 99-145, title VI, § 611(a), Nov. 8, 1985, 99 Stat. 639.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "two months" for "one month" in first sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 611(b) of Pub. L. 99-145 provided that: "The amendment made by this section [amending this section] shall apply to moves begun after September 30, 1985."

§ 408. Travel and transportation allowances: travel within limits of duty station

A member of a uniformed service may be directed, by regulations of the head of the department or agency in which he is serving, to procure transportation necessary for conducting official business of the United States within the limits of his station. Expenses so incurred by the member for train, bus, streetcar, taxicab, ferry, bridge, and similar fares and tolls, or for the use of privately-owned vehicles at a fixed rate a mile plus parking fees, shall be defrayed by the department or agency under which he is serving, or the member is entitled to be reimbursed for the expense.

(As amended Pub. L. 99-145, title VI, § 619(a), Nov. 8, 1985, 99 Stat. 642.)

AMENDMENTS

1985—Pub. L. 99-145 inserted "plus parking fees" after "fixed rate a mile".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 619(b) of Pub. L. 99-145 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to parking fees incurred after September 30, 1985."

§ 411b. Travel and transportation allowances: travel performed in connection with certain leave

(a)(1) Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service stationed outside the forty-eight contiguous States and the District of Columbia who is ordered to a consecutive tour of duty at the same duty station or who is ordered to made a change of permanent station to another duty station outside the forty-eight contiguous States and the District of Columbia may be paid travel and transportation allowances in connection with authorized leave from his last duty station to a place approved by the Secretary concerned, or his designee, or to a place no farther distant than his home of record and from that place to his designated post of duty. Such allowances may be paid for the member and for the dependents of the member who are authorized to, and do, accompany him at his duty stations.

[*See main edition for text of (2); (b)*]

(As amended Pub. L. 99-145, title VI, § 615(a), Nov. 8, 1985, 99 Stat. 641.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-145 struck out "if he is a member without dependents," after "home of record", struck out ", if either his last duty station or his designated post of duty is a restricted area in which dependents are not authorized" after "post of duty" in first sentence, and added "such allowances may be paid for the member and for the dependents of the member who are authorized to, and do, accompany him at his duty stations."

EFFECTIVE DATE OF 1985 AMENDMENT

Section 615(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to orders to change a permanent station that are effective after September 30, 1985."

§ 411d. Travel and transportation allowances: transportation incident to personal emergencies for certain members and dependents

(a) Under uniform regulations prescribed by the Secretaries concerned, transportation in accordance with subsection (b) of this section may be provided for a member of a uniformed service and for dependents of that member authorized to reside at the member's duty station (or authorized to reside at another location and receive a station allowance) incident to emergency leave granted for reasons of a personal emergency (or in the case of transportation provided only for a dependent, under circumstances involving a personal emergency similar to the circumstances for which emergency leave could be granted a member).

(b)(1) In the case of a member stationed outside the continental United States and the dependents of such a member, transportation under this section may be provided from the international airport nearest the location of the member and dependents at the time notification of the personal emergency is received or the international airport nearest the member's permanent duty station (and if the member's dependents reside at another overseas location and receive a station allowance, from that location)—

(A) to the international airport in the continental United States closest to the international airport from which the member and his dependents departed; or

(B) to an airport in Alaska, Hawaii, the Commonwealth of Puerto Rico, any possession of the United States, or any other location outside the continental United States, as determined by the Secretary concerned.

(2) In the case of a member whose domicile is outside the continental United States and who is stationed in the continental United States and the dependents of such a member, transportation under this section may be provided from the international airport in the continental United States nearest the location of the member and dependents at the time notification of the personal emergency is received or the international airport nearest the member's permanent duty station to an international airport in Alaska, Hawaii, the Commonwealth of Puerto Rico, a possession of the United States, or any other location outside the continental United States, as determined by the Secretary concerned.

(3) In the case of a member stationed outside the continental United States whose dependents reside in the continental United States,
transportation under this section may be pr
vided for the member as described in paragrap
(1) of this subsection and for the dependents a
described in paragraph (2) of this subsection.

(4) Whenever transportation is provide
under this section, return transportation ma
be provided to the international airport fro
which the member or dependent departed
the international airport nearest the member
duty station.

(c) Transportation under this section may
authorized only upon a determination tha
considering the nature of the personal eme
gency involved, Government transportation
not reasonably available. The cost of transpo
tation authorized under this section for
member, or the dependents of a member, ma
not exceed the cost of Government-procure
commercial air travel between the applicable l
cations described in subsection (b) of this se
tion.

(d) In this section, "continental Unit
States" means the 48 contiguous States and t
District of Columbia.

(As amended Pub. L. 98-525, title V
§ 612(a)(1), Oct. 19, 1984, 98 Stat. 2538.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "personal emerge
cies for certain members and dependents" for "cert
emergencies for members performing temporary dut
in section catchline.

Subsec. (a). Pub. L. 98-525 substituted "transpor
tion in accordance with subsection (b) of this secti
may be provided for a member of a uniformed serv
and for dependents of that member authorized
reside at the member's duty station (or authorized
reside at another location and receive a station allo
ance) incident to emergency leave granted for reas
of a personal emergency (or in the case of transpor
tion provided only for a dependent, under circu
stances involving a personal emergency similar to
circumstances for which emergency leave could
granted a member)" for "a member of a uniform
service who is performing temporary duty away fr
his permanent duty station (or who is assigned t
ship or unit operating away from its home port) m
be provided the travel and transportation authori
by section 404 of this title for travel performed by
member from his place of temporary duty (or from
ship or unit) to his permanent duty station (or
home port of the ship or unit) or to any other lo
tion, and return (if applicable), if such travel has b
approved incident to the serious illness or injury
the death of a dependent of the member".

Subsec. (b). Pub. L. 98-525 added subsec. (b). For
subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 98-525 redesignated subsec.
as (c) and, in subsec. (c) as so redesignated, substitu
"Transportation under this section may be authori
only upon a determination that, considering
nature of the personal emergency involved, Gov
ment transportation is not reasonably available"
"Transportation under this section may be authori
only upon a determination that Government trans
tation is not reasonably available, considering
nature of the personal emergency involved" and
stituted "The cost of transportation authorized u
this section for a member, or the dependents
member, may not exceed the cost of Government-
cured commercial air travel between the applicabl
cations described in subsection (b) of this section"
"The cost of transportation authorized under this
tion may not exceed the cost of Government-proc

commercial air travel from the member's place of temporary duty (or from his ship or unit) to the member's permanent duty station (or the home port of the ship or unit), and return (if applicable)".

Subsec. (d). Pub. L. 98-525 added subsec. (d).

Effective Date of 1984 Amendment

Section 612(b) of Pub. L. 98-525 provided that: "The amendment made by subsection (a)(1) [amending this section] shall apply with respect to transportation begun after September 30, 1984."

§ 411f. Travel and transportation allowances: transportation for survivors of deceased member to attend the member's burial ceremonies

(a) Under uniform regulations prescribed by the Secretaries concerned, round trip travel and transportation allowances may be provided the dependents of a member who dies while on active duty for a period of 30 days or more in order to attend the burial ceremonies of the deceased member.

(b)(1) Except as provided in paragraph (2), allowances under this section are limited to travel and transportation to a location in the United States, Puerto Rico, and the possessions of the United States and may not exceed the rates for 2 days.

(2) If a deceased member was ordered or called to active duty from a place outside the United States, Puerto Rico, or the possessions of the United States, the allowances authorized under this section may be provided to and from such place and may be extended to accommodate the time necessary for such travel.

(c) In this section, the term "dependents" includes the dependents specified in paragraphs (1) and (2) of section 401 of this title. However, if no person qualifies under such paragraphs, the parents of a member (including stepparent or parent by adoption, or any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least 5 years before the member became 21 years of age) may be paid the travel and transportation allowances authorized under this section.

(Added Pub. L. 99-145, title VI, § 620(a)(1), Nov. 8, 1985, 99 Stat. 642.)

Effective Date

Section 620(b) of Pub. L. 99-145 provided that: "The travel and transportation allowance authorized by the amendments made by this section [enacting this section] is payable only for travel that commences after September 30, 1985."

§ 420. Allowances: no increase while dependent is entitled to basic pay

Section Referred to in Other Sections

This section is referred to in section 406b of this title.

[§ 421. Repealed. Pub. L. 98-94, title IX, § 932(e)(1), Sept. 24, 1983, 97 Stat. 650]

Section, Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 479; Pub. L. 88-132, § 3(b), Oct. 2, 1963, 77 Stat. 212, provided for the pay and allowances of contract surgeons. See section 1091 of Title 10, Armed Forces.

Effective Date of Repeal

Repeal effective Oct. 1, 1983, see section 932(f) of Pub. L. 98-94, set out as an Effective Date note under section 1091 of Title 10, Armed Forces.

§ 427. Family separation allowance

[*See main edition for text of* (*a*)]

(b) Except in time of war or of national emergency hereafter declared by Congress, and in addition to any allowance or per diem to which he otherwise may be entitled under this title, including subsection (a) of this section, a member of a uniformed service with dependents is entitled to a monthly allowance equal to $60 if—

[*See main edition for text of* (*1*) *to* (*3*); *concluding provision*]

(As amended Pub. L. 99-145, title VI, § 607(a), Nov. 8, 1985, 99 Stat. 639.)

Amendments

1985—Subsec. (b). Pub. L. 99-145 substituted "$60" for "$30".

Effective Date of 1985 Amendment

Section 607(b) of Pub. L. 99-145 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1985, and shall apply only to family separation allowances payable for months beginning on or after that date."

Section Referred to in Other Sections

This section is referred to in section 403a of this title.

§ 429. Travel and transportation allowances: minor dependent schooling

Under regulations to be prescribed by the Secretary of Defense, a member of a uniformed service whose permanent station is outside the United States may be allowed transportation in kind for any minor dependent (or reimbursement therefor), or a monetary allowance in place of such transportation in kind, to a school operated by the Department of Defense under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.) for dependents in an overseas area which is operated, and which such dependent attends, on a 5-day-a-week dormitory basis or on a 7-day-a-week dormitory basis. In the case of a dependent attending a school on a 5-day-a-week dormitory basis, the transportation in kind or allowance authorized by this section shall be for weekly trips to and from such school, and in the case of a dependent attending a school on a 7-day-a-week dormitory basis, such transportation in kind or allowances shall be for not less than three trips to and from such school during the school year.

(As amended Pub. L. 99-145, title XIII, § 1303(b)(10), Nov. 8, 1985, 99 Stat. 741.)

Amendments

1985—Pub. L. 99-145 inserted "(20 U.S.C. 921 et seq.)".

DEPENDENT STUDENT TRAVEL WITHIN UNITED STATES

For availability of Department of Defense funds for travel and transportation of dependent students of members of the Armed Forces stationed overseas for transportation allowances for travel within or between the contiguous States, see section 808 of Pub. L. 99-145, set out as a note under section 133 of Title 10, Armed Forces.

§ 430. Travel and transportation: dependent children of members stationed overseas

(a) Under regulations to be prescribed by the Secretary of Defense, a member of a uniformed service who—

(1) is assigned a permanent duty station outside the United States,

(2) is accompanied by his dependents at or near his oversea duty station (unless his only dependents are in the category of dependent described in clause (3) of this subsection), and

(3) has a dependent child who is under 23 years of age attending a school in the United States for the purpose of obtaining a secondary or undergraduate college education,

may be paid the allowance set forth in subsection (b) of this section if he otherwise qualifies for such allowance.

(b) A member described in subsection (a) of this section may be paid a transportation allowance for each unmarried dependent child, who is under 23 years of age and is attending a school in the United States for the purpose of obtaining a secondary or undergraduate college education, of one annual trip between the school being attended and the member's duty station in the oversea area and return. The allowance authorized by this section may be transportation in kind or reimbursement therefor, as prescribed by the Secretaries concerned. However, the transportation authorized by this section may not be paid a member for a child attending a school in the United States for the purpose of obtaining a secondary education if the child is eligible to attend a secondary school for dependents that is located at or in the vicinity of the duty station of the member and is operated under the Defense Dependents' Education Act of 1978.

(c) Whenever possible, the Military Airlift Command or Military Sealift Command shall be used, on a space-required basis, for the travel authorized by this section.

(Added Pub. L. 98-94, title IX, § 910(a)(1), Sept. 24, 1983, 97 Stat. 638.)

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (b), is title XIV of Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§ 921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

EFFECTIVE DATE

Section 910(b) of Pub. L. 98-94 provided that: "Section 430 of title 37, United States Code, as added by subsection (a), shall apply only with respect to travel begun after September 30, 1983."

DEPENDENT STUDENT TRAVEL WITHIN UNITED STATES

For availability of Department of Defense funds for travel and transportation of dependent students of members of the Armed Forces stationed overseas for transportation allowances for travel within or between the contiguous States, see section 808 of Pub. L. 99-145, set out as a note under section 133 of Title 10, Armed Forces.

Pub. L. 98-212, title VII, § 799B, Dec. 8, 1983, 97 Stat. 1456, as amended by Pub. L. 98-396, title I, § 101, Aug. 22, 1984, 98 Stat. 1378, provided in part that: "After August 31, 1984, none of the funds appropriated to the Department of Defense for the travel and transportation of dependent students of military personnel stationed overseas shall be obligated for a transportation allowance for travel within or between the contiguous United States."

§ 431. Benefits for certain members assigned to the Defense Intelligence Agency

(a) The Secretary of Defense may provide to members of the armed forces who are assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States and who are designated by the Secretary of Defense for the purposes of this subsection allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.

(b) The authority of the Secretary of Defense to make payments under subsection (a) of this section is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

(c) Members of the armed forces may not receive benefits under both subsection (a) of this section and any other provision of this title for the same purpose. The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.

(d) Regulations prescribed pursuant to subsection (a) of this section shall be submitted to the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate before such regulations take effect.

(Added Pub. L. 99-145, title XIII, § 1302(b)(1), Nov. 8, 1985, 99 Stat. 738.)

DELEGATION OF AUTHORITY OF SECRETARY OF DEFENSE

Section 1302(b)(3) of Pub. L. 99-145 provided that: "The authority of the Secretary of Defense under section 431 of title 37, United States Code, as added by paragraph (1), may be delegated in accordance with section 133(d) of title 10, United States Code."

CROSS REFERENCES

Civilian Personnel of Defense Intelligence Agency, entitlement to benefits similar to those provided by this section, see section 1605 of Title 10, Armed Forces.

CHAPTER 9—LEAVE

§ 501. Payments for unused accrued leave

[*See main edition for text of* (*a*)]

(b) [*See main edition for text of* (*1*) *and* (*2*)]

(3) Payment may not be made to a member for any leave he elects to have carried over to a new enlistment in any uniformed service on the day after the date of his discharge; but payment may be made to a member for any leave he elects not to carry over to a new enlistment. However, the number of days of leave for which payment is made may not exceed sixty, less the number of days for which payment was previously made under this section after February 9, 1976.

[*See main edition for text of* (*4*); (*c*) *and* (*d*)]

(e)(1) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration who is discharged under other than honorable conditions forfeits all accrued leave to his credit at the time of his discharge.

(2) The Secretary concerned may require that a member of a uniformed service who is discharged before completing six months of active duty because of a failure to serve satisfactorily (as determined by the Secretary concerned) forfeit all accrued leave to his credit at the time of his discharge.

(f) The number of days upon which payment under subsection (b), (d), or (g) of this section is based may not exceed sixty, less the number of days for which payment has been previously made under such subsections after February 9, 1976. For the purposes of this subsection, the number of days upon which payment may be based shall be determined without regard to any break in service or change in status in the uniformed services.

[*See main edition for text of* (*g*) *and* (*h*)]

(As amended Pub. L. 98-525, title VI, § 606(a), Oct. 19, 1984, 98 Stat. 2537; Pub. L. 99-145, title VI, § 682, Nov. 8, 1985, 99 Stat. 665.)

AMENDMENTS

1985—Subsecs. (b)(3), (f). Pub. L. 99-145 substituted "February 9, 1976" for "September 1, 1976".

1984—Subsec. (e). Pub. L. 98-525, § 606(a), designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 606(b) of Pub. L. 98-525 provided that: "The amendments made by subsection (a) [adding par. (2) of subsec. (e) of this section] shall apply in the case of members of the uniformed service (as defined in section 101(3) of title 37, United States Code) who enlist or are commissioned on or after the date of the enactment of this Act [Oct. 19, 1984]."

CHAPTER 10—PAYMENTS TO MISSING PERSONS

§ 551. Definitions

In this chapter—

(1) "dependent", with respect to a member of a uniformed service, means—

(A) his spouse;

[*See main edition for text of* (*B*) *to* (*E*); (*2*) *and* (*3*)]

(As amended Pub. L. 99-145, title XIII, § 1301(g), Nov. 8, 1985, 99 Stat. 737.)

AMENDMENTS

1985—Par. (1)(A). Pub. L. 99-145 substituted "spouse" for "wife".

§ 557. Settlement of accounts

[*See main edition for text of* (*a*) *and* (*b*)]

(c) In the settlement of his accounts, a disbursing officer is entitled, if there is no fraud or criminality by him, to credit for an erroneous payment or overpayment he made in carrying out this chapter, except section 558 of this title. Unless there is fraud or criminality by him, recovery may not be made from a civilian officer or employee or a member of a uniformed service who authorizes a payment under this chapter, except section 558 of this title.

(As amended Pub. L. 99-145, title XIII, § 1303(b)(11), Nov. 8, 1985, 99 Stat. 741.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-145 inserted "of this title" after "558" in two places.

CHAPTER 13—ALLOTMENTS AND ASSIGNMENTS OF PAY

Sec.
701. Members of the Army, Navy, Air Force, and Marine Corps; contract surgeons.
[702. Repealed.]
[705. Repealed.]

AMENDMENTS

1985—Pub. L. 99-145, title VI, § 683(a)(3), (b)(2), Nov. 8, 1985, 99 Stat. 665, 666, included reference to the Navy and Marine Corps in item 701, and struck out item 702 "Allotments: officers of Navy or Marine Corps" and item 705 "Assignments: enlisted members of naval service".

§ 701. Members of the Army, Navy, Air Force, and Marine Corps; contract surgeons

(a) Under regulations prescribed by the Secretary of the military department concerned, a commissioned officer of the Army, Navy, Air Force, or Marine Corps may transfer or assign his pay account, when due and payable.

(b) A contract surgeon, or contract dental surgeon, of the Army, Navy, or Air Force, on duty in Alaska, Hawaii, the Philippine Islands, or Puerto Rico, may transfer or assign his pay account, when due and payable, under the regulations prescribed under section (a) of this section.

(c) An enlisted member of the Army, Navy, Air Force, or Marine Corps may not assign his pay, and if he does so, the assignment is void.

(d) The Secretary of the military department concerned,[1] may allow a—

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[1] So in original. The comma probably should not appear.

(1) member of the Army, Navy, Air Force, or Marine Corps; or

(2) contract surgeon of the Army, Navy, or Air Force;

to make allotments from his pay for the support of his relatives, or for any other purpose that the Secretary concerned considers proper. If an allotment made under this subsection is paid to the allottee before the disbursing officer receives a notice of discontinuance from the officer required by regulation to furnish the notice, the amount of the allotment shall be credited to the disbursing officer. If an allotment is erroneously paid because the officer required by regulation to so report failed to report the death of the allotter or any other fact that makes the allotment not payable, the amount of the payment not recovered from the allottee shall, if practicable, be collected by the Secretary concerned, from the officer who failed to make the report.

(As amended Pub. L. 99-145, title VI, § 683(a)(1), (2), Nov. 8, 1985, 99 Stat. 665.)

AMENDMENTS

1985—Pub. L. 99-145, § 683(a)(2), included reference to the Navy and Marine Corps in section catchline.

Subsec. (a). Pub. L. 99-145, § 683(a)(1)(A), (C), substituted "Secretary of the military department concerned" for "Secretary of the Army or the Secretary of the Air Force, as the case may be" and "commissioned officer of the Army, Navy, Air Force, or Marine Corps" for "commissioned officer of the Army or the Air Force".

Subsec. (b). Pub. L. 99-145, § 683(a)(1)(B), included reference to the Navy.

Subsec. (c). Pub. L. 99-145, § 683(a)(1)(A), included reference to the Navy and Marine Corps.

Subsec. (d). Pub. L. 99-145, § 683(a)(1)(C), substituted "Secretary of the military department concerned" for "Secretary of the Army or the Secretary of the Air Force, as the case may be".

Subsec. (d)(1). Pub. L. 99-145, § 683(a)(1)(A), included reference to the Navy and Marine Corps.

Subsec. (d)(2). Pub. L. 99-145, § 683(a)(1)(B), included reference to the Navy.

[§ 702. Repealed. Pub. L. 99-145, title VI, § 683(b)(1), Nov. 8, 1985, 99 Stat. 665]

Section, Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 484, authorized allotments by officers of the Navy and Marine Corps for the support of the family or relatives, for personal savings, and for other purposes. See section 701 of this title.

[§ 705. Repealed. Pub. L. 99-145, title VI, § 683(b)(1), Nov. 8, 1985, 99 Stat. 665]

Section, Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 485, related to assignments of pay due enlisted members of the naval service. See section 701 of this title.

CHAPTER 15—PROHIBITIONS AND PENALTIES

Sec.
[805. Repealed.]

AMENDMENTS

1985—Pub. L. 99-145, title VI, § 683(b)(3), Nov. 8, 1985, 99 Stat. 666, struck out item 805 "Sale of pay by members of naval service to be discouraged by commanding officer".

[§ 805. Repealed. Pub. L. 99-145, title VI, § 683(b)(1), Nov. 8, 1985, 99 Stat. 665]

Section, Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 486, required the commanding officer to discourage the sale of pay by members of the naval service. See section 701 of this title.

CHAPTER 19—ADMINISTRATION

Sec.
1012. Disbursement and accounting: pay of enlisted members of the National Guard.

AMENDMENTS

1985—Pub. L. 99-145, title XIII, § 1303(b)(13)(C), Nov. 8, 1985, 99 Stat. 741, added "; pay of enlisted members of the National Guard" in item 1012.

§ 1006. Advance payments

[See main edition for text of (a) to (g)]

(h) Notwithstanding subsections (a) and (b) of section 3324 of title 31, the Secretary concerned may, when the last day of the pay period falls on a Saturday, Sunday, or legal holiday, authorize the payment of pay and allowances to members of uniformed service under his jurisdiction on the preceding workday but not more than three days before the last day of that pay period. If a member dies after he has received an advance payment under this subsection, but before the last day of the pay period for which the payment is made, no part of the amount so advance is recoverable by the United States.

[See main edition for text of (i)]

(As amended Pub. L. 99-145, title XIII, § 1303(b)(12), Nov. 8, 1985, 99 Stat. 741.)

AMENDMENTS

1985—Subsec. (h). Pub. L. 99-145 substituted "subsections (a) and (b) of section 3324" for "section 3324(a) and (b)".

§ 1007. Deductions from pay

[See main edition for text of (a) and (b)]

(c) Under regulations prescribed by the Secretary concerned, an amount that a member of the uniformed services is administratively determined to owe the United States or any of its instrumentalities may be deducted from his pay in monthly installments. However, after the deduction of pay forfeited by the sentence of a court-martial, if any, or otherwise authorized by law to be withheld, the deductions authorized by this section may not reduce the pay actually received for any month to less than one-third of his pay for that month.

[See main edition for text of (d) to (g)]

(As amended Pub. L. 98-525, title XIII, § 1305, Oct. 19, 1984, 98 Stat. 2613; Pub. L. 99-145, title VI, § 684, Nov. 8, 1985, 99 Stat. 666.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-145 substituted "uniformed services" for "armed forces".

1984—Subsec. (c). Pub. L. 98-525 substituted "a member of the armed forces" for "an enlisted member of the Army or the Air Force".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5514.

§ 1009. Adjustments of compensation

MILITARY PAY RAISES FOR FISCAL YEAR 1985

Pub. L. 98-525, title VI, § 601, Oct. 19, 1984, 98 Stat. 2533, provided that:

"(a) Any adjustment required by section 1009 of title 37, United States Code, in elements of the compensation of members of the uniformed services to become effective during fiscal year 1985 shall not be made.

"(b)(1) Except as provided in paragraph (2), the rates of basic pay and basic allowances for subsistence for members of the uniformed services are increased by 4 percent effective on January 1, 1985.

"(2) The increase in rates of basic pay and basic allowances for subsistence provided for in paragraph (1) shall not apply to enlisted members in pay grade E-1 with less than 4 months active duty."

DELAY UNTIL APRIL 1, 1984, OF PAY ADJUSTMENT OTHERWISE EFFECTIVE OCTOBER 1, 1983; LIMIT; CONDITIONS FOR EARLIER EFFECTIVE DATE

Pub. L. 98-94, title IX, § 901, Sept. 24, 1983, 97 Stat. 634, provided that:

"(a) The adjustment required by section 1009 of title 37, United States Code, in certain elements of the compensation of members of the uniformed services to become effective on October 1, 1983, shall not be made.

"(b)(1) Subject to the provisions of paragraphs (2) and (3), each element of compensation specified in section 1009(a) of title 37, United States Code, shall be increased for members of the uniformed services by 4 percent effective on April 1, 1984.

"(2) The increase provided for in paragraph (1) shall not apply to enlisted members in pay grade E-1 with less than 4 months active duty.

"(3) The President may allocate the percentage increase specified under paragraphs (1) and (2) in the same manner and to the same extent the President is authorized under subsections (c) and (d) of section 1009 of title 37, United States Code, to allocate any percentage increase described in subsection (b)(3) of section 1009 of such title.

"(c) Notwithstanding the effective date of April 1, 1984, prescribed in subsection (b) for the increase in compensation of members of the uniformed services, if an adjustment is made after the date of the enactment of this Act [Sept. 24, 1983] in the General Schedule [5 U.S.C. 5332 note] of compensation for Federal classified employees and such adjustment is to become effective before April 1, 1984, the increase in the compensation of members of the uniformed services provided for in subsection (b) shall become effective on the first day of the first pay period for members of the uniformed services which begins on or after the effective date of the adjustment made in the compensation of Federal classified employees."

MILITARY PAY RAISE FOR FISCAL YEAR 1986

Pub. L. 99-145, title VI, § 601, Nov. 8, 1985, 99 Stat. 635, provided that:

"(a) WAIVER OF SECTION 1009 ADJUSTMENT.—Any adjustment required by section 1009 of title 37, United States Code, in elements of the compensation of members of the uniformed services to become effective during fiscal year 1986 shall not be made.

"(b) THREE PERCENT PAY RAISE.—The rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 3 percent effective on October 1, 1985."

ADJUSTMENT OF PAY RATES EFFECTIVE OCTOBER 1, 1981

Pub. L. 97-60, title I, § 101, Oct. 14, 1981, 95 Stat. 989, as amended effective Oct. 1, 1984, by Pub. L. 98-557, § 35(a), (c), Oct. 30, 1984, 98 Stat. 2877, set forth tables specifying the increased rates of monthly basic pay for members of the uniformed services, effective Oct. 1, 1981, and provided that the adjustment required by section 1009 of this title in certain elements of the compensation of members of the uniformed services which was to become effective on Oct. 1, 1981, should not be made, and no adjustment of the compensation of any member of a uniformed service should be made pursuant to such section for the period beginning on Oct. 1, 1981, and ending on Oct. 14, 1981.

ADJUSTMENT OF PAY RATES EFFECTIVE OCTOBER 1, 1985

Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5, Government Organization and Employees, provided for an adjustment of pay rates under this section effective Oct. 1, 1985. See Schedule set out below:

SCHEDULE 8

Pay and Allowances of the Uniformed Services

PART I—MONTHLY BASIC PAY

(Years of service computed under 37 U.S.C. 205)

Commissioned Officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
O-10 [1]	$5,221.50	$5,405.40	$5,405.40	$5,405.40	$5,405.40
O-9	4,627.80	4,749.00	4,850.10	4,850.10	4,850.10
O-8	4,191.60	4,317.00	4,419.60	4,419.60	4,419.60
O-7	3,483.00	3,719.70	3,719.70	3,719.70	3,886.20
O-6	2,581.50	2,836.20	3,021.90	3,021.90	3,021.90
O-5	2,064.60	2,424.60	2,592.00	2,592.00	2,592.00
O-4	1,740.30	2,119.20	2,260.50	2,260.50	2,302.50
O-3 [2]	1,617.30	1,808.10	1,932.90	2,138.70	2,241.00
O-2 [2]	1,410.30	1,540.20	1,850.10	1,912.50	1,952.70
O-1 [2]	1,224.30	1,274.70	1,540.20	1,540.20	1,540.20
	Over 8	Over 10	Over 12	Over 14	Over 16
O-10 [1]	$5,612.70	$5,612.70	*$6,042.30	*$6,042.30	*$6,474.60
O-9	4,973.40	4,973.40	5,180.40	5,180.40	5,612.70
O-8	4,749.00	4,749.00	4,973.40	4,973.40	5,180.40
O-7	3,886.20	4,111.80	4,111.80	4,317.00	4,749.00
O-6	3,021.90	3,021.90	3,021.90	3,124.50	3,618.60
O-5	2,592.00	2,670.60	2,814.00	3,002.70	3,227.10
O-4	2,404.20	2,568.00	2,712.60	2,836.20	2,960.70
O-3 [2]	2,321.70	2,447.10	2,568.00	2,631.30	2,631.30
O-2 [2]	1,952.70	1,952.70	1,952.70	1,952.70	1,952.70
O-1 [2]	1,540.20	1,540.20	1,540.20	1,540.20	1,540.20
	Over 18	Over 20	Over 22	Over 26	
O-10 [1]	*$6,474.60	*$6,907.80	*$6,907.80	*$7,338.30	
O-9	5,612.70	*6,042.30	*6,042.30	*6,474.60	
O-8	5,405.40	5,612.70	*5,837.70	*5,837.70	
O-7	5,075.40	5,075.40	5,075.40	5,075.40	
O-6	3,803.70	3,886.20	4,111.80	4,459.50	
O-5	3,412.50	3,515.70	3,638.40	3,638.40	
O-4	3,042.60	3,042.60	3,042.60	3,042.60	
O-3 [2]	2,631.30	2,631.30	2,631.30	2,631.30	
O-2 [2]	1,952.70	1,952.70	1,952.70	1,952.70	
O-1 [2]	1,540.20	1,540.20	1,540.20	1,540.20	

[1] While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is *$8,097.00 regardless of cumulative years of service computed under section 205 of title 37, United States Code.

[2] Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members and/or as warrant officers.

* Basic pay is limited to the rate of basic pay payable for level V of the Executive Schedule, which is $5,724.90 per month.

Commissioned officers credited with over 4 years active duty as an enlisted member and/or warrant officer

Pay Grade	Over 4	Over 6	Over 8	Over 10
O-3	$2,138.70	$2,241.00	$2,321.70	$2,447.10
O-2	1,912.50	1,952.70	2,014.50	2,119.20
O-1	1,540.20	1,645.20	1,705.80	1,767.60
	Over 12	Over 14	Over 16	Over 18
O-3	$2,568.00	$2,670.60	$2,670.60	$2,670.60
O-2	2,200.20	2,260.50	2,260.50	2,260.50
O-1	1,829.10	1,912.50	1,912.50	1,912.50
	Over 20	Over 22	Over 26	
O-3	$2,670.60	$2,670.60	$2,670.60	
O-2	2,260.50	2,260.50	2,260.50	
O-1	1,912.50	1,912.50	1,912.50	

Warrant Officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
W-4	$1,647.60	$1,767.60	$1,767.60	$1,808.10	$1,890.30
W-3	1,497.30	1,624.50	1,624.50	1,645.20	1,664.70
W-2	1,311.60	1,419.00	1,419.00	1,460.40	1,540.20
W-1	1,092.90	1,253.10	1,253.10	1,357.50	1,419.00
	Over 8	Over 10	Over 12	Over 14	Over 16
W-4	$1,973.70	$2,056.50	$2,200.20	$2,302.50	$2,383.20
W-3	1,786.20	1,890.30	1,952.70	2,014.50	2,074.50
W-2	1,624.50	1,686.00	1,747.80	1,808.10	1,871.40
W-1	1,479.90	1,540.20	1,604.10	1,664.70	1,726.20
	Over 18	Over 20	Over 22	Over 26	
W-4	$2,447.10	$2,526.00	$2,610.60	$2,814.00	
W-3	2,138.70	2,221.80	2,302.50	2,383.20	
W-2	1,932.90	1,994.10	2,074.50	2,074.50	
W-1	1,786.20	1,850.10	1,850.10	1,850.10	

Enlisted Members

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
E-9[1]	$0.00	$0.00	$0.00	$0.00	$0.00
E-8	0.00	0.00	0.00	0.00	0.00
E-7	1,122.30	1,211.40	1,256.40	1,300.20	1,344.90
E-6	965.40	1,052.40	1,096.20	1,143.00	1,185.30
E-5	847.20	922.50	966.90	1,009.20	1,075.20
E-4	790.50	834.60	883.50	952.20	989.70
E-3	744.60	785.10	816.90	849.30	849.30
E-2	716.40	716.40	716.40	716.40	716.40
E-1[2]	639.00	639.00	639.00	639.00	639.00
E-1[3]	590.70	590.70	590.70	590.70	590.70
	Over 8	Over 10	Over 12	Over 14	Over 16
E-9[1]	$0.00	$1,916.40	$1,959.90	$2,004.30	$2,050.20
E-8	1,607.40	1,653.30	1,696.50	1,740.90	1,786.50
E-7	1,387.50	1,431.90	1,476.30	1,543.20	1,587.00
E-6	1,228.50	1,273.80	1,339.20	1,381.20	1,425.60
E-5	1,119.00	1,163.70	1,208.30	1,228.50	1,228.50
E-4	989.70	989.70	989.70	989.70	989.70
E-3	849.30	849.30	849.30	849.30	849.30
E-2	716.40	716.40	716.40	716.40	716.40
E-1[2]	639.00	639.00	639.00	639.00	639.00
E-1[3]	590.70	590.70	590.70	590.70	590.70
	Over 18	Over 20	Over 22	Over 26	
E-9[1]	$2,095.80	$2,136.60	$2,249.10	$2,467.80	
E-8	1,827.90	1,872.90	1,983.00	2,204.10	
E-7	1,631.40	1,652.70	1,763.70	1,983.00	
E-6	1,447.50	1,447.50	1,447.50	1,447.50	
E-5	1,228.50	1,228.50	1,228.50	1,228.50	
E-4	989.70	989.70	989.70	989.70	
E-3	849.30	849.30	849.30	849.30	
E-2	716.40	716.40	716.40	716.40	
E-1[2]	639.00	639.00	639.00	639.00	
E-1[3]	590.70	590.70	590.70	590.70	

[1] While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $2,999.40 regardless of cumulative years of service computed under section 205 of title 37, United States Code.

[2] Applies to personnel who have served 4 months or more on active duty.

[3] Applies to personnel who have served less than 4 months on active duty.

PART II—BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers (per month)	$109.37	
	E-1 (less than 4 months' active duty)	All Other Enlisted
Enlisted members (per day).		
When on leave or authorized to mess separately	$4.82	$5.21
When rations-in-kind are not available	$5.45	$5.89
When assigned to duty under emergency conditions where no messing facilities of the United States are available	$7.21	$7.80

PART III—MONTHLY BASIC ALLOWANCE FOR QUARTERS RATES

Pay Grade	Without Dependents		With Dependents
	Full Rate[1]	Partial Rate[2]	
Commissioned officers:			
O-10	$553.50	$50.70	$680.70
O-9	553.50	50.70	680.70
O-8	553.50	50.70	680.70
O-7	553.50	50.70	680.70
O-6	507.90	39.60	617.40
O-5	479.40	33.00	568.80
O-4	439.50	26.70	519.90
O-3	355.80	22.20	433.50
O-2	286.50	17.70	371.70
O-1	245.70	13.20	333.30
Warrant officers:			
W-4	402.90	25.20	467.40
W-3	340.20	20.70	418.20
W-2	306.00	15.90	390.90
W-1	258.90	13.80	340.80
Enlisted members:			
E-9	324.90	18.60	442.80
E-8	300.90	15.30	412.50
E-7	256.80	12.00	383.70
E-6	228.00	9.90	348.00
E-5	210.90	8.70	309.30
E-4	183.00	8.10	267.30
E-3	177.60	7.80	245.70
E-2	150.90	7.20	245.70
E-1	137.40	6.90	245.70

[1] Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by title 37, United States Code, and part IV of Executive Order 11157, as amended.

[2] Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and part IV of Executive Order 11157, as amended.

Executive Order No. 12387

Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, which provided for the adjustment of pay rates effective Oct. 1, 1982, was superseded by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, set out as a note under section 5332 of Title 5, Government Organization and Employees.

Executive Order No. 12456

Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, which provided for adjustment of pay rates effective Jan. 1, 1984, was superseded by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, set out as a note under section 5332 of Title 5.

Section Referred to in Other Sections

This section is referred to in sections 203, 402, 403 of this title; title 2 section 906; title 26 section 3121; title 42 section 409.

§ 1011. Mess operation: reimbursement of expenses

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Spouses and dependent children of enlisted members in pay grades E-1, E-2, E-3, and E-4 may not be charged for meals sold at messes in excess of a level sufficient to cover food costs.

(As amended Pub. L. 99-145, title VIII, § 810(a), Nov. 8, 1985, 99 Stat. 681.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-145 added subsec. (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145, effective Oct. 1, 1985, see section 813 of Pub. L. 99-145, set out in a Military Family Policy and Programs note under section 133 of Title 10, Armed Forces.

§ 1012. Disbursement and accounting: pay of enlisted members of the National Guard

Amounts appropriated for the pay, under subsections (a), (b), and (d) of section 206, section 301(f), the last sentence of section 402(b), and section 1002 of this title, of enlisted members of the Army National Guard of the United States or the Air National Guard of the United States for attending regular periods of duty and instruction shall be disbursed and accounted for by the Secretary concerned. All such disbursements shall be made for 3-month periods for units of the Army National Guard or Air National Guard under regulations prescribed by the Secretary concerned, and on pay rolls prepared and authenticated as prescribed in those regulations.

(As amended Pub. L. 99-145, title XIII, § 1303(b)(13)(A), (B), Nov. 8, 1985, 99 Stat. 741.)

AMENDMENTS

1985—Pub. L. 99-145 inserted ": pay of enlisted members of the National Guard" in section catchline, and substituted "for the pay, under subsections (a), (b), and (d) of section 206, section 301(f), the last sentence of section 402(b), and section 1002 of this title," for "under sections 206(a), (b), and (d), 301(f), 309, 402(b) (last sentence), and 1002 of this title for pay", "All such disbursements" for "Disbursements", and "as prescribed in those" for "under the".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1303(b)(13)(D) of Pub. L. 99-145 provided that: "The amendments made by this paragraph [amending this section] shall take effect as if included in the enactment of section 2(i) of Public Law 97-258 [enacting this section]."

TITLE 38—VETERANS' BENEFITS

This title was enacted by Pub. L. 85-857, § 1, Sept. 2, 1958, 72 Stat. 1105

Part Sec.

III. **Readjustment and Related Benefits** ...... [1]1501

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 5 section 8347; title 7 section 2012; title 10 sections 1408, 1450, 1451, 3686, 8686; title 20 section 1070e-1; title 29 section 1721; title 42 sections 410, 424a, 10008.

PART III—READJUSTMENT AND RELATED BENEFITS

Chap. Sec.

30. **All-Volunteer Force Educational Assistance Program** 1401

AMENDMENTS

1984—Pub. L. 98-525, title VII, § 702(a)(2), Oct. 19, 1984, 98 Stat. 2563, added item for chapter 30.

PART I—GENERAL PROVISIONS

CHAPTER 1—GENERAL

§ 101. Definitions

For the purposes of this title—

[*See main edition for text of* (*1*) *to* (*3*)]

(4)(A) The term "child" means (except for purposes of chapter 19 of this title and section 5202(b) of this title) a person who is unmarried and—

[*See main edition for text of* (*i*) *to* (*iii*)]

and who is a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Administrator to be the father of such child. A person shall be deemed, as of the date of death of a veteran, to be the legally adopted child of such veteran if such person was at the time of the veteran's death living in the veteran's household and was legally adopted by the veteran's surviving spouse before August 26, 1961, or within two years after the veteran's death; however, this sentence shall not apply if at the time of the veteran's death, such person was receiving regular contributions toward the person's support from some individual other than the veteran or the veteran's spouse, or from any public or private welfare organization which furnishes services or assistance for children. A person with respect to whom an interlocutory decree of adoption has been issued by an appropriate adoption authority shall be recognized thereafter as a legally adopted child, unless and until that decree is rescinded, if the child remains in the custody of the adopting parent or parents during the interlocutory period. A person who has been placed for adoption under an agreement entered into by the adopting parent or parents with any agency authorized under law to so act shall be recognized thereafter as a legally adopted child, unless and until such agreement is terminated, if the child remains in the custody of the adopting parent or parents during the period of placement for adoption under such agreement. A person described in clause (ii) of the first sentence of this subparagraph who was a member of a veteran's household at the time the person became 18 years of age and who is adopted by the veteran shall be recognized as a legally adopted child of the veteran regardless of the age of such person at the time of adoption.

[*See main edition for text of* (*B*); (*5*) *to* (*32*)]

(As amended Pub. L. 98-223, title II, § 201, Mar. 2, 1984, 98 Stat. 41.)

AMENDMENTS

1984—Par. (4)(A). Pub. L. 98-223 inserted provision that a person described in cl. (ii) of first sentence of subpar. (A) who was a member of a veteran's household at the time the person became 18 years of age and who is adopted by the veteran be recognized as a legally adopted child of the veteran regardless of the age of such person at the time of the adoption.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 113(d) of Pub. L. 97-306, as amended by Pub. L. 98-223, title II, § 210, Mar. 2, 1984, 98 Stat. 45, provided that: "The amendments made by subsections (a) [amending par. (22) of this section] and (b) [repealing section 403 of this title] and the provisions of subsection (c) [set out as a note under section 8140 of Title 5, Government Organization and Employees]—

"(1) with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated after September 30, 1982, shall take effect as of October 1, 1982; and

"(2) with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated before October 1, 1982, shall take effect as of October 1, 1983."

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[1] So in original. Should be "1401".

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-238, § 1, Jan. 13, 1986, 99 Stat. 1765, provided that: "This Act [amending sections 314, 315, 362, 411, 413, and 414 of this title, enacting provisions set out as notes under sections 314 and 1516 of this title and section 1721 of Title 29, Labor, and amending provisions set out as notes under section 1721 of Title 29] may be cited as the 'Veterans' Compensation Rate Increase and Job Training Amendments of 1985'."

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-166, § 1(a), Dec. 3, 1985, 99 Stat. 941, provided that: "This Act [enacting sections 612B, 4151, and 4152 of this title, amending sections 210, 230, 601, 610, 612, 612A, 620, 620A, 767, 777, 3305, 4101, 4114, 5004, 5007, and 5035 of this title, and enacting provisions set out as notes under sections 601, 610, 767, 3203, 4110, and 5003 of this title] may be cited as the 'Veterans' Administration Health-Care Amendments of 1985'."

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98-543, § 1(a), Oct. 24, 1984, 98 Stat. 2735, provided that: "This Act [enacting sections 363, 524, and 525 of this title, amending sections 314, 315, 335, 362, 411, 413, 414, 618, 802, 1508, 1682, 1692, 1732, 1742, 1786, 1787, 1796, 1902, 1903, 2014, and 3203 of this title, amending provisions set out as a note under section 1721 of Title 29, Labor, and enacting provisions set out as notes under sections 314, 335, 363, 521, 524, 1508, 1903, and 3203 of this title] may be cited as the 'Veterans' Benefits Improvement Act of 1984'."

For short title of Pub. L. 98-542 as the "Veterans' Dioxin and Radiation Exposure Compensation Standards Act, see section 1 of Pub. L. 98-542, set out as a note under section 354 of this title.

Pub. L. 98-528, § 1(a), Oct. 19, 1984, 98 Stat. 2686, provided that: "This Act [amending sections 218, 220, 601, 617, 4101, 4104, 4107, 5010, 5032, 5034, 5035, 5036, and 5037 of this title and enacting provisions set out as notes under sections 218, 601, and 612A of this title] may be cited as the 'Veterans' Health Care Act of 1984'."

Pub. L. 98-525, title VII, § 701, Oct. 19, 1984, 98 Stat. 2553, provided that: "This title [which enacted chapter 30 (section 1401 et seq.) of this title and sections 708, 1046, 2006, and 2136 to 2138 of Title 10, Armed Forces; amended sections 1508, 1673, 1781, and 1795 of this title and sections 2131 to 2135 of Title 10; enacted provisions set out as notes under section 1421 of this title and sections 708, 1046, 2006, and 2131 of Title 10; and amended provision set out as a note under section 2141 of this title] may be cited as the 'Veterans' Educational Assistance Act of 1984'."

Section 1 of Pub. L. 98-223 provided in part: "That (a) this Act [amending sections 101, 312, 314, 315, 351, 355, 362, 411, 412, 413, 414, 1008, 1602, 1733, 1781, 1795, 1802, 1803, 1810, 1819, 2011, 3010, 3011, 3202, 4001, 4002, and 4112 of this title and enacting provisions set out as notes under sections 101, 301, 312, and 314 of this title] may be cited as the 'Veterans' Compensation and Program Improvements Amendments of 1984'."

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-160, § 1(a), Nov. 21, 1983, 97 Stat. 993, provided that: "This Act [enacting sections 222 and 630 of this title, amending sections 203, 301, 360, 361, 601, 610, 612A, 620, 641, 661, 663, 664, 719, 1622, 1623, 1632, 1643, 1662, 1682, 1701, 1712, 1820, 2002, 2002A, 3005, 3010, 3021, 3107, 3110, 3113, 3203, 3402, 3503, 4104, 4105, 4106, 4107, 4110, 4111, 4142, 5010, 5022, and 5053 of this title, enacting provisions set out as notes under sections 111, 210, 219, 601, 612A, 620, 641, and 4106 of this title, and amending provisions set out as a note under section 1721 of Title 29, Labor] may be cited as the 'Veterans' Health Care Amendments of 1983'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 901, 3102, 5011A of this title; title 5 sections 2108, 3501, 5532, 6303, 8706; title 20 section 1070e-1; title 26 section 3121; title 42 sections 410, 1477; title 49 App. section 2214.

§ 106. Certain service deemed to be active service

WOMEN'S AIR FORCES SERVICE PILOTS

Pub. L. 95-202, title IV, § 401, Nov. 23, 1977, 91 Stat. 1449, as amended by Pub. L. 96-466, title VIII, § 801(m)(3), Oct. 17, 1980, 94 Stat. 2217; Pub. L. 98-94, title XII, § 1263(a), Sept. 24, 1983, 97 Stat. 703, provided that:

[*See main edition for text of* (*a*) *and* (*b*)]

"(c) Under regulations prescribed by the Secretary of Defense, any person who is issued a discharge under honorable conditions pursuant to the implementation of subsection (a) of this section may be awarded any campaign or service medal warranted by such person's service."

[Section 1263(b) of Pub. L. 98-94 provided that: "The amendment made by subsection (a) [enacting subsec. (c) set out above] shall apply to all persons issued discharges under honorable conditions pursuant to section 401 of the GI Bill Improvements Act of 1977 [Pub. L. 95-202, set out above] whether such discharges are awarded before, on, or after the date of the enactment of this Act [Sept. 24, 1983]."]

[Amendment of subsec. (a)(1)(B), set out above, by Pub. L. 96-466, effective Oct. 1, 1980, see section 802(h) of Pub. L. 96-466, set out as an Effective Date of 1980 Amendment note under section 1652 of this title.]

§ 111. Travel expenses

INTERIM GUIDELINES FOR BENEFICIARY TRAVEL BETWEEN JANUARY 1, 1984, AND THE PROMULGATION OF REGULATIONS BY ADMINISTRATOR OF VETERANS' AFFAIRS

Pub. L. 98-160, title I, § 108, Nov. 21, 1983, 97 Stat. 999, provided that:

"(a)(1) If by January 1, 1984, the Administrator of Veterans' Affairs has not prescribed the regulations that the Administrator is required by subsection (e)(2)(A) of section 111 of title 38, United States Code, to prescribe, payments for travel that occurs during the period beginning on such date and ending on the day on which the Administrator prescribes such regulations may not be made under such section to any person except—

"(A) a person receiving benefits under such title for or in connection with a service-connected disability;

"(B) a veteran receiving or eligible to receive pension under section 521 of such title; or

"(C) a person whose travel to a Veterans' Administration facility was required to be performed by a special mode of transportation and such travel (i) was authorized by the Administrator before such travel, or (ii) was in connection with a medical emergency of such a nature that the delay incident to obtaining authorization under subclause (i) would have been hazardous to the person's life or health.

"(2) For the purpose of this subsection, the term 'service-connected' has the meaning given such term in section 101(16) of title 38, United States Code.

"(b) The Administrator of Veterans' Affairs shall review the making of payments under section 111 for the purpose of effecting management improvements and economies in the making of such payments. Not later than April 1, 1984, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report describing and explaining the results of such review and including any recommendation for legislative and administrative action that the Administrator considers appropriate."

Section Referred to in Other Sections

This section is referred to in sections 601, 614, 620, 628, 1504 of this title.

CHAPTER 3—VETERANS' ADMINISTRATION; OFFICERS AND EMPLOYEES

SUBCHAPTER II—ADMINISTRATOR OF VETERANS' AFFAIRS

Sec.
218. Security and law enforcement on property under the jurisdiction of the Veterans' Administration.
220. Coordination and promotion of other programs affecting veterans and their dependents.
222. Advisory Committee on Women Veterans.

Amendments

1984—Pub. L. 98-528, title I, § 101(a)(3), Oct. 19, 1984, 98 Stat. 2688, amended item 218 generally.

Pub. L. 98-528, title I, § 106(b)(2), Oct. 19, 1984, 98 Stat. 2690, substituted "other programs" for "other Federal programs" in item 220.

1983—Pub. L. 98-160, title III, § 301(b), Nov. 21, 1983, 97 Stat. 1004, added item 222.

SUBCHAPTER I—VETERANS' ADMINISTRATION

§ 203. Availability of appropriations

[*See main edition for text of* (*a*)]

(b) Any funds appropriated to the Veterans' Administration may be used for a settlement of more than $1,000,000 on a construction contract only if the settlement is audited independently for reasonableness and appropriateness of expenditures and the settlement is provided for specifically in an appropriation law.

(As amended Pub. L. 98-160, title VII, § 702(1), Nov. 21, 1983, 97 Stat. 1009.)

Amendments

1983—Subsec. (b). Pub. L. 98-160 substituted "Any funds appropriated to the Veterans' Administration" for "An appropriation" and struck out "not" after "and the settlement is".

SUBCHAPTER II—ADMINISTRATOR OF VETERANS' AFFAIRS

§ 210. Appointment and general authority of Administrator; Deputy Administrator

[*See main edition for text of* (*a*)]

(b) [*See main edition for text of* (*1*) *and* (*2*)]

(3)(A) The Administrator may not implement a grade reduction described in subparagraph (B) of this paragraph unless the Administrator first submits to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing a detailed plan for such reduction and a detailed justification for the plan. Such report shall include a determination by the Administrator (together with data supporting such determination) that, in the personnel area concerned, the Veterans' Administration has a disproportionate number of employees at the salary grade or grades selected for reduction in comparison to the number of such employees at the salary levels involved who perform comparable functions in other departments and agencies of the Federal Government and in non-Federal entities. Any grade reduction described in such report may not take effect until the end of a period of 90 calendar days (not including any day on which either House of Congress is not in session) after the report is received by the committees.

(B) A grade reduction referred to in subparagraph (A) of this paragraph is a systematic reduction, for the purpose of reducing the average salary cost for Veterans' Administration employees described in subparagraph (C) of this paragraph, in the number of such Veterans' Administration employees at a specific grade level.

(C) The employees referred to in subparagraph (B) of this paragraph are—

(i) health-care personnel who are determined by the Administrator to be providing either direct patient-care services or services incident to direct patient-care services;

(ii) individuals who meet the definition of professional employee as set forth in section 7103(a)(15) of title 5; and

(iii) individuals who are employed as computer specialists.

(D) Not later than the forty-fifth day after the Administrator submits a report under subparagraph (A) of this paragraph, the Comptroller General shall submit to such Committees a report on the Administrator's compliance with such subparagraph. The Comptroller General shall include in the report the Comptroller General's opinion as to the accuracy of the Administrator's determination (and of the data supporting such determination) made under such subparagraph.

(E) In the case of Veterans' Administration employees not described in subparagraph (C) of paragraph (3), the Administrator may not in any fiscal year implement a systematic reduction for the purpose of reducing the average salary cost for such Veterans' Administration employees that will result in a reduction in the number of such Veterans' Administration employees at any specific grade level at a rate greater than the rate of the reductions systematically being made in the numbers of employees at such grade level in all other agencies and departments of the Federal Government combined.

[*See main edition for text of* (*c*) *and* (*d*)]

(As amended Pub. L. 99-166, title IV, § 403(a), Dec. 3, 1985, 99 Stat. 957.)

Amendments

1985—Subsec. (b)(3). Pub. L. 99-166 added par. (3).

Office of Inspector General

All the functions, powers, and duties of the Office of Audits and the Office of Investigations of the Veterans' Administration were transferred to the Office of Inspector General in the Veterans' Administration, by section 9(a)(1)(N) of the Inspector General Act of 1978 Pub. L. 95-452, set out in the Appendix to Title 5, Government Organization and Employees, section 2 of which established such Office of Inspector General.

STATUS AND ROLE OF ADMINISTRATOR OF VETERANS' AFFAIRS; MEMBER OF CABINET, SENSE OF CONGRESS

Pub. L. 98-160, title V, Nov. 21, 1983, 97 Stat. 1005, provided that:

"CONGRESSIONAL FINDINGS

"SEC. 501. The Congress finds that—

"(1) the Nation has an historic and deeply-rooted commitment to providing benefits and services to those who served in the Armed Forces;

"(2) this commitment must be continued and maintained, both to fulfill moral obligations to those who served in the past and to assure current and potential members of the Armed Forces that the Nation's obligations to those who serve will always be honored;

"(3) the Veterans' Administration is the principal Federal entity responsible for veterans' benefits and programs;

"(4) the Veterans' Administration has a potential population of beneficiaries of over 28 million veterans and over 55 million survivors and dependents;

"(5) the Veterans' Administration will distribute over $13.8 billion in income maintenance payments and over $1.5 billion in education, training, and rehabilitation assistance payments during fiscal year 1984, operates one of the Federal Government's two major home loan guaranty programs, with over four million loans currently guaranteed, administers the largest direct insurance program in the Nation, and operates 108 national cemeteries and provides burial assistance for nearly 350,000 deceased veterans annually;

"(6) the Veterans' Administration operates the largest centrally administered health-care system—consisting of, among other facilities, 172 hospitals, 226 outpatient clinics, and 99 nursing home care units—in the United States;

"(7) the Veterans' Administration health-care system serves as the primary backup to the medical resources of the Department of Defense in time of war or national emergency involving the use of the Armed Forces in armed conflict;

"(8) in terms of share of the annual Federal budget, the Veterans' Administration ranks sixth among Federal departments and agencies, and among Federal departments and agencies only the Department of Defense employs more personnel;

"(9) the Administrator of Veterans' Affairs is the principal executive branch official responsible for the administration of the benefits, services, and programs of the Veterans' Administration and for seeking the coordination of veterans' programs administered by other Federal departments and agencies;

"(10) there is a need for greater coordination between the Veterans' Administration and other Federal entities administering veterans programs and between the Veterans' Administration and other Federal entities providing similar benefits to individuals on a basis other than their status as veterans;

"(11) by virtue of the Administrator of Veterans' Affairs not being included in the President's Cabinet, the Administrator generally is not included in Cabinet meetings and deliberations and generally does not have the ready access to the President and senior advisers on the President's staff that Cabinet members have; and

"(12) as a consequence, Presidential decisions affecting veterans and the Veterans' Administration are made from time to time without an understanding of their full impact on veterans and on the Veterans' Administration's performance of its statutory missions.

"SENSE OF THE CONGRESS

"SEC. 502. In view of the findings in section 501, it is the sense of the Congress that the Administrator of Veterans' Affairs should be designated by the President as a member of, and a full participant in all activities of, the Cabinet and as the President's principal adviser on all matters relating to veterans and their dependents."

§ 214. Reports to the Congress

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 221, 222, 245, 618, 654, 664, 1521, 4001 of this title.

§ 218. Security and law enforcement on property under the jurisdiction of the Veterans' Administration

(a)(1) The Administrator shall prescribe regulations to provide for the maintenance of law and order and the protection of persons and property on land and in buildings under the jurisdiction of the Veterans' Administration and not under the control of the Administrator of General Services (hereinafter in this section referred to as "Veterans' Administration property").

(2) Such regulations shall include—

(A) rules for conduct on Veterans' Administration property; and

(B) the penalties, within the limits specified in paragraph (3) of this subsection, for violations of such rules.

(3) Whoever violates any rule prescribed under paragraph (2)(A) of this subsection shall be fined not more than $500 or imprisoned not more than six months (or such lesser amount or period of time as the Administrator prescribes in the regulations prescribed under this subsection), or both.

(4) The rules prescribed under clause (A) of paragraph (2) of this subsection, together with the penalties for violations of such rules, shall be posted conspicuously on property to which they apply.

(5) The Administrator shall consult with the Attorney General before prescribing regulations under this subsection.

(b)(1) Veterans' Administration employees who are Veterans' Administration police officers shall enforce Federal laws and the rules prescribed under subsection (a)(2)(A) of this section on Veterans' Administration property. Subject to regulations prescribed under paragraph (2) of this subsection, a Veterans' Administration police officer may make arrests on Veterans' Administration property for a violation of any Federal law or of any such rule.

(2) The Administrator shall prescribe regulations with respect to Veterans' Administration police officers. Such regulations shall include—

(A) policies with respect to the exercise by Veterans' Administration police officers of the enforcement and arrest authorities provided by paragraph (1) of this subsection;

(B) the scope and duration of training that is required for Veterans' Administration police officers, with particular emphasis on dealing with situations involving patients; and

(C) rules limiting the carrying and use of weapons by Veterans' Administration police officers.

(3) The Administrator shall consult with the Attorney General before prescribing regulations under clause (A) of paragraph (2) of this subsection.

(4) Rates of basic pay for Veterans' Administration police officers may be increased by the Administrator under section 4107(g) of this title.

(c)(1) The Administrator may pay an allowance under this subsection for the purchase of uniforms to any Veterans' Administration police officer who is required to wear a prescribed uniform in the performance of official duties.

(2) The amount of the allowance that the Administrator may pay under this subsection—

(A) may be based on estimated average costs or actual costs;

(B) may vary by geographic regions; and

(C) except as provided in paragraph (3) of this paragraph, may not exceed $200 in a fiscal year for any police officer.

(3)(A) The amount of an allowance under this subsection may be increased to an amount up to $400 for not more than one fiscal year in the case of any Veterans' Administration police officer. In the case of a person who is appointed as a Veterans' Administration police officer on or after the date on which the Administrator initially exercises the authority granted by this paragraph, an allowance in an amount established under this paragraph shall be paid at the beginning of such person's employment as such an officer. In the case of any other Veterans' Administration police officer, an allowance in an amount established under this paragraph shall be paid upon the request of the officer.

(B) A police officer who resigns as a police officer less than one year after receiving an allowance in an amount established under this paragraph shall repay to the Veterans' Administration a pro rata share of the amount paid, based on the number of months the officer was actually employed as such an officer during the twelve-month period following the date on which such officer began such employment or the date on which the officer submitted a request for such allowance, as the case may be.

(4) An allowance may not be paid to a Veterans' Administration police officer under this subsection and under section 5901 of title 5 for the same fiscal year.

(d) The Administrator shall furnish Veterans' Administration police officers with such weapons and related equipment as the Administrator determines to be necessary and appropriate.

(e) With the permission of the head of the agency concerned, the Administrator may use the facilities and services of Federal, State, and local law enforcement agencies when it is economical and in the public interest to do so.

(As amended Pub. L 98-528, title I, § 101(a)(1), Oct. 19, 1984, 98 Stat. 2686.)

SAVINGS PROVISION

Section 101(a)(2) of Pub. L. 98-528 provided that: "The provisions of section 218 of title 38, United States Code, other than clause (2) of subsection (a) of such section, as in effect on the day before the date of the enactment of this Act [Oct. 19, 1984] shall remain in effect until the date on which the Administrator of Veterans' Affairs prescribes the regulations required to be prescribed by subsections (a) and (b) of such section as amended by subsection (a) of this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4107 of this title.

§ 219. Evaluation and data collection

RADIATION EXPOSURE STUDY AND GUIDE

Pub. L. 98-160, title VI, Nov. 21, 1983, 97 Stat. 1006, as amended by Pub. L. 98-542, § 8(b), Oct. 24, 1984, 98 Stat. 2732, provided that:

"SEC. 601. (a)(1)(A) Subject to subparagraphs (B) and (C), the Administrator of Veterans' Affairs, through contracts or agreements with private or public agencies or persons and in consultation with the Director of the Office of Technology Assessment, shall provide for the conduct of epidemiological study of the long-term adverse health effects of exposure to ionizing radiation from the detonation of nuclear devices in connection with the test of such devices or in connection with the American occupation of Hiroshima and Nagasaki, Japan, during the period beginning on September 11, 1945, and ending on July 1, 1946, in persons who, while serving in the Armed Forces of the United States, were exposed to such radiation. Such study shall include, but not necessarily be limited to, a study of identifiable prevalent illnesses, including malignancies, in the persons exposed.

"(B) If the Administrator, in consultation with the Director of the Office of Technology Assessment, determines that it is not feasible to conduct scientifically valid study of any or all of the matters required under subparagraph (A) to be studied—

"(i) the Administrator shall promptly submit to the appropriate committees of the Congress notice of that determination and the reasons therefor; and

"(ii) the Director, not later than 60 days after such notice is provided, shall submit to such committees a report evaluating and commenting on such determination.

"(C) If the Administrator notifies the Congress of a determination or determinations made pursuant to subparagraph (B), the matter or matters required under subparagraph (A) to be studied to which such determination or determinations apply shall not be required to be studied. If the Administrator notifies the Congress of a determination made pursuant to subparagraph (B) that, taken as a whole, study under subparagraph (A) is not scientifically feasible, the requirement in subparagraph (A) that the Administrator provide for the conduct of epidemiological study shall cease to have effect as if repealed by law.

"(2) Not later than one year after the date of the enactment of this Act [Nov. 21, 1983], the Administrator shall submit to the appropriate committees of the Congress a report on the development of a protocol or protocols for study under paragraph (1)(A). With respect to any such protocol under consideration for development, or in the process of development, that has not been completed by the end of such year, the report shall include an estimate of the completion date for such protocol and an estimate of the cost to be incurred in developing such protocol.

"(3)(A) The Director of the Office of Technology Assessment shall monitor the development of the protocol or protocols for, and the conduct of, study under paragraph (1)(A) and shall submit to the appropriate committees of the Congress, at each of the times specified in the next sentence, a report on such monitoring. Reports under the preceding sentence shall be submitted within 6 months after the date of the enactment of this Act [Nov. 21, 1983], within 12 months after such date, within 25 months after such date, and annually thereafter until such study is completed.

"(B) If any protocol to which paragraph (2) applies (or any part of such protocol) is not completed by the end of the 12-month period beginning on the date of the enactment of this Act, the Director shall periodically submit to such committees reports on the status of the development of such protocol.

"(4) When the Administrator has entered into a contract or agreement with an agency or person for the conduct of a study under paragraph (1)(A), the Administrator and such agency or person shall submit to the appropriate committees of the Congress a joint report containing a copy of the contract and an estimate of the total cost of such study.

"(5)(A) Not later than 24 months after the date of the enactment of this Act [Nov. 21, 1983], and annually thereafter, the Administrator shall submit to the appropriate committees of the Congress a report on the status of study under paragraph (1)(A). Such report shall contain (i) a description of the progress on and any results obtained under such study, and (ii) such comments, and such recommendations for administrative and legislative action, as the Administrator considers appropriate in light of such progress and results.

"(B) Immediately after the submission of each report under subparagraph (A), the Administrator, based on the results described in such report and the comments and recommendations included therein and any other available pertinent information, shall evaluate the need for any amendments to regulations, prescribed pursuant to section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act [section 5 of Pub. L. 98-542, set out as a note under section 354 of this title], for the resolution of claims for service connection based on the exposure specified in subsection (a)(1)(B) of such section. To the extent that the Administrator determines that any amendments to such regulations are needed, the Administrator, not later than 90 days after such submission, shall develop and publish in the Federal Register, for public review and comment, proposed amendments to such regulations.

"(C) The requirement in subparagraph (A) for the submission of annual reports shall expire upon the submission of a report after the completion of study under paragraph (1)(A).

"(6) A contract to carry out study under paragraph (1)(A) may not be entered into unless (A) appropriations for payments under the contract have been provided in advance, or (B) the contract provides that the obligation of the United States to make payments under the contract is contingent upon the availability of funds appropriated for the making of such payments.

"(7) There are authorized to be appropriated such sums as may be necessary for the conduct of study under subsection (a)(1)(A).

"(b) Not later than one year after the date of the enactment of this Act [Nov. 21, 1983], the Administrator shall develop and distribute to appropriate Veterans' Administration personnel an indexed reference guide, derived from existing pertinent research-result compilations, designed to provide Veterans' Administration personnel who either furnish health care or adjudicate claims for benefits under title 38, United States Code, with readily usable information regarding the state of medical and other scientific information on any long-term adverse health effects in humans of exposure to ionizing radiation, including nuclear-device exposure, medical exposure, and occupational exposure.

"(c)(1) For the purpose of ensuring that any study, research, or other activity carried out by the Federal Government with respect to adverse health effects in humans from exposure to ionizing radiation is scientifically valid and is conducted with efficiency and objectivity, the President shall ensure that—

"(A) activities of the Veterans' Administration in connection with (i) study under subsection (a)(1)(A), (ii) the development of the guide required by subsection (b), and (iii) such additional research as may be identified, as a result of such study or the development of such guide or otherwise, as necessary for the resolution of questions regarding such effects are fully coordinated with studies and other activities which are planned, are being conducted, or have been completed by other departments, agencies, and instrumentalities of the Federal Government and which pertain to such effects, including the radioepidemiological tables mandated by section 7 of the Orphan Drug Act (Public Law 97-414; 96 Stat. 2059) [42 U.S.C. 241 note]; and

"(B) appropriate coordination and consultation occurs between and among the Administrator and the heads of such departments, agencies, and instrumentalities that may be engaged, during the conduct of study under subsection (a)(1)(A), in the design, conduct, monitoring, or evaluation of such radiation-exposure studies or related activities.

"(2) Not later than 90 days after the date of the enactment of this Act [Nov. 21, 1983], the President shall submit to the appropriate committees of the Congress a report containing a description of the steps taken and plans made to ensure the coordination and consultation required by paragraph (1)."

AGENT ORANGE STUDY; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 96-151, title III, § 307, Dec. 20, 1979, 93 Stat. 1097, as amended by Pub. L. 97-72, title IV, § 401, Nov. 3, 1981, 95 Stat. 1061; Pub. L. 98-542, § 8(a), Oct. 24, 1984, 98 Stat. 2731, provided that:

[*See main edition for text of* (*a*)]

"(b) [*See main edition for text of* (*1*) *and* (*2*)]

"(3) Immediately after the submission of each report under paragraph (2), the Administrator, based on the results described in such report and the comments and recommendations included therein and any other available pertinent information, shall evaluate the need for any amendments to regulations, prescribed pursuant to section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act [section 5 of Pub. L. 98-528, set out as a note under section 354 of this title], for the resolution of claims for service connection based on the exposure specified in subsection (a)(1)(A) of such section. To the extent that the Administrator determines that any amendments to such regulations are needed, the Administrator, not later than 90 days after such submission, shall develop and publish in the Federal Register, for public review and comment, proposed amendments to such regulations.

[*See main edition for text of* (*4*); (*c*) *and* (*d*)]

§ 220. Coordination and promotion of other program affecting veterans and their dependents

(a) The Administrator shall seek to achiev the maximum feasible effectiveness, coordination, and interrelationship of services among al programs and activities affecting veterans an their dependents carried out by and under al other departments, agencies, and instrumenta ities of the executive branch and shall seek t achieve the maximum feasible coordination o such programs with programs carried out unde this title, and shall actively promote the effe tive implementation, enforcement, and applic tion of all provisions of law and regulations pr viding for special consideration, emphasis, o preference for veterans.

(b) The Administrator shall seek to achie the effective coordination of the provisio under laws administered by the Veterans' A ministration, of benefits and services (and i formation about such benefits and services) with appropriate programs (and information about such programs) conducted by State and local governmental agencies and by private entities at the State and local level. In carrying out this subsection, the Administrator shall place special emphasis on veterans who are sixty-five years of age or older.

(As amended Pub. L. 98-528, title I, § 106(a), (b)(1), Oct. 19, 1984, 98 Stat. 2690.)

AMENDMENTS

1984—Pub. L. 98-528 substituted "other programs" for "other Federal programs" in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

§ 222. Advisory Committee on Women Veterans

(a) The Administrator shall establish an advisory committee to be known as the Advisory Committee on Women Veterans (hereinafter in this section referred to as "the Committee").

(b)(1)(A) The Committee shall consist of members appointed by the Administrator from the general public, including—

(i) representatives of women veterans;

(ii) individuals who are recognized authorities in fields pertinent to the needs of women veterans, including the gender-specific health-care needs of women; and

(iii) representatives of both female and male veterans with service-connected disabilities, including at least one female veteran with a service-connected disability and at least one male veteran with a service-connected disability.

(B) The Committee shall include, as ex officio members—

(i) the Secretary of Labor (or a representative of the Secretary of Labor designated by the Secretary after consultation with the Assistant Secretary of Labor for Veterans' Employment);

(ii) the Secretary of Defense (or a representative of the Secretary of Defense designated by the Secretary after consultation with the Defense Advisory Committee on Women in the Services); and

(iii) the Chief Medical Director and Chief Benefits Director, or their designees.

(C) The Administrator may invite representatives of other departments and agencies of the United States to participate in the meetings and other activities of the Committee.

(2) The Administrator shall determine the number, terms of service, and pay and allowances of members of the Committee appointed by the Administrator, except that a term of service of any such member may not exceed 3 years. The Administrator may reappoint any such member for additional terms of service.

(c) The Administrator shall, on a regular basis, consult with and seek the advice of the Committee with respect to—

(1) the administration of benefits by the Veterans' Administration for women veterans;

(2) reports and studies pertaining to women veterans; and

(3) the needs of women veterans with respect to compensation, health care, rehabilitation, outreach, and other benefits and programs administered by the Veterans' Administration.

(d)(1) Not later than July 1, 1984, and not later than July 1 of each second year thereafter, the Committee shall submit to the Administrator a report on the programs and activities of the Veterans' Administration that pertain to women veterans. Each such report shall contain (A) an assessment of the needs of such veterans with respect to compensation, health care, rehabilitation, outreach, and other benefits and programs administered by the Veterans' Administration, (B) a review of the programs and activities of the Veterans' Administration designed to meet such needs, and (C) such recommendations (including recommendations for administrative and legislative action) as the Committee considers appropriate. Within 60 days after receiving each such report, the Administrator shall submit to the Congress a copy of the report, together with any comments concerning the report that the Administrator considers appropriate.

(2) The Committee may submit to the Administrator such other reports and recommendations as the Committee considers appropriate.

(3) The Administrator shall submit with each annual report submitted to the Congress pursuant to section 214 of this title a summary of all reports and recommendations of the Committee submitted to the Administrator since the previous annual report of the Administrator submitted pursuant to such section.

(Added Pub. L. 98-160, title III, § 301(a), Nov. 21, 1983, 97 Stat. 1003.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER III—VETERANS' ADMINISTRATION REGIONAL OFFICES: EMPLOYEES

§ 230. Central and regional offices

[*See main edition for text of* (*a*)]

(b) The Administrator may exercise authority under this section in territory of the Republic of the Philippines until September 30, 1988.

(As amended Pub. L. 99-108, § 1, Sept. 30, 1985, 99 Stat. 481; Pub. L. 99-166, title IV, § 402, Dec. 3, 1985, 99 Stat. 957.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-166 substituted "September 30, 1988" for "October 31, 1985".

Pub. L. 99-108 substituted "October 31, 1985" for "September 30, 1985".

SUBCHAPTER IV—VETERANS OUTREACH SERVICES PROGRAM

§ 246. Veterans cost-of-instruction payments to institutions of higher learning

(a) [*See main edition for text of (1) and (2)*]

(3) With respect to any academic year beginning on or after July 1, 1978, and ending on or before September 30, 1980, each institution which has qualified for payment under this section for the preceding year shall be entitled during such period, notwithstanding the provisions of paragraph (1)(A), to a payment under this section if—

(A) the number of persons referred to in paragraph (1) equals at least the number which bears the same ratio to the number of such recipients who were in attendance at such institution during the first academic year in which the institution was entitled to payments under this section as the number of such recipients in all institutions of higher learning during the same academic year for which the determination is made bears to the number of such recipients in all institutions of higher learning for the first such academic year; or

[*See main edition for text of (B); (b) to (g); credits*]

References in Text

The Higher Education Act of 1965, referred to in subsecs. (b)(1)(B), (c)(1)(A), and (f), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. Section 419 of the Act was renumbered section 420 by Pub. L. 98-558, title VIII, § 801(b)(1), Oct. 30, 1984, 98 Stat. 2902, and is classified to section 1070e of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Codification

Subsec. (a)(3)(A) is set out in this supplement to correct typographical error appearing in the main edition.

PART II—GENERAL BENEFITS

CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

SUBCHAPTER VI—GENERAL COMPENSATION PROVISIONS

Sec.
363. Temporary program for trial work periods and vocational rehabilitation for certain veterans with total disability ratings.

Amendments

1984—Pub. L. 98-543, title I, § 111(a)(2), Oct. 24, 1984, 98 Stat. 2739, added item 363.

Chapter Referred to in Other Sections

This chapter is referred to in sections 106, 107, 410, 415, 612, 801, 1502, 1685, 1701, 1901, 2013, 3103A, 3110 of this title; title 10 sections 1086, 1437, 1446, 1450; title 42 section 6862.

SUBCHAPTER I—GENERAL

§ 301. Definitions

For the purposes of this chapter—

[*See main edition for text of (1) and (2)*]

(3) The term "chronic disease" includes—

[*See main edition for list of chronic diseases*]

and such other chronic diseases as the Administrator may add to this list.

[*See main edition for text of (4)*]

(As amended Pub. L. 98-160, title VII, § 702(2), Nov. 21, 1983, 97 Stat. 1009.)

Amendments

1983—Par. (3). Pub. L. 98-160 substituted a period for the semicolon at end of paragraph following "may add to this list".

Effective Date of Future Increases

Pub. L. 98-223, title I, § 108, Mar. 2, 1984, 98 Stat. 40, provided that: "It is the sense of the Congress that any increase provided by law to take effect after fiscal year 1984 in the rates of disability compensation and dependency and indemnity compensation payable under chapters 11 [§ 301 et seq.] and 13 [§ 401 et seq.], respectively, of title 38, United States Code, shall take effect on December 1 of the fiscal year involved and that the budgets for any such fiscal year include amounts to achieve such purpose."

[Section 108 of Pub. L. 98-223 effective Apr. 1, 1984, see section 107 of Pub. L. 98-223, set out as a note under section 314 of this title.]

SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

§ 312. Presumptions relating to certain diseases and disabilities

(a) For the purposes of section 310 of this title, and subject to the provisions of section 313 of this title, in the case of any veteran who served for ninety days or more during a period of war—

(1) a chronic disease becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service;

(2) a tropical disease, and the resultant disorders or disease originating because of therapy, administered in connection with such diseases, or as a preventative thereof, becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service, or at a time when standard or accepted treatises indicate that the incubation period thereof commenced during such service;

(3) active tuberculous disease developing a 10 percent degree of disability or more within three years from the date of separation from such service;

(4) multiple sclerosis developing a 10 percent degree of disability or more within seven years from the date of separation from such service;

(5) Hansen's disease developing a 10 percent degree of disability or more within three years from the date of separation from such service;

shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service.

(b) For the purposes of section 310 of this title and subject to the provisions of section 313 of this title, in the case of a veteran who is a former prisoner of war and who was detained or interned for not less than thirty days, the disease of—

[See main edition for text of (1) to (7)]

(8) psychosis,

(9) any of the anxiety states, or

(10) dysthymic disorder (or depressive neurosis),

which became manifest to a degree of 10 percent or more after active military, naval, or air service shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of such disease during the period of service.

(As amended Pub. L. 98-223, title I, §§ 101(c), 111, Mar. 2, 1984, 98 Stat. 38, 40.)

AMENDMENTS

1984—Subsec. (a)(1) to (5). Pub. L. 98-223, § 101(c), substituted "percent" for "per centum".

Subsec. (b). Pub. L. 98-223, § 111, added par. (10).

Pub. L. 98-223, § 101(c), substituted "percent" for "per centum" in provision following par. (10).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 101(c) of Pub. L. 98-223 effective Apr. 1, 1984, see section 107 of Pub. L. 98-223, set out as a note under section 314 of this title.

Section 114 of Pub. L. 98-223 provided that: "The amendments made by this part [part B, §§ 111 to 114, of title I of Pub. L. 98-223, amending sections 312, 314, and 3011 of this title] shall take effect as of October 1, 1983."

§ 314. Rates of wartime disability compensation

For the purposes of section 310 of this title—

(a) if and while the disability is rated 10 percent the monthly compensation shall be $68;

(b) if and while the disability is rated 20 percent the monthly compensation shall be $126;

(c) if and while the disability is rated 30 percent the monthly compensation shall be $191;

(d) if and while the disability is rated 40 percent the monthly compensation shall be $274;

(e) if and while the disability is rated 50 percent the monthly compensation shall be $388;

(f) if and while the disability is rated 60 percent the monthly compensation shall be $489;

(g) if and while the disability is rated 70 percent the monthly compensation shall be $617;

(h) if and while the disability is rated 80 percent the monthly compensation shall be $713;

(i) if and while the disability is rated 90 percent the monthly compensation shall be $803;

(j) if and while the disability is rated as total the monthly compensation shall be $1,335;

(k) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of one or more creative organs, or one foot, or one hand, or both buttocks, or blindness of one eye, having only light perception, or has suffered complete organic aphonia with constant inability to communicate by speech, or deafness of both ears, having absence of air and bone conduction, the rate of compensation therefor shall be $62 per month for each such loss or loss of use independent of any other compensation provided in subsections (a) through (j) or subsection (s) of this section but in no event to exceed $1,659 per month; and in the event the veteran has suffered one or more of the disabilities heretofore specified in this subsection, in addition to the requirement for any of the rates specified in subsections (*l*) through (n) of this section, the rate of compensation shall be increased by $62 per month for each such loss or loss of use, but in no event to exceed $2,325 per month;

(*l*) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both feet, or of one hand and one foot, or is blind in both eyes, with 5/200 visual acuity or less, or is permanently bedridden or so helpless as to be in need of regular aid and attendance, the monthly compensation shall be $1,659;

(m) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both hands, or of both legs at a level, or with complications, preventing natural knee action with prostheses in place, or of one arm and one leg at levels, or with complications, preventing natural elbow and knee action with prostheses in place, or has suffered blindness in both eyes having only light perception, or has suffered blindness in both eyes, rendering such veteran so helpless as to be in need of regular aid and attendance, the monthly compensation shall be $1,829;

(n) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both arms at levels, or with complications, preventing natural elbow action with prostheses in place, has suffered the anatomical loss of both legs so near the hip as to prevent the use of prosthetic appliances, or has suffered the anatomical loss of one arm and one leg so near the shoulder and hip as to prevent the use of prosthetic appliances, or has suffered the anatomical loss of both eyes, or has suffered blindness without light perception in both eyes, the monthly compensation shall be $2,080;

(o) if the veteran, as the result of service-connected disability, has suffered disability under conditions which would entitle such veteran to two or more of the rates provided in one or more subsections (*l*) through (n) of this section, no condition being considered twice in the determination, or if the veteran has suffered bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 60 percent or more disabling and the veteran has also suffered service-connected total blindness with

5/200 visual acuity or less, or if the veteran has suffered service-connected total deafness in one ear or bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 40 percent or more disabling and the veteran has also suffered service-connected blindness having only light perception or less, or if the veteran has suffered the anatomical loss of both arms so near the shoulder as to prevent the use of prosthetic appliances, the monthly compensation shall be $2,325;

(p) in the event the veteran's service-connected disabilities exceed the requirements for any of the rates prescribed in this section, the Administrator may allow the next higher rate or an intermediate rate, but in no event in excess of $2,325. In the event the veteran has suffered service-connected blindness with 5/200 visual acuity or less and (1) has also suffered bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at no less than 30 percent disabling, the Administrator shall allow the next higher rate, or (2) has also suffered service-connected total deafness in one ear or service-connected anatomical loss or loss of use of one hand or one foot, the Administrator shall allow the next intermediate rate, but in no event in excess of $2,325. In the event the veteran has suffered service-connected blindness, having only light perception or less, and has also suffered bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 10 or 20 percent disabling, the Administrator shall allow the next intermediate rate, but in no event in excess of $2,325. In the event the veteran has suffered the anatomical loss or loss of use, of a combination of anatomical loss and loss of use, of three extremities, the Administrator shall allow the next higher rate or intermediate rate, but in no event in excess of $2,325. Any intermediate rate under this subsection shall be established at the arithmetic mean, rounded down to the nearest dollar, between the two rates concerned;

[(q) Repealed. Pub. L. 90-493, § 4(a), Aug. 19, 1968, 82 Stat. 809.]

(r) Subject to section 3203(e) of this title, if any veteran, otherwise entitled to compensation authorized under subsection (*o*) of this section, at the maximum rate authorized under subsection (p) of this section, or at the intermediate rate authorized between the rates authorized under subsections (n) and (*o*) of this section and at the rate authorized under subsection (k) of this section, is in need of regular aid and attendance, then, in addition to such compensation—

(1) the veteran shall be paid a monthly aid and attendance allowance at the rate of $998; or

(2) if the veteran, in addition to such need for regular aid and attendance, is in need of a higher level of care, such veteran shall be paid a monthly aid and attendance allowance at the rate of $1,487, in lieu of the allowance authorized in clause (1) of this subsection, if the Administrator finds that the veteran, in the absence of the provision of such care, would require hospitalization, nursing home care, or other residential institutional care.

For the purposes of clause (2) of this subsection, need for a higher level of care shall be considered to be need for personal health-care services provided on a daily basis in the veteran's home by a person who is licensed to provide such services or who provides such services under the regular supervision of a licensed health-care professional. The existence of the need for such care shall be determined by a physician employed by the Veterans' Administration or, in areas where no such physician is available, by a physician carrying out such function under contract or fee arrangement based on an examination by such physician. For the purposes of section 334 of this title, such allowance shall be considered as additional compensation payable for disability.

(s) If the veteran has a service-connected disability rated as total, and (1) has additional service-connected disability or disabilities independently ratable at 60 percent or more, or (2) by reason of such veteran's service-connected disability or disabilities, is permanently housebound, then the monthly compensation shall be $1,494. For the purpose of this subsection, the requirement of "permanently housebound" will be considered to have been met when the veteran is substantially confined to such veteran's house (ward or clinical areas, if institutionalized) or immediate premises due to a service-connected disability or disabilities which it is reasonably certain will remain throughout such veteran's lifetime.

(t)(1) If the veteran (A) is entitled to receive compensation at any rate provided for under subsections (a) through (i) of this section and compensation under subsection (k) of this section, (B) has suffered the loss or loss of use of an extremity as a result of a service-connected disability ratable at 40 percent or more, and (C) has suffered the loss or loss of use of the paired extremity as a result of a non-service-connected disability, not the result of the veteran's own willful misconduct, that would be rated, if service-connected, at 40 percent or more, the monthly rate of compensation payable to such veteran shall be increased by $289.

[*See main edition for text of* (2)]

(As amended Pub. L. 98-223, title I, §§ 101(a), 112, Mar. 2, 1984, 98 Stat. 37, 40; Pub. L. 98-543, title I, § 101(a), Oct. 24, 1984, 98 Stat. 2735; Pub. L. 99-238, title I, § 101(a), Jan. 13, 1986, 99 Stat. 1765.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-238, § 101(a)(1), substituted "$68" for "$66".

Subsec. (b). Pub. L. 99-238, § 101(a)(2), substituted "$126" for "$122".

Subsec. (c). Pub. L. 99-238, § 101(a)(3), substituted "$191" for "$185".

Subsec. (d). Pub. L. 99-238, § 101(a)(4), substituted "$274" for "$266".

Subsec. (e). Pub. L. 99-238, § 101(a)(5), substituted "$388" for "$376".

Subsec. (f). Pub. L. 99-238, § 101(a)(6), substituted "$489" for "$474".

Subsec. (g). Pub. L. 99-238, § 101(a)(7), substituted "$617" for "$598".

Subsec. (h). Pub. L. 99-238, § 101(a)(8), substituted "$713" for "$692".

Subsec. (i). Pub. L. 99-238, § 101(a)(9), substituted "$803" for "$779".

Subsec. (j). Pub. L. 99-238, § 101(a)(10), substituted "$1,335" for "$1,295".

Subsec. (k). Pub. L. 99-238, § 101(a)(11), substituted "$1,659" and "$2,325" for "$1,609" and "$2,255", respectively.

Subsec. (*l*). Pub. L. 99-238, § 101(a)(12), substituted "$1,659" for "$1,609".

Subsec. (m). Pub. L. 99-238, § 101(a)(13), substituted "$1,829" for "$1,774".

Subsec. (n). Pub. L. 99-238, § 101(a)(14), substituted "$2,080" for "$2,017".

Subsecs. (*o*), (p). Pub. L. 99-238, § 101(a)(15), substituted "$2,325" for "$2,255" wherever appearing.

Subsec. (r). Pub. L. 99-238, § 101(a)(16), substituted "$998" and "$1,487" for "$968" and "$1,442", respectively.

Subsec. (s). Pub. L. 99-238, § 101(a)(17), substituted "$1,494" for "$1,449".

Subsec. (t)(1). Pub. L. 99-238, § 101(a)(18), substituted "$289" for "$280".

1984—Subsec. (a). Pub. L. 98-543, § 101(a)(1), substituted "$66" for "$64".

Pub. L. 98-223, § 101(a)(1), substituted "$64" for "$62".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Subsec. (b). Pub. L. 98-543, § 101(a)(2), substituted "$122" for "$118".

Pub. L. 98-223, § 101(a)(2), substituted "$118" for "$114".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Subsec. (c). Pub. L. 98-543, § 101(a)(3), substituted "$185" for "$179".

Pub. L. 98-223, § 101(a)(3), substituted "$179" for "$173".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Subsec. (d). Pub. L. 98-543, § 101(a)(4), substituted "$266" for "$258".

Pub. L. 98-223, § 101(a)(4), substituted "$258" for "$249".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Subsec. (e). Pub. L. 98-543, § 101(a)(5), substituted "376" for "364".

Pub. L. 98-223, § 101(a)(5), substituted "$364" for "$352".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Subsec. (f). Pub. L. 98-543, § 101(a)(6), substituted "$474" for "$459".

Pub. L. 98-223, § 101(a)(6), substituted "$459" for "$443".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Subsec. (g). Pub. L. 98-543, § 101(a)(7), substituted "$598" for "$579".

Pub. L. 98-223, § 101(a)(7), substituted "$579" for "$559".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Subsec. (h). Pub. L. 98-543, § 101(a)(8), substituted "$692" for "$671".

Pub. L. 98-223, § 101(a)(8), substituted "$671" for "$648".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Subsec. (i). Pub. L. 98-543, § 101(a)(9), substituted "$779" for "$755".

Pub. L. 98-223, § 101(a)(9), substituted "$755" for "$729".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Subsec. (j). Pub. L. 98-543, § 101(a)(10), substituted "$1,295" for "$1,255".

Pub. L. 98-223, § 101(a)(10), substituted "$1,255" for "$1,213".

Subsec. (k). Pub. L. 98-543, § 101(a)(11), substituted "$1,609" and "$2,255" for "$1,559" and "$2,185", respectively.

Pub. L. 98-223, § 101(a)(11), substituted "$1,559" and "$2,185" for "$1,506" and "$2,111", respectively.

Subsec. (*l*). Pub. L. 98-543, § 101(a)(12), substituted "$1,609" for "$1,559".

Pub. L. 98-223, § 101(a)(12), substituted "$1,559" for "$1,506".

Subsec. (m). Pub. L. 98-543, § 101(a)(13), substituted "$1,774" for "$1,719".

Pub. L. 98-223, § 101(a)(13), substituted "$1,719" for "$1,661".

Subsec. (n). Pub. L. 98-543, § 101(a)(14), substituted "$2,017" for "$1,954".

Pub. L. 98-223, § 101(a)(14), substituted "$1,954" for "$1,888".

Subsec. (*o*). Pub. L. 98-543, § 101(a)(15), substituted "$2,255" for "$2,185".

Pub. L. 98-223, § 101(a)(15), substituted "$2,185" for "$2,111".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Pub. L. 98-223, § 112(a), inserted "or if the veteran has suffered service-connected total deafness in one ear or bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 40 percent or more disabling and the veteran has also suffered service-connected blindness having only light perception or less," after "5/200 visual acuity or less,".

Subsec. (p). Pub. L. 98-543, § 101(a)(15), substituted "$2,255" for "$2,185" in four places.

Pub. L. 98-223, § 101(a)(15), substituted "$2,185" for "$2,111" in three places.

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Pub. L. 98-223, § 112(b)(1), substituted "30" for "40" in cl. (1).

Pub. L. 98-223, § 112(b)(2), inserted provision authorizing the Administrator to allow the next intermediate rate, but in no event in excess of $2,185, in the event the veteran has suffered service-connected blindness, having only light perception or less, and has also suffered bilateral deafness, and the hearing impairment in either one or both ears is service connected, rated at 10 to 20 percent disabling.

Subsec. (r). Pub. L. 98-543, § 101(a)(16), substituted "$968" and "$1,442" for "$938" and "$1,397", respectively.

Pub. L. 98-223, § 101(a)(16), substituted "$938" and "$1,397" for "$906" and "$1,350", respectively.

Subsec. (s). Pub. L. 98-543, § 101(a)(17), substituted "$1,449" for "$1,404".

Pub. L. 98-223, § 101(a)(17), substituted "$1,404" for "$1,357".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum".

Subsec. (t)(1). Pub. L. 98-543, § 101(a)(18), substituted "$280" for "$271".

Pub. L. 98-223, § 101(a)(18), substituted "$271" for "$262".

Pub. L. 98-223, § 101(a)(19), substituted "percent" for "per centum" in two places.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 107 of title I of Pub. L. 99-238 provided that: "The amendments made by this title [amending sections 314, 315, 362, 411, 413, and 414 of this title and enacting provisions set out as a note under this section] shall take effect as of December 1, 1985."

Effective Date of 1984 Amendments

Section 107 of Pub. L. 98-543 provided that: "Sections 101 through 106 [amending sections 314, 315, 362, 411, 413, and 414 of this title and enacting provisions set out as a note under section 314 of this title] shall take effect on December 1, 1984."

Section 107 of Pub. L. 98-223 provided that: "The amendments made by this part [part A, §§ 101 to 108, of title I of Pub. L. 98-223, which amended sections 312, 314, 315, 355, 362, 411, 413 and 414 of this title and enacted provisions set out as notes under sections 301 and 314 of this title] shall take effect on April 1, 1984."

Amendment by section 112 of Pub. L. 98-223 effective Oct. 1, 1983, see section 114 of Pub. L. 98-223, set out as a note under section 312 of this title.

Administrative Adjustment of Disability Rates of Certain Persons Not Covered by This Chapter

Section 101(b) of Pub. L. 99-238 provided that: "The Administrator of Veterans' Affairs may adjust administratively, consistent with the increases authorized by this section [amending this section], the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 [set out as a note preceding section 101 of this title] who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code."

Similar provisions were contained in the following acts:

Pub. L. 98-543, title I, § 101(b), Oct. 24, 1984, 98 Stat. 2736.

Pub. L. 98-223, title I, § 101(b), Mar. 2, 1984, 98 Stat. 38.

Pub. L. 97-306, title I, § 101(b), Oct. 14, 1982, 96 Stat. 1430.

§ 315. Additional compensation for dependents

Any veteran entitled to compensation at the rate provided in section 314 of this title, and whose disability is rated not less than 30 percent, shall be entitled to additional compensation for dependents in the following monthly amounts:

(1) If and while rated totally disabled and—

(A) has a spouse but no child, $81;

(B) has a spouse and one or more children, $136 plus $43 for each child in excess of one;

(C) has no spouse but one or more children, $56 plus $43 for each child in excess of one;

(D) has a parent dependent upon such veteran for support, then, in addition to the above amounts, $66 for each parent so dependent;

(E) notwithstanding the other provisions of this paragraph, the monthly payable amount on account of a spouse who is (i) a patient in a nursing home or (ii) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person, shall be $147 for a totally disabled veteran and proportionate amounts for partially disabled veterans in accordance with paragraph (2) of this section; and

(F) notwithstanding the other provisions of this paragraph, the monthly amount payable on account of each child who has attained the age of eighteen years and who is pursuing a course of instruction at an approved educational institution shall be $124 for a totally disabled veteran and proportionate amounts for partially disabled veterans in accordance with paragraph (2) of this section.

(2) If and while rated partially disabled, but not less than 30 percent, in an amount having the same ratio to the amount specified in paragraph (1) of this section as the degree of disability bears to total disability. The amounts payable under this paragraph, if not a multiple of $1, shall be rounded down to the nearest dollar.

(As amended Pub. L. 98-223, title I, § 102, Mar. 2, 1984, 98 Stat. 38; Pub. L. 98-543, title I, § 102, Oct. 24, 1984, 98 Stat. 2736; Pub. L. 99-238, title I, § 102, Jan. 13, 1986, 99 Stat. 1766.)

Amendments

1986—Par. (1)(A). Pub. L. 99-238, § 102(1), substituted "$81" for "$79".

Par. (1)(B). Pub.L. 99-238, § 102(2), substituted "$136" and "$43" for "$132" and "$42", respectively.

Par. (1)(C). Pub. L. 99-238, § 102(3), substituted "$56" and "$43" for "$54" and "$42", respectively.

Par. (1)(D). Pub. L. 99-238, § 102(4), substituted "$66" for "$64".

Par. (1)(E). Pub. L. 99-238, § 102(5), substituted "$147" for "$143".

Par. (1)(F). Pub. L. 99-238, § 102(6), substituted "$124" for "$120".

1984—Pub. L. 98-223, § 102(b), substituted "percent" for "per centum" in provision preceding par. (1).

Par. (1)(A). Pub. L. 98-543, § 102(1), substituted "$79" for "$77".

Pub. L. 98-223, § 102(a)(1), substituted "$77" for "$74".

Par. (1)(B). Pub. L. 98-543, § 102(2), substituted "$132" and "$42" for "$128" and "$41", respectively.

Pub. L. 98-223, § 102(a)(2), substituted "$128" and "$41" for "$124" and "$40", respectively.

Par. (1)(C). Pub. L. 98-543, § 102(3), substituted "$54" and "$42" for "$52" and "$41", respectively.

Pub. L. 98-223, § 102(a)(3), substituted "$52" and "$41" for "$50" and "$40", respectively.

Par. (1)(D). Pub. L. 98-543, § 102(4), substituted "$64" for "$62".

Pub. L. 98-223, § 102(a)(4), substituted "$62" for "$60".

Par. (1)(E). Pub. L. 98-543, § 102(5), substituted "$143" for "$139".

Pub. L. 98-223, § 102(a)(5), substituted "$139" for "$134".

Par. (1)(F). Pub. L. 98-543, § 102(6), substituted "$120" for "$116".

Pub. L. 98-223, § 102(a)(6), substituted "$116" for "$112".

Par. (2). Pub. L. 98-223, § 102(b), substituted "percent" for "per centum".

Effective Date of 1986 Amendment

Amendment by Pub. L. 99-238 effective Dec. 1, 1985, see section 107 of Pub. L. 99-238, set out as a note under section 314 of this title.

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-543 effective Dec. 1, 1984, see section 107 of Pub. L. 98-543, set out as a note under section 314 of this title.

Amendment by Pub. L. 98-223 effective Apr. 1, 1984, see section 107 of Pub. L. 98-223, set out as a note under section 314 of this title.

SUBCHAPTER IV—PEACETIME DISABILITY COMPENSATION

§ 335. Additional compensation for dependents

Any veteran entitled to compensation at the rates provided in section 334 of this title, and whose disability is rated not less than 30 percent, shall be entitled to additional monthly compensation for dependents as provided in section 315 of this title.

(As amended Pub. L. 98-543, title I, § 112(a), Oct. 24, 1984, 98 Stat. 2740.)

AMENDMENTS

1984—Pub. L. 98-543 substituted "30 percent" for "50 per centum".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 112(b) of Pub. L. 98-543 provided that: "The amendment made by subsection (a) [amending this section] shall take effect as of October 1, 1978."

SUBCHAPTER VI—GENERAL COMPENSATION PROVISIONS

§ 351. Benefits for persons disabled by treatment or vocational rehabilitation

Where any veteran shall have suffered an injury, or an aggravation of an injury, as the result of hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation under chapter 31 of this title, awarded under any of the laws administered by the Veterans' Administration, or as a result of having submitted to an examination under any such law, and not the result of such veteran's own willful misconduct, and such injury or aggravation results in additional disability to or the death of such veteran, disability or death compensation under this chapter and dependency and indemnity compensation under chapter 13 of this title shall be awarded in the same manner as if such disability, aggravation, or death were service-connected. Where an individual is, on or after December 1, 1962, awarded a judgment against the United States in a civil action brought pursuant to section 1346(b) of title 28 or, on or after December 1, 1962, enters into a settlement or compromise under section 2672 or 2677 of title 28 by reason of a disability, aggravation, or death treated pursuant to this section as if it were service-connected, then no benefits shall be paid to such individual for any month beginning after the date such judgment, settlement, or compromise on account of such disability, aggravation, or death becomes final until the aggregate amount of benefits which would be paid but for this sentence equals the total amount included in such judgment, settlement, or compromise.

(As amended Pub. L. 98-223, title II, § 213(1), Mar. 2, 1984, 98 Stat. 46.)

AMENDMENTS

1984—Pub. L. 98-223 substituted "title 28" for "title 28, United States Code," in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 610, 3010, 3113 of this title.

§ 354. Consideration to be accorded time, place and circumstances of service

(a) The Administrator shall include in the regulations pertaining to service-connection of disabilities (1) additional provisions in effect requiring that in each case where a veteran is seeking service-connection for any disability due consideration shall be given to the places, types, and circumstances of such veteran's service as shown by such veteran's service record, the official history of each organization in which such veteran served, his medical records, and all pertinent medical and lay evidence, and (2) the provisions required by section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-542, § 4, Oct. 24, 1984, 98 Stat. 2727.)

REFERENCES IN TEXT

Section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, referred to in subsec. (a), is section 5 of Pub. L. 98-542, Oct. 24, 1984, 98 Stat. 2727, which is set out as a note below.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-542 designated existing provisions as cl. (1) and added cl. (2).

VETERANS' DIOXIN AND RADIATION EXPOSURE COMPENSATION STANDARDS; CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

Sections 1-3 of Pub. L. 98-542 provided that:

"SHORT TITLE

"SECTION 1. This Act [amending this section, enacting provisions set out as notes under this section, and amending provisions set out as notes under section 219 of this title] may be cited as the 'Veterans' Dioxin and Radiation Exposure Compensation Standards Act'.

"FINDINGS

"SEC. 2. The Congress makes the following findings:

"(1) Veterans who served in the Republic of Vietnam during the Vietnam era and veterans who participated in atmospheric nuclear tests or the American occupation of Hiroshima or Nagasaki, Japan, are deeply concerned about possible long-term health effects of exposure to herbicides containing dioxin or to ionizing radiation.

"(2) There is scientific and medical uncertainty regarding such long-term adverse health effects.

"(3) In section 102 of Public Law 97-22 [see Tables for classifications], the Congress responded to that uncertainty by authorizing priority medical care at Veterans' Administration facilities for any disability of a veteran who may have been so exposed (even though there is insufficient medical evidence linking such disability with such exposure) unless the disability is found to have resulted from a cause other than the exposure.

"(4) The Congress has further responded to that medical and scientific uncertainty by requiring, in section 307 of Public Law 96-151 and section 601 of Public Law 98-160 [set out as notes under section 219 of this title], the conduct of thorough epidemiological studies of the health effects experienced by veterans in connection with exposure both to herbicides containing dioxin and (if not determined to be scientifically infeasible) to radiation, and by requiring in Public Law 97-414 [see Tables for classifications], the development of radioepidemiological tables setting forth the probabilities of causation between various cancers and exposure to radiation.

"(5) There is some evidence that chloracne, porphyria cutanea tarda, and soft tissue sarcoma are associated with exposure to certain levels of dioxin as found in some herbicides and that most types of leukemia, malignancies of the thyroid, female breast, lung, bone, liver, and skin, and polycythemia vera are associated with exposure to certain levels of ionizing radiation.

"(6) As of the date of the enactment of this Act [Oct. 24, 1984], there are sixty-six federally sponsored research projects being conducted relating to herbicides containing dioxin, at a cost to the Federal Government in excess of $130,000,000 and, as of 1981, federally sponsored research projects relating to ionizing radiation were costing the Federal Government more than $115,000,000.

"(7) The initial results of one project—an epidemiological study, conducted by the United States Air Force School of Aerospace Medicine, of the health status of the 'Ranch Hand' veterans who carried out the loading and aerial spraying of herbicides containing dioxin in Vietnam and in the process came into direct skin contact with such herbicides in their most concentrated liquid form—were released on February 24, 1984, and contained the conclusion 'that there is insufficient evidence to support a cause and effect relationship between herbicide exposure and adverse health in the Ranch Hand group at this time'.

"(8) The 'film badges' which were originally issued to members of the Armed Forces in connection with the atmospheric nuclear test program have previously constituted a primary source of dose information for veterans (and survivors of veterans) filing claims for Veterans' Administration disability compensation or dependency and indemnity compensation in connection with exposure to radiation.

"(9) These film badges often provide an incomplete measure of radiation exposure, since they were not capable of recording inhaled, ingested, or neutron doses (although the Defense Nuclear Agency currently has the capability to reconstruct individual estimates of such doses), were not issued to most of the participants in nuclear tests, often provided questionable readings because they were shielded during the detonation, and were worn for only limited periods during and after each nuclear detonation.

"(10) Standards governing the reporting of dose estimates in connection with radiation-related claims for Veterans' Administration disability compensation vary among the several branches of the Armed Forces, and no uniform minimum standards exist.

"(11) The Veterans' Administration has not promulgated permanent regulations setting forth specific guidelines, standards, and criteria for the adjudication of claims for Veterans' Administration disability compensation based on exposure to herbicides containing dioxin or to ionizing radiation.

"(12) Such claims (especially those involving health effects with long latency periods) present adjudicatory issues which are significantly different from issues generally presented in claims based upon the usual types of injuries incurred in military service.

"(13) It has always been the policy of the Veterans' Administration and is the policy of the United States, with respect to individual claims for service connection of diseases and disabilities, that when, after consideration of all evidence and material of record, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of a claim, the benefit of the doubt in resolving each such issue shall be given to the claimant.

"PURPOSE

"SEC. 3. The purpose of this Act is to ensure that Veterans' Administration disability compensation is provided to veterans who were exposed during service in the Armed Forces in the Republic of Vietnam to a herbicide containing dioxin or to ionizing radiation in connection with atmospheric nuclear tests or in connection with the American occupation of Hiroshima or Nagasaki, Japan, for all disabilities arising after that service that are connected, based on sound scientific and medical evidence, to such service (and that Veterans' Administration dependency and indemnity compensation is provided to survivors of those veterans for all deaths resulting from such disabilities)."

REQUIREMENT FOR AND CONTENT OF REGULATIONS; ADVISORY COMMITTEE ON ENVIRONMENTAL STANDARDS; NUCLEAR RADIATION MATTERS INVOLVING OTHER AGENCIES

Sections 5-7 of Pub. L. 98-542 provided that:

"REQUIREMENT FOR AND CONTENT OF REGULATIONS

"SEC. 5. (a) In carrying out the responsibilities of the Administrator of Veterans' Affairs under section 354(a)(2) of title 38, United States Code, and in order to promote consistency in claims processing and decisions, the Administrator shall prescribe regulations to—

"(1) establish guidelines and (where appropriate) standards and criteria for the resolution of claims for benefits under laws administered by the Veterans' Administration where the criteria for eligibility for a benefit include a requirement that a death or disability be service connected and the claim of service connection is based on a veteran's exposure during service—

"(A) in the Republic of Vietnam during the Vietnam era to a herbicide containing dioxin, or

"(B) in connection with such veteran's participation in atmospheric nuclear tests or with the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, to ionizing radiation from the detonation of a nuclear device; and

"(2) ensure that, with respect to those claims, the policy of the United States described in section 2(13) [set out as a note above] is carried out.

"(b)(1)(A) The guidelines required to be established in regulations prescribed under this section shall include guidelines governing the evaluation of the findings of scientific studies relating to the possible increased risk of adverse health effects of exposure to herbicides containing dioxin or of exposure to ionizing radiation. Those guidelines shall require that, in the evaluation of those studies, the Administrator shall take into account whether the results are statistically significant, are capable of replication, and withstand peer review.

"(B) The evaluations described in subparagraph (A) shall be made by the Administrator of Veterans' Affairs after receiving the advice of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards (established under section 6). Those evaluations shall be published in the notice section of the Federal Register.

"(C) The standards and criteria required to be established in regulations prescribed under this section shall include provisions governing the use in the adjudication of individual claims of the Administrator's evaluations made under subparagraph (B).

"(2)(A)(i) In prescribing regulations under this section, the Administrator (after receiving the advice of the Advisory Committee and of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards regarding the diseases described in subparagraph (B)) shall make determinations, based on sound medical and scientific evidence, with respect to each disease described in subparagraph (B) as to whether service connection shall, subject to division (ii) of this subparagraph, be granted in the adjudication of individual cases. In making determinations regarding such diseases, the Administrator shall give due regard to the need to maintain the policy of the United States with respect to the resolution of contested issues as set forth in section 2(13) [set out as a note above]. The Administrator shall set forth in such regulations such determinations, with any specification (relating to exposure or other relevant matter) of limitations on the circumstances under which service connection shall be granted, and shall implement such determinations in accordance with such regulations.

"(ii) If the Administrator makes a determination, pursuant to this subparagraph, that service connection shall be granted in the case of a disease described in subparagraph (B), the Administrator shall specify in such regulations that, in the adjudication of individual cases, service connection shall not be granted where there is sufficient affirmative evidence to the contrary or evidence to establish that an intercurrent injury or disease which is a recognized cause of the described disease has been suffered between the date of separation from service and the onset of such disease or that the disability is due to the veteran's own willful misconduct.

"(iii) With regard to each disease described in subparagraph (B), the Administrator shall include in the regulations prescribed under this section provisions specifying the factors to be considered in adjudicating issues relating to whether or not service connection should be granted in individual cases and the circumstances governing the granting of service connection for such disease.

"(B) The diseases referred to in subparagraph (A) are those specified in section 2(5) [set out as a note above] and any other disease with respect to which the Administrator finds (after receiving and considering the advice of the appropriate panel of the Scientific Council established under section 6(d)(2)) that there is sound scientific or medical evidence indicating—

"(i) a connection to exposure to a herbicide containing dioxin, in the case of a veteran who was exposed to that herbicide during such veteran's service in the Republic of Vietnam during the Vietnam era, or

"(ii) a connection to exposure to ionizing radiation, in the case of a veteran who was exposed to ionizing radiation in connection with such veteran's participation in an atmospheric nuclear test or with the American occupation of Hiroshima or Nagasaki, Japan, before July 1, 1946.

"(3) The regulations prescribed under this section shall include—

"(A) specification of the maximum period of time after exposure to such herbicide or ionizing radiation for the development of those diseases; and

"(B) a requirement that a claimant filing a claim based upon a veteran's exposure to a herbicide containing dioxin or to ionizing radiation from the detonation of a nuclear device may not be required to produce evidence substantiating the veteran's exposure during active military, naval, or air service if the information in the veteran's service records and other records of the Department of Defense is not inconsistent with the claim that the veteran was present where and when the claimed exposure occurred.

"(c)(1) The Administrator of Veterans' Affairs shall develop the regulations required by this section (and any amendment to those regulations) through a public review and comment process in accordance with the provisions of section 553 of title 5, United States Code. That process may include consideration by the Administrator of the recommendations of the Veterans' Advisory Committee on Environmental Hazards and the Scientific Council thereof (established under section 6) with respect to the proposed regulations, and that process shall include consideration by the Administrator of the recommendations of the Committee and the Council with respect to the final regulations and proposed and final amendments to such regulations. The period for public review and comment shall be completed not later than ninety days after the proposed regulations or proposed amendments are published in the Federal Register.

"(2)(A) Not later than one hundred and eighty days after the date of the enactment of this Act [Oct. 24, 1984], the Administrator shall develop and publish in the Federal Register a proposed version of the regulations required to be prescribed by this section.

"(B) Not later than three hundred days after the date of the enactment of this Act [Oct. 24, 1984], the Administrator shall publish in the Federal Register the final regulations (together with explanations of the bases for the guidelines, standards, and criteria contained therein) required to be prescribed by this section.

"ADVISORY COMMITTEE ON ENVIRONMENTAL HAZARDS

"SEC. 6. (a) The advisory committee referred to in subsections (b) and (c) of section 5, to be known as the Veterans' Advisory Committee on Environmental Hazards (hereinafter in this section referred to as the 'Committee') shall consist of fifteen members appointed by the Administrator of Veterans' Affairs after requesting and considering recommendations from veteran organizations, including—

"(1) eleven individuals (of whom none may be members of the Armed Forces on active duty or employees of the Veterans' Administration or the Department of Defense and not more than three may be employees of other Federal departments or agencies), appointed, after requesting and considering the recommendations of the heads of Federal entities with particular expertise in biomedical and environmental science, including—

"(A) three individuals who are recognized medical or scientific authorities in fields pertinent to understanding the health effects of exposure to dioxin;

"(B) three individuals who are recognized medical or scientific authorities in fields pertinent to understanding the health effects of exposure to ionizing radiation; and

"(C) five individuals who are recognized medical or scientific authorities in fields, such as epidemiology and other scientific disciplines, pertinent to determining and assessing the health effects of exposure to dioxin or ionizing radiation in exposed populations; and

"(2) four individuals from the general public, including at least one disabled veteran, having a demonstrated interest in and experience relating to veterans' concerns regarding exposure to dioxin or ionizing radiation.

"(b) The Committee shall include, as ex officio, nonvoting members, the Chief Medical Director and the Chief Benefits Director of the Veterans' Administration, or their designees.

"(c) The Committee shall submit to the Administrator any recommendations it considers appropriate for administrative or legislative action.

"(d)(1) The eleven members of the Committee described in subsection (a)(1) shall, in addition to serving as members of the Committee, constitute a Scientific Council of the Committee (hereinafter in this section referred to as the 'Council').

"(2) The Council shall be divided into (A) an eight-member panel with responsibility for evaluating scientific studies relating to possible adverse health effects of exposure to dioxin, and (B) an eight-member panel with responsibility for evaluating scientific studies relating to possible adverse health effects of exposure to ionizing radiation.

"(3) The Council shall make findings and evaluations regarding pertinent scientific studies and shall submit to the Committee and the Administrator directly periodic reports on such findings and evaluations.

"(e) The Administrator shall designate one of the members to chair the Committee and another member to chair the Council.

"(f) The Administrator shall determine the terms of service and pay and allowances of members of the Committee, except that a term of service of any member may not exceed three years. The Administrator may reappoint any member for additional terms of service.

"(g) The Administrator shall provide administrative support services and fiscal support for the Committee.

"NUCLEAR RADIATION MATTERS INVOLVING OTHER AGENCIES

"SEC. 7. (a) In connection with the duties of the Director of the Defense Nuclear Agency, as Department of Defense Executive Agent for the Nuclear Test Personnel Review Program, relating to the preparation of radiation dose estimates with regard to claims for Veterans' Administration disability compensation and dependency and indemnity compensation under chapters 11 [§ 301 et seq.] and 13 [§ 401 et seq.], respectively, of title 38, United States Code—

"(1) the Secretary of Defense shall prescribe guidelines (and any amendment to those guidelines) through a public review and comment process in accordance with the provisions of section 553 of title 5, United States Code—

"(A) specifying the minimum standards governing the preparation of radiation dose estimates in connection with claims for such compensation,

"(B) making such standards uniformly applicable to the several branches of the Armed Forces, and

"(C) requiring that each such estimate furnished to the Veterans' Administration and to any veteran or survivor include information regarding all material aspects of the radiation environment to which the veteran was exposed and which form the basis of the claim, including inhaled, ingested, and neutron doses; and

"(2) the Secretary of Health and Human Services, through the Director of the National Institutes of Health, shall—

"(A) conduct a review of the reliability and accuracy of scientific and technical devices and techniques (such as 'whole body counters') which may be useful in determining previous radiation exposure;

"(B) submit to the Administrator of Veterans' Affairs and the Committees on Veterans' Affairs of the House of Representatives and the Senate, not later than July 1, 1985, a report regarding the results of such review, including information concerning the availability of such devices and techniques, the categories of exposed individuals as to whom use of such devices and techniques may be appropriate, and the reliability and accuracy of dose estimates which may be derived from such devices and techniques; and

"(C) enter into an interagency agreement with the Administrator of Veterans' Affairs for the purpose of assisting the Administrator in identifying agencies or other entities capable of furnishing services involving the use of such devices and techniques.

"(b) The Administrator of Veterans' Affairs, in resolving material differences between a radiation dose estimate, from a credible source, submitted by a veteran or survivor and a radiation dose estimate prepared and transmitted by the Director of the Defense Nuclear Agency, shall provide for the preparation of a radiation dose estimate by an independent expert, who shall be selected by the Director of the National Institutes of Health and who shall not be affiliated with the Defense Nuclear Agency, and the Administrator shall provide for the consideration of such independent estimate in connection with the adjudication of the claim for Veterans' Administration compensation."

INTERIM BENEFITS FOR DISABILITY OR DEATH IN CERTAIN CASES

Section 9 of Pub. L. 98-542 provided that:

"(a)(1) In the case of a veteran—

"(A) who served in the active military, naval, or air service in the Republic of Vietnam during the Vietnam era; and

"(B) who has a disease described in subsection (b) that became manifest within one year after the date of the veteran's most recent departure from the Republic of Vietnam during that service,

the Administrator shall (except as provided in subsection (c)) pay a monthly disability benefit to the veteran in accordance with this section.

"(2) If a veteran described in paragraph (1) dies from the disease, the Administrator shall pay a monthly death benefit to the survivors of the veteran in accordance with this section.

"(b) The diseases referred to in subsection (a) are chloracne and porphyria cutanea tarda.

"(c) Benefits may not be paid under this section with respect to a disease occurring in a veteran—

"(1) where there is affirmative evidence that the disease was not incurred by the veteran during service in the Republic of Vietnam during the Vietnam era;

"(2) where there is affirmative evidence to establish that an intercurrent injury or disease which is a recognized cause of the disease was suffered by the veteran between the date of the veteran's most recent departure from the Republic of Vietnam during active military, naval, or air service and the onset of the disease; or

"(3) if the Administrator determines, based on evidence in the veteran's service records and other records of the Department of Defense, that the veteran was not exposed to dioxin during active military, naval, or air service in the Republic of Vietnam during the Vietnam era.

"(d)(1) A disability benefit payable to a veteran under this section for a disease described in subsection (b) shall be paid at the rate at which compensation would be payable under chapter 11 [§ 301 et seq.] of title 38, United States Code, to that veteran for the disability resulting from that disease if the disability were determined to be service-connected.

"(2) A death benefit payable under this section to the survivors of a veteran shall be paid to such survivors based upon the eligibility requirements (other than the requirement that death be the result of a service-connected or compensable disability) and at the rates that are applicable to dependency and indemnity compensation under chapter 13 [§ 401 et seq.] of that title.

"(e) A benefit may not be paid under this section with respect to a disease or the death of a veteran for any month for which compensation is payable to that veteran for that disease under chapter 11 [§ 301 et seq.] of title 38, United States Code, or for which dependency and indemnity compensation is payable for that death under chapter 13 [§ 401 et seq.] of such title.

"(f) A disease establishing eligibility for a disability or death benefit under this section shall be treated for purposes of all other laws of the United States (other than chapters 11 [§ 301 et seq.] and 13 [§ 401 et seq.] of title 38, United States Code) as if such disease were service connected. The receipt of a disability benefit under this section shall be treated for purposes of all other laws of the United States as if such benefit were compensation under chapter 11 of such title, and the receipt of a death benefit under this section shall be treated for purposes of all other laws of the United States as if such benefit were dependency and indemnity compensation under chapter 13 of title 38, United States Code.

"(g) For the purposes of this section:

"(1) The term 'Administrator' means the Administrator of Veterans' Affairs.

"(2) The term 'Vietnam era' means the period beginning on August 5, 1964, and ending on May 7, 1975.

"(3) The term 'veteran' has the meaning given that term in paragraph (2) of section 101 of title 38, United States Code, and includes a person who died in the active military, naval, or air service.

"(4) The terms 'service-connected' and 'active military, naval, or air service' have the meanings given those terms in paragraphs (16) and (24), respectively, of section 101 of title 38, United States Code.

"(h)(1) This section takes effect as of October 1, 1984. No benefit may be paid under this section for a period before that date.

"(2) No benefit may be paid under this section for a period after September 30, 1986."

§ 355. Authority for schedule for rating disabilities

The Administrator shall adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combination of injuries. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations. The schedule shall be constructed so as to provide ten grades of disability and no more, upon which payments of compensation shall be based, namely, 10 percent, 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, 80 percent, 90 percent, and total, 100 percent. The Administrator shall from time to time readjust this schedule of ratings in accordance with experience.

(As amended Pub. L. 98-223, title I, § 101(c), Mar. 2, 1984, 98 Stat. 38.)

AMENDMENTS

1984—Pub. L. 98-223 substituted "percent" for "per centum" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-223 effective Apr. 1, 1984, see section 107 of Pub. L. 98-223, set out as a note under section 314 of this title.

§ 360. Special consideration for certain cases of blindness or bilateral kidney involvement or bilateral deafness

Where any veteran (1) has suffered blindness in one eye as a result of service-connected disability and has suffered blindness in the other eye as a result of non-service-connected disability not the result of such veteran's own willful misconduct, or (2) has suffered the loss or loss of use of one kidney as a result of service-connected disability, and has suffered severe involvement of the other kidney such as to cause total disability, as a result of non-service-connected disability not the result of such veteran's own willful misconduct, or (3) has suffered total deafness in one ear as a result of service-connected disability and has suffered total deafness in the other ear as the result of non-service-connected disability not the result of such veteran's own willful misconduct, the Administrator shall assign and pay to the veteran concerned the applicable rate of compensation under this chapter as if such veteran's blindness in both eyes or such bilateral kidney involvement were the result of service-connected disability.

(As amended Pub. L. 98-160, title VII, § 702(3), Nov. 21, 1983, 97 Stat. 1009.)

AMENDMENTS

1983—Pub. L. 98-160 substituted "(1) has suffered" for "has suffered (1)".

§ 361. Payment of disability compensation in disability severance cases

The deduction of disability severance pay from disability compensation, as required by section 1212(c) of title 10, shall be made at a monthly rate not in excess of the rate of compensation to which the former member would be entitled based on the degree of such former member's disability as determined on the initial Veterans' Administration rating.

(As amended Pub. L. 98-160, title VII, § 702(4), Nov. 21, 1983, 97 Stat. 1009.)

AMENDMENTS

1983—Pub. L. 98-160 struck out "United States Code," after "title 10,".

§ 362. Clothing allowance

The Administrator under regulations which the Administrator shall prescribe, shall pay a clothing allowance of $360 per year to each veteran who because of disability which is compensable under the provisions of this chapter, wears or uses prosthetic or orthopedic appliance or appliances (including a wheelchair) which the Administrator determines tends to wear out or tear the clothing of such a veteran.

(As amended Pub. L. 98-223, title I, § 103, Mar. 2, 1984, 98 Stat. 38; Pub. L. 98-543, title I, § 103, Oct. 24, 1984, 98 Stat. 2736; Pub. L. 99-238, title I, § 103, Jan. 13, 1986, 99 Stat. 1766.)

AMENDMENTS

1986—Pub. L. 99-238 substituted "$360" for "$349".

1984—Pub. L. 98-543 substituted "$349" for "$338".

Pub. L. 98-223 substituted "$338" for "$327".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-238 effective Dec. 1, 1985, see section 107 of Pub. L. 99-238, set out as a note under section 314 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-543 effective Dec. 1, 1984, see section 107 of Pub. L. 98-543, set out as a note under section 314 of this title.

Amendment by Pub. L. 98-223 effective Apr. 1, 1984, see section 107 of Pub. L. 98-223, set out as a note under section 314 of this title.

§ 363. Temporary program for trial work periods and vocational rehabilitation for certain veterans with total disability ratings

(a)(1) The disability rating of a qualified veteran who begins to engage in a substantially gainful occupation during the program period may not be reduced on the basis of the veteran having secured and followed a substantially gainful occupation unless the veteran maintains such an occupation for a period of 12 consecutive months.

(2) For purposes of this section:

(A) The term "qualified veteran" means a veteran who has a service-connected disability, or service-connected disabilities, not rated as total but who has been awarded a rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of such disability or disabilities.

(B) The term "program period" means the period beginning on February 1, 1985, and ending on January 31, 1989.

(b) During the program period, the Administrator shall make counseling services described in section 1504(a)(2) of this title and placement and postplacement services described in section 1504(a)(5) of this title available to each qualified veteran (whether or not the veteran is participating in a vocational rehabilitation program under chapter 31 of this title).

(c)(1)(A) Except as provided in paragraph (4) of this subsection, in the case of each award during the program period of a rating of total disability described in subsection (a)(2)(A) of this section to a veteran, the Administrator shall provide to the veteran, at the time that notice of the award is provided to the veteran, a statement providing—

(i) notice of the provisions of this section;

(ii) information explaining the purposes and availability of and eligibility for, and the procedures for pursuing, a vocational rehabilitation program under chapter 31 of this title; and

(iii) a summary description of the scope of services and assistance available under that chapter.

(B) After providing the notice required under subparagraph (A) of this paragraph to a veteran, the Administrator shall arrange as promptly as is practical for the veteran to be provided an evaluation in order to make a determination as to whether the achievement of a vocational goal by the veteran is reasonably feasible. Such evaluation shall include a personal interview of the veteran by a Veterans' Administration employee who is trained in vocational counseling. The Administrator shall provide the veteran with reasonable notice of the schedule for the evaluation.

(2) If the veteran fails, for reasons other than those beyond the veteran's control, to participate in an evaluation under paragraph (1)(B) of this subsection in the manner required by the Administrator in order to make the determination described in that paragraph, the Administrator shall reduce the veteran's disability rating to the rating that would be applicable to the veteran but for the determination of the veteran's inability to secure or follow a substantially gainful occupation. Any such reduction shall remain in effect for the duration of such failure.

(3)(A) If, after completion of an evaluation under paragraph (1)(B) of this subsection, the Administrator determines that achievement of a vocational goal by the veteran is reasonably feasible, the Administrator shall formulate an individualized written plan of vocational rehabilitation for the veteran under chapter 31 of this title.

(B) If the Administrator determines that the veteran has failed to pursue (or to continue to pursue) the vocational rehabilitation program described in such plan, the Administrator shall provide the veteran with notice that, if the veteran fails, for reasons other than those beyond the veteran's control, to initiate or resume pursuit of such program within 60 days after the Administrator provided such notice (or such longer period as the Administrator determines is the shortest period within which it is reasonably feasible for the veteran to initiate or resume pursuit), the Administrator will provide for the results of the evaluation to be considered in the next scheduled review of the veteran's eligibility for a rating of total disability based on inability to secure or follow a substantially gainful occupation. Unless the veteran initiates or resumes such pursuit within such 60 days (or such longer period, if applicable), the Administrator shall provide for such results to be so considered.

(4) This subsection does not apply with respect to a veteran as to whom the Administrator determines that an evaluation of vocational rehabilitation potential or achievement of a vocational goal is not reasonably feasible.

(Added Pub. L. 98-543, title I, § 111(a)(1), Oct. 24, 1984, 98 Stat. 2738.)

Information; Temporary Program; Administrator

Section 111(b) of Pub. L. 98-543 provided that:

"(1) Not later than April 1, 1985, the Administrator of Veterans' Affairs shall provide to each veteran described in paragraph (2) a statement providing—

"(A) information explaining the provisions of section 363(b) of title 38, United States Code (as added by subsection (a)(1));

"(B) information explaining the purposes and availability of and eligibility for, and the procedures for pursuing, a vocational rehabilitation program under chapter 31 [§ 1500 et seq.] of such title; and

"(C) a summary description of the scope of services and assistance available under that chapter.

"(2)(A) A veteran to whom a statement is to be provided under paragraph (1) is a veteran who has a service-connected disability, or service-connected disabilities, not rated as total but who, as of January 31, 1985, has been awarded a rating of total disability by reason of a determination of inability to secure or follow a substantially gainful occupation as a result of such disability or disabilities.

"(B) Notice under paragraph (1) need not be provided to a veteran who has a rating of total disability described in subparagraph (A) which is protected by the first sentence of section 110 of title 38, United States Code."

Report to Congressional Committees; Trial Program

Section 111(c) of Pub. L. 98-543 provided that: "Not later than April 15, 1988, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the results of the implementation of section 363 of title 38, United States Code (as added by subsection (a)(1)), during the three-year period beginning on February 1, 1985. The report shall include—

"(1) information regarding—

"(A) the number of veterans with a disability rating of total based on inability to secure or follow a substantially gainful occupation who during such period followed a substantially gainful occupation for a period of twelve consecutive months and the work experience of those veterans and their disability ratings after completing such twelve-month period and (if known) the number of veterans with such a rating who during the period covered by the report followed a substantially gainful occupation but did not maintain employment in it for a period of twelve consecutive months,

"(B) the number of veterans who during the period covered by the report were provided with evaluations under subsection (b) of such section,

"(C) the number of veterans provided such evaluations for whom a plan of vocational rehabilitation was formulated pursuant to such subsection,

"(D) the number of veterans for whom such a plan was formulated who elected, and who did not elect, to pursue a vocational rehabilitation program,

"(E) the extent to which those veterans who elected to pursue such a program completed the program, and

"(F) the subsequent work experience and disability ratings of the veterans who were provided such evaluations;

"(2) a tabulation of the reasons given by such veterans for not electing to pursue such a program by those who did not elect to pursue such a program; and

"(3) the Administrator's assessment of the value (including the cost-effectiveness) and effect of such implementation and any recommendations of the Administrator for administrative and legislative action based on such results and assessment."

CHAPTER 13—DEPENDENCY AND INDEMNITY COMPENSATION FOR SERVICE-CONNECTED DEATHS

SUBCHAPTER I—GENERAL

[§ 403. Repealed. Pub. L. 97-306, title I, § 113(b)(1), Oct. 14, 1982, 96 Stat. 1432]

Effective Date of Repeal

Repeal effective as of Oct. 1, 1982, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated after Sept. 30, 1982, and as of Oct. 1, 1983, with respect to deaths and disabilities incurred or aggravated before Oct. 1, 1982, see section 113(d) of Pub. L. 97-306, set out as an Effective Date of 1982 Amendment note under section 101 of this title.

SUBCHAPTER II—DEPENDENCY AND INDEMNITY COMPENSATION

§ 411. Dependency and indemnity compensation to a surviving spouse

(a) Dependency and indemnity compensation shall be paid to a surviving spouse, based on the pay grade of the person upon whose death entitlement is predicated, at monthly rates set forth in the following table:

Pay grade	Monthly rate
E-1	$491
E-2	505
E-3	518
E-4	552
E-5	566
E-6	578
E-7	607
E-8	640
E-9	[1]669
W-1	621
W-2	645
W-3	664
W-4	703
O-1	621
O-2	640
O-3	686
O-4	725
O-5	799
O-6	900
O-7	973
O-8	1,067
O-9	1,145
O-10	[2]1,255

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $722.

[2] If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $1,345.

(b) If there is a surviving spouse with one or more children below the age of eighteen of a deceased veteran, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by $57 for each such child.

(c) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $147 if the spouse is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(d) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $72 if the surviving spouse is, by reason of disability, permanently housebound but does not qualify for the aid and attendance allowance under subsection (c) of this section. For the purposes of this subsection, the requirement of "permanently housebound" will be considered to have been met when the surviving spouse is substantially confined to such surviving spouse's home (ward or clinical areas, if institutionalized) or immediate premises by reason of a disability or disabilities which it is reasonably certain will remain throughout such surviving spouse's lifetime.

(As amended Pub. L. 98-223, title I, § 104, Mar. 2, 1984, 98 Stat. 38; Pub. L. 98-543, title I, § 104, Oct. 24, 1984, 98 Stat. 2736; Pub. L. 99-238, title I, § 104, Jan. 13, 1986, 99 Stat. 1766.)

Amendments

1986—Subsec. (a). Pub. L. 99-238, § 104(1), generally upgraded the monthly rates for all pay grades.

Subsec. (b). Pub. L. 99-238, § 104(2), substituted "$57" for "$55".

Subsec. (c). Pub. L. 99-238, § 104(3), substituted "$147" for "$143".

Subsec. (d). Pub. L. 99-238, § 104(4), substituted "$72" for "$70".

1984—Subsec. (a). Pub. L. 98-543, § 104(a), generally upgraded the monthly rates for all pay grades.

Pub. L. 98-223, § 104(a), generally upgraded the monthly rates for all pay grades.

Subsec. (b). Pub. L. 98-543, § 104(b), substituted "$55" for "$53".

Pub. L. 98-223, § 104(b), substituted "$53" for "$51".

Subsec. (c). Pub. L. 98-543, § 104(c), substituted "$143" for "$139".

Pub. L. 98-223, § 104(c), substituted "$139" for "$134".

Subsec. (d). Pub. L. 98-543, § 104(d), substituted "$70" for "$68".

Pub. L. 98-223, § 104(d), substituted "$68" for "$66".

Effective Date of 1986 Amendment

Amendment by Pub. L. 99-238 effective Dec. 1, 1985, see section 107 of Pub. L. 99-238, set out as a note under section 314 of this title.

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-543 effective Dec. 1, 1984, see section 107 of Pub. L. 98-543, set out as a note under section 314 of this title.

Amendment by Pub. L. 98-223 effective Apr. 1, 1984, see section 107 of Pub. L. 98-223, set out as a note under section 314 of this title.

Section Referred to in Other Sections

This section is referred to in sections 410, 3010 of this title; title 10 sections 1450, 1451.

§ 412. Benefits in certain cases of in-service or service-connected deaths

(a) In the case of any veteran—

(1) who dies after December 31, 1956, and is not a fully and currently insured individual (as defined in section 214 of the Social Security Act (42 U.S.C. 414)) at the time of such veteran's death; and

[*See main edition for text of* (*2*)]

(3) who leaves one or more survivors who are not entitled for any month to monthly benefits under section 202 of the Social Security Act (42 U.S.C. 402) on the basis of such veteran's wages and self-employment income but who would, upon application therefor, be entitled to such benefits if such veteran had been fully and currently insured at the time of such veteran's death;

the Administrator shall pay for such month benefits under this section to each such survivor in an amount equal to the amount of the benefits which would have been paid for such month to such survivor under title II of the Social Security Act (42 U.S.C. 201 [1] et seq.), if such veteran had been both fully and currently insured at the time of such veteran's death and if such survivor had filed application therefor on the same date on which application for benefits under this section is filed with the Administrator.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-223, title II, § 213(2), Mar. 2, 1984, 98 Stat. 46.)

References in Text

The Social Security Act, referred to in subsec. (a), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 214 and 202 of the Social Security Act are classified to section 414 and 402 of Title 42, respectively. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Amendments

1984—Subsec. (a). Pub. L. 98-223, § 213(2), substit
ed "section 214 of the Social Security Act (42 U.S
414)" for "section 414 of title 42" in par. (1), "secti
202 of the Social Security Act (42 U.S.C. 402)"
"section 402 of title 42" in par. (3), and "title II of t
Social Security Act (42 U.S.C. 201 et seq.)" for "su
chapter II of chapter 7 of title 42" in provision follo
ing par. (3).

§ 413. Dependency and indemnity compensation children

(a) Whenever there is no surviving spouse
a deceased veteran entitled to dependency a
indemnity compensation, dependency and
demnity compensation shall be paid in equ
shares to the children of the deceased veter
at the following monthly rates:

(1) one child, $247;

(2) two children, $356;

(3) three children, $460; and

(4) more than three children, $460, plus $
for each child in excess of three.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-223, title I, § 105, M
2, 1984, 98 Stat. 39; Pub. L. 98-543, title I, § 1
Oct. 24, 1984, 98 Stat. 2737; Pub. L. 99-238, ti
I, § 105, Jan. 13, 1986, 99 Stat. 1767.)

Codification

Amendments by section 105 of Pub. L. 99-238,
tion 105 of Pub. L. 98-543, and section 105 of Pub
98-223, which directed that cls. (1) to (4) of this
tion be amended, were executed by amending subs
(a) of this section, as the probable intent of Congr
in view of subsec. (a) containing cls. (1) to (4).

Amendments

1986—Subsec. (a)(1). Pub. L. 99-238, § 105(1), sub
tuted "$247" for "$240".

Subsec. (a)(2). Pub. L. 99-238, § 105(2), substitu
"$356" for "$345".

Subsec. (a)(3). Pub. L. 99-238, § 105(3), substitu
"$460" for "$446".

Subsec. (a)(4). Pub. L. 99-238, § 105(4), substitu
"$460" and "$93" for "$446" and "$90", respectively

1984—Subsec. (a)(1). Pub. L. 98-543, § 105(1), sub
tuted "$240" for "$233".

Pub. L. 98-223, § 105(1), substituted "$233"
"$225".

Subsec. (a)(2). Pub. L. 98-543, § 105(2), substitu
"$345" for "$334".

Pub. L. 98-223, § 105(2), substituted "$334"
"$323".

Subsec. (a)(3). Pub. L. 98-543, § 105(3), substitu
"$446" for "$432".

Pub. L. 98-223, § 105(3), substituted "$432"
"$417".

Subsec. (a)(4). Pub. L. 98-543, § 105(4), substitu
"$446" and "$90" for "$432" and "$87", respectivel

Pub. L. 98-223, § 105(4), substituted "$432"
"$87" for "$417" and "$84", respectively.

Effective Date of 1986 Amendment

Amendment by Pub. L. 99-238 effective Dec. 1,
see section 107 of Pub. L. 99-238, set out as a
under section 314 of this title.

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-543 effective Dec. 1,
see section 107 of Pub. L. 98-543, set out as a
under section 314 of this title.

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[1] So in original. Probably should be "401".

Amendment by Pub. L. 98-223 effective Apr. 1, 1984, see section 107 of Pub. L. 98-223, set out as a note under section 314 of this title.

§ 414. Supplemental dependency and indemnity compensation to children

(a) In the case of a child entitled to dependency and indemnity compensation who has attained the age of eighteen and who, while under such age, became permanently incapable of self-support, the dependency and indemnity compensation paid monthly to such child shall be increased by $147.

(b) If dependency and indemnity compensation is payable monthly to a person as a surviving spouse and there is a child (of such person's deceased spouse) who has attained the age of eighteen and who, while under such age, became permanently incapable of self-support, dependency and indemnity compensation shall be paid monthly to each such child, concurrently with the payment of dependency and indemnity compensation to the widow, in the amount of $247.

(c) If dependency and indemnity compensation is payable monthly to a person as a surviving spouse and there is a child (of such person's deceased spouse), who has attained the age of eighteen and who, while under the age of twenty-three, is pursuing a course of instruction at an educational institution approved under section 104 of this title, dependency and indemnity compensation shall be paid monthly to each such child, concurrently with the payment of dependency and indemnity compensation to the surviving spouse, in the amount of $126.

(As amended Pub. L. 98-223, title I, § 106, Mar. 2, 1984, 98 Stat. 39; Pub. L. 98-543, title I, § 106, Oct. 24, 1984, 98 Stat. 2737; Pub. L. 98-238, title I, § 106, Jan. 13, 1986, 99 Stat. 1767.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-238, § 106(1), substituted "$147" for "$143".

Subsec. (b). Pub. L. 99-238, § 106(2), substituted "$247" for "$240".

Subsec. (c). Pub. L. 99-238, § 106(3), substituted "$126" for "$122".

1984—Subsec. (a). Pub. L. 98-543, § 106(1), substituted "$143" for "$139".

Pub. L. 98-223, § 106(1), substituted "$139" for "$134".

Subsec. (b). Pub. L. 98-543, § 106(2), substituted "$240" for "$233".

Pub. L. 98-223, § 106(2), substituted "$233" for "$225".

Subsec. (c). Pub. L. 98-543, § 106(3), substituted "$122" for "$118".

Pub. L. 98-223, § 106(3), substituted "$118" for "$114".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-238 effective Dec. 1, 1985, see section 107 of Pub. L. 99-238, set out as a note under section 314 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-543 effective Dec. 1, 1984, see section 107 of Pub. L. 98-543, set out as a note under section 314 of this title.

Amendment by Pub. L. 98-223 effective Apr. 1, 1984, see section 107 of Pub. L. 98-223, set out as a note under section 314 of this title.

CHAPTER 15—PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

SUBCHAPTER II—VETERANS' PENSIONS

NON-SERVICE-CONNECTED DISABILITY PENSION

Sec.
524. Temporary vocational training for certain new pension recipients.[1]
525. Temporary protection of health-care eligibility.

AMENDMENTS

1984—Pub. L. 98-543, title III, § 301(a)(2), Oct. 24, 1984, 98 Stat. 2746, added items 524 and 525.

SUBCHAPTER II—VETERANS' PENSIONS

NON-SERVICE-CONNECTED DISABILITY PENSION

§ 521. Veterans of a period of war

REPORT TO CONGRESSIONAL COMMITTEES; MEDICAL EXAMINATIONS OF CERTAIN PENSION RECIPIENTS

Pub. L. 98-543, title III, § 302, Oct. 24, 1984, 98 Stat. 2747, provided that:

"(a) Not later than twenty-eight months after the date of the enactment of this Act [Oct. 24, 1984], the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing a statistical tabulation of the results of the medical examinations conducted under subsection (b)(1)(A) and the determinations made under subsection (b)(1)(B).

"(b)(1) The Administrator—

"(A) shall provide for the selection of a sampling of the class of pension recipients described in paragraph (3) to undergo, and each recipient in such sampling shall undergo, a medical examination of the kind provided a veteran under 65 years of age who is applying for pension under section 521 of title 38, United States Code; and

"(B) shall determine what, if any, percentage rating would be applicable to the recipient under the schedule of ratings adopted pursuant to section 355 of such title.

"(2) The sampling of pension recipients selected under paragraph (1)(A) shall be selected in a manner that is statistically valid for the purpose of estimating the disability ratings of all recipients in the class described in paragraph (3).

"(3) The class of pension recipients referred to in paragraphs (1) and (2) are those individuals who, during the two-year period beginning on the date of the enactment of this Act, are awarded pension under section 521 of title 38, United States Code, by reason of being considered, under section 502(a) of such title, to be permanently and totally disabled by reason of being 65 years of age or older or becoming unemployable after age 65."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 111, 506, 508, 511, 512, 522, 523, 525, 541, 542, 3023, 3104, 3112, 3203 of this title; title 42 section 8624.

§ 524. Temporary program of vocational training for certain new pension recipients

(a)(1) Subject to paragraph (3) of this subsection, in the case of a veteran under the age of 50 who is awarded pension during the program period, the Administrator shall determine whether the achievement of a vocational goal by the veteran is reasonably feasible. Any such determination shall be made only after evaluation of the veteran's potential for rehabilitation, and any such evaluation shall include a personal interview of the veteran by a Veterans' Administration employee who is trained in vocational counseling. If the veteran fails, for reasons other than those beyond the veteran's control, to participate in the evaluation in the manner required by the Administrator in order to make such determination, the Administrator shall suspend the veteran's pension for the duration of such failure.

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[1] So in original. Does not correspond with section catchline.

(2) Subject to paragraph (3) of this subsection, if a veteran who is 50 years of age or older and who is awarded pension during the program period applies for vocational training under this section and the Administrator makes a preliminary finding on the basis of information in the application that, with the assistance of a vocational training program under subsection (d) of this section, the veteran has a good potential for achieving employment, the Administrator shall provide the veteran with an evaluation in order to determine whether the achievement of a vocational goal by the veteran is reasonably feasible. Any such evaluation shall include a personal interview by a Veterans' Administration employee trained in vocational counseling.

(3) Not more than 2,500 veterans may be given evaluations under this subsection during any 12-month period beginning on February 1 of a year.

(4) For the purposes of this section, the term "program period" means the period beginning on February 1, 1985, and ending on January 31, 1989.

(b)(1) If the Administrator, based upon an evaluation under subsection (a) of this section, determines that the achievement of a vocational goal by a veteran is reasonably feasible, the veteran shall be offered and may elect to pursue a vocational training program under this subsection. If the veteran elects to pursue such a program, the program shall be designed in consultation with the veteran in order to meet the veteran's individual needs and shall be set forth in an individualized written plan of vocational rehabilitation of the kind described in section 1507 of this title.

(2)(A) Subject to subparagraph (B) of this paragraph, a vocational training program under this subsection shall consist of vocationally oriented services and assistance of the kind provided under chapter 31 of this title and such other services and assistance of the kind provided under that chapter as are necessary to enable the veteran to prepare for and participate in vocational training or employment.

(B) A vocational training program under this subsection—

(i) may not exceed 24 months unless, based on a determination by the Administrator that an extension is necessary in order for the veteran to achieve a vocational goal identified (before the end of the first 24 months of such program) in the written plan formulated for the veteran, the Administrator grants an extension for a period not to exceed 24 months;

(ii) may not include the provision of any loan or subsistence allowance or any automobile adaptive equipment of the kind provided under chapter 39 of this title; and

(iii) may include a program of education at an institution of higher learning (as defined in sections 1652(b) and 1652(f), respectively, of this title) only in a case in which the Administrator determines that the program involved is predominantly vocational in content.

(3) When a veteran completes a vocational training program under this subsection, the Administrator may provide the veteran with counseling of the kind described in section 1504(a)(2) of this title, placement and postplacement services of the kind described in section 1504(a)(5) of this title, and training of the kind described in section 1504(a)(6) of this title during a period not to exceed 18 months beginning on the date of such completion.

(4) A veteran may not begin pursuit of a vocational training program under this subsection after the later of (A) January 31, 1989, or (B) the end of a reasonable period of time, as determined by the Administrator, following either the evaluation of the veteran under subsection (a)(1) of this section or the award of pension to the veteran as described in subsection (a)(2) of this section. Any determination by the Administrator of such a reasonable period of time shall be made pursuant to regulations which the Administrator shall prescribe.

(c) Notwithstanding subsection (c) of section 525 of this title, a veteran who pursues a vocational training program under subsection (b) of this section shall have the benefit of the provisions of subsection (a) of section 525 of this title beginning at such time as the veteran's entitlement to pension is terminated by reason of income from work or training (as defined in subsection (b) of that section).

(d) Payments by the Administrator for education, training, and other services and assistance under subsection (b) of this section (other than the services of Veterans' Administration employees) shall be made from the Veterans' Administration appropriations account from which payments for pension are made.

(Added Pub. L. 98-543, title III, § 301(a)(1), Oct. 24, 1984, 98 Stat. 2744.)

REPORT TO CONGRESSIONAL COMMITTEES; NEW PENSION RECIPIENTS; HEALTH-CARE ELIGIBILITY

Section 301(b) of Pub. L. 98-543 provided that: "Not later than April 15, 1988, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the results of the implementation of sections 524 and 525 of title 38, United States Code (as added by subsection (a)(1)), during the period beginning on February 1, 1985, and ending on January 31, 1988. The report shall include—

"(1) information regarding—

"(A) the number of veterans who during the period covered by the report were provided with evaluations under paragraphs (1) and (2) of subsection (a) of such section 524,

"(B) the number of such veterans for whom a vocational goal was determined to be feasible,

"(C) the number of such veterans who elected, and who did not elect, to pursue a vocational training program under subsection (b) of that section, "(D) the extent to which those veterans who elected to pursue such a program completed the program,

"(E) the subsequent work and pension-eligibility experience of the veterans who were provided with such evaluations, shown according to their participation in and completion of vocational training programs, and

"(F) the number of veterans who received the benefit of such section 525;

"(2) a tabulation of the reasons given by such veterans for not electing to pursue such a program by those for whom a vocational goal was determined to be reasonably feasible but who did not elect to pursue such program; and

"(3) the Administrator's assessment of the value (including the cost-effectiveness) and effect of such implementation and any recommendations of the Administrator for administrative and legislative action based on such results and assessment."

§ 525. Temporary protection of health-care eligibility

(a) In the case of a veteran whose entitlement to pension under section 521 of this title is terminated during the program period by reason of income from work or training, the veteran shall retain for a period of three years beginning on the date of such termination all eligibility for care and services under such chapter that the veteran would have had if the veteran's entitlement to pension had not been terminated. Care and services for which such a veteran retains eligibility include, when applicable, drugs and medicines under section 612(h) of this title and special priority with respect to such care and services under section 612(i)(5) of this title.

(b) For the purposes of this section:

(1) The term "terminated by reason of income from work or training" means terminated as a result of the veteran's receipt of earnings from activity performed for remuneration or gain, but only if the veteran's annual income from sources other than such earnings would, taken alone, not result in the termination of the veteran's pension.

(2) The term "program period" means the period beginning on February 1, 1985, and ending on January 31, 1989.

(Added Pub. L. 98-543, title III, § 301(a)(1), Oct. 24, 1984, 98 Stat. 2746.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 524 of this title.

SUBCHAPTER IV—ARMY, NAVY, AIR FORCE, AND COAST GUARD MEDAL OF HONOR ROLL

§ 562. Special provisions relating to pension

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 560, 561 of this title; title 26 sections 134, 6334.

CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

SUBCHAPTER II—HOSPITAL, NURSING HOME, OR DOMICILIARY CARE AND MEDICAL TREATMENT

Sec.
612B. Counseling for former prisoners of war.
620. Transfers for nursing home care; adult day health care.
620A. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS RELATING TO HOSPITAL AND NURSING HOME CARE AND MEDICAL TREATMENT OF VETERANS

630. Community residential care.

AMENDMENTS

1985—Pub. L. 99-166, title I, §§ 101(b)(2), 107(b), Dec. 3, 1985, 99 Stat. 943, 946, added item 612B and struck out "; pilot program" after "disabilities" in item 620A.

1983—Pub. L. 98-160, title I, §§ 103(a)(3), 104(b), Nov. 21, 1983, 97 Stat. 996, 998, added "; adult day health care" in item 620 and added item 630.

SUBCHAPTER I—GENERAL

§ 601. Definitions

For the purposes of this chapter—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) The term "Veterans' Administration facilities" means—

(A) facilities over which the Administrator has direct jurisdiction;

(B) Government facilities for which the Administrator contracts; and

(C) private facilities for which the Administrator contracts when facilities described in clause (A) or (B) of this paragraph are not capable of furnishing economical care because of geographical inaccessibility or of furnishing the care or services required in order to provide (i) hospital care or medical services to a veteran for the treatment of a service-connected disability or a disability for which a veteran was discharged or released from the active military, naval, or air service; (ii) medical services for the treatment of any disability of a veteran described in clause (1)(B) or (2) of the first sentence, or in the third sentence, of section 612(f) of this title or of a veteran described in section 612(g) of this title if the Administrator has determined, based on an examination by a physician employed by the Veterans' Administration (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in facilities described in clauses (A) and (B) of this paragraph; (iii) hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran receiving medical services in a facility described in clause (A) or (B) of this paragraph until such time as the veteran can be safely transferred to any such facility; (iv) hospital care for women veterans; (v) hospital care, or medical services that will obviate the need for hospital admission, for veterans in a State not contiguous to the forty-eight contiguous States, except that the annually determined hospital patient load and incidence of the provision of medical services to veterans hospitalized or treated at the expense of the Veterans' Administration in Government and private facilities in each such noncontiguous State shall be consistent with the patient load or incidence of the provision of medical services for veterans hospitalized or treated by the Veterans' Administration within the forty-eight contiguous States, but the authority of the Administrator under this subclause with respect to the Commonwealth of Puerto Rico shall expire on September 30, 1988, and until such date the Administrator may, if necessary to prevent hardship, waive the applicability to the Commonwealth of Puerto Rico of the restrictions in this subclause with respect to hospital patient loads and incidence of provision of medical services; or (vi) diagnostic services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, the provision of medical services at independent Veterans' Administration outpatient clinics to obviate the need for hospital admission.

In the case of any veteran for whom the Administrator contracts to provide treatment in a private facility pursuant to the provisions of this paragraph, the Administrator shall periodically review the necessity for continuing such contractual arrangement pursuant to such provision.

[*See main edition for text of* (5)]

(6) The term "medical services" includes, in addition to medical examination, treatment, and rehabilitative services—

(A)(i) surgical services, dental services and appliances as described in sections 610 and 612 of this title, optometric and podiatric services, (in the case of a person otherwise receiving care or services under this chapter) preventive health-care services as defined in section 662 of this title, and (except under the conditions described in section 612(f)(1)(A) of this title), wheelchairs, artificial limbs, trusses, and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the Administrator determines to be reasonable and necessary, and (ii) travel and incidental expenses pursuant to the provisions of section 111 of this title; and

[*See main edition for text of* (*B*); (*7*) *and* (*8*)]

(As amended Pub. L. 98-105, Sept. 30, 1983, 97 Stat. 730; Pub. L. 98-160, title I, § 106(a), Nov. 21, 1983, 97 Stat. 998; Pub. L. 98-528, title I, § 103(a), Oct. 19, 1984, 98 Stat. 2688; Pub. L. 99-108, § 2, Sept. 30, 1985, 99 Stat. 481; Pub. L. 99-166, title I, § 102(a), Dec. 3, 1985, 99 Stat. 943.)

Amendment of Paragraph (4)(C)(v)

Pub. L. 99-166, title I, § 102(b)(1), Dec. 3, 1985, 99 Stat. 943, provided that, effective Oct. 1, 1988, paragraph (4)(C)(v) of this section is amended by inserting "(other than the Commonwealth of Puerto Rico)" after "in a State" and by substituting "contiguous States and the Commonwealth of Puerto Rico" for "contiguous States, but the authority of the Administrator under this subclause with respect to the Commonwealth of Puerto Rico shall expire on September 30, 1988, and until such date the Administrator may, if necessary to prevent hardship, waive the applicability to the Commonwealth of Puerto Rico of the restrictions in this subclause with respect to hospital patient loads and incidence of provision of medical services".

Amendments

1985—Par. (4)(C)(v). Pub. L. 99-166, § 102(a), substituted "with respect to the Commonwealth of Puerto Rico shall expire on September 30, 1988" for "(except with respect to Alaska and Hawaii) shall expire on October 31, 1985" and struck out "and to the Virgin Islands" before "of the restrictions in this subclause".

Pub. L. 99-108 substituted "October 31, 1985" for "September 30, 1985".

1984—Par. (4)(C)(v). Pub. L. 98-528 substituted "September 30, 1985" for "September 30, 1984".

1983—Par. (4)(C)(v). Pub. L. 98-105 substituted "September 30, 1984" for "September 30, 1983".

Par. (6)(a)(i). Pub. L. 98-160 added "(in the case of a person otherwise receiving care or services under this chapter) preventive health-care services as defined in section 662 of this title,".

Puerto Rico Contract Care; Limitation on Incurring of Obligations

Section 102(b)(2) to (5) of Pub. L. 99-166 provided that:

"(2) During fiscal year 1986, the obligations incurred for Puerto Rico contract care may not exceed 85 percent of the obligations incurred for such care for fiscal year 1985.

"(3) During fiscal year 1987, the obligations incurred for Puerto Rico contract care may not exceed 50 percent of the obligations incurred for such care for fiscal year 1985.

"(4) During fiscal year 1988, the obligations incurred for Puerto Rico contract care may not exceed 25 percent of the obligations incurred for such care for fiscal year 1985.

"(5) For the purpose of this subsection, the term 'obligations incurred for Puerto Rico contract care' means the total obligations incurred during a fiscal year for medical services for veterans residing in the Commonwealth of Puerto Rico under the Administrator's authority to contract for hospital care or medical services under clause (v) of section 601(4)(C) of title 38, United States Code, in the Commonwealth of Puerto Rico."

Contract Health Care; Ratification of Action of Administrator of Veterans' Affairs

Section 103(b) of Pub. L. 98-528 provided that: "Any action by the Administrator of Veterans' Affairs in entering into a contract applicable to the period beginning on October 1, 1984, and ending on the date of the enactment of this Act [Oct. 19, 1984] for the provision of care described in subclause (v) of section 601(4)(C) of title 38, United States Code, and any waiver described in that subclause made by the Administrator that is applicable to that period, is hereby ratified with respect to that period."

ADMINISTRATION CAPABILITY TO PROVIDE APPROPRIATE CARE FOR GENDER-SPECIFIC DISABILITIES OF WOMEN VETERANS

Section 302 of Pub. L. 98-160 provided that: "The Administrator of Veterans' Affairs shall ensure that each health-care facility under the direct jurisdiction of the Administrator is able, through services made available either by individuals appointed to positions in the Department of Medicine and Surgery or under contracts or other agreements made under section 4117, 5011, or 5053 of title 38, United States Code, to provide appropriate care, in a timely fashion, for any gender-specific disability (as defined in section 601(1) of such title) of a woman veteran eligible for such care under chapter 17 or chapter 31 of such title."

SUBCHAPTER II—HOSPITAL, NURSING HOME, OR DOMICILIARY CARE AND MEDICAL TREATMENT

§ 610. Eligibility for hospital, nursing home, and domiciliary care

(a) The Administrator, within the limits of Veterans' Administration facilities, may furnish hospital care or nursing home care which the Administrator determines is needed to—

[*See main edition for text of (1) and (2)*]

(3) a person (A) who is in receipt of, or but for the receipt of retirement pay would be entitled to, disability compensation, or (B) who, but for a suspension pursuant to section 351 of this title (or both such a suspension and the receipt of retired pay), would be entitled to disability compensation, but only to the extent that such person's continuing eligibility for such care is provided for in the judgment or settlement described in such section;

[*See main edition for text of (4) to (6); (b) to (d)*]

(e) [*See main edition for text of (1) and (2)*]

(3) Hospital and nursing home care and medical services may not be provided under or by virtue of subsection (a)(5) of this section after September 30, 1989.

(As amended Pub. L. 98-160, title VII, § 701, Nov. 21, 1983, 97 Stat. 1008; Pub. L. 99-166, title I, § 103, Dec. 3, 1985, 99 Stat. 944.)

AMENDMENTS

1985—Subsec. (e)(3). Pub. L. 99-166 substituted "after September 30, 1989" for "after the end of the one-year period beginning on the date the Administrator submits to the appropriate committees of Congress the first report required by section 307(b)(2) of the Veterans Health Programs Extension and Improvement Act of 1979 (Public Law 96-151; 93 Stat. 1098)".

1983—Subsec. (a)(3). Pub. L. 98-160 inserted "(A)" after "a person" and, after "disability compensation", inserted "or (B) who, but for a suspension pursuant to section 351 of this title (or both such a suspension and the receipt of retired pay), would be entitled to disability compensation, but only to the extent that such person's continuing eligibility for such care is provided for in the judgment or settlement described in such section".

CHIROPRACTIC SERVICES PILOT PROGRAM

Section 109 of Pub. L. 99-166 provided that:

"(a) ESTABLISHMENT OF PILOT PROGRAM.—(1) The Administrator of Veterans' Affairs shall conduct a pilot program to evaluate the therapeutic benefits and the cost-effectiveness of furnishing certain chiropractic services to veterans eligible for medical services under chapter 17 of title 38, United States Code. Such a veteran is eligible to receive chiropractic services under the pilot program if the veteran was furnished hospital care or medical services by the Veterans' Administration for a neuromusculoskeletal condition of the spine within the 12-month period immediately preceding the commencement of the furnishing of such chiropractic services.

"(2) The pilot program shall consist of not less than one demonstration project in each of five geographic regions of the United States designated by the Administrator for the purpose of this section.

"(3) The pilot program shall be carried out during the period beginning on January 1, 1986, and ending on December 31, 1988.

"(b) CONSULTATION AND COORDINATION.—In developing the pilot program, the Administrator shall consult with the Secretary of Defense regarding the demonstration projects carried out by the Secretary under section 632(b) of the Department of Defense Authorization Act, 1985 (10 U.S.C. 1092 note). In designing, conducting, and evaluating the pilot program, the Administrator shall obtain advice and recommendations from recognized medical or scientific authorities in the treatment of neuromusculoskeletal conditions of the spine. The Administrator shall ensure that there is adequate participation by chiropractors in the design and evaluation of the demonstration projects, including participation by representatives from chiropractic colleges recognized by an approved accrediting organization.

"(c) PAYMENT FOR CHIROPRACTIC SERVICES UNDER THE PILOT PROGRAM.—(1)(A) The Administrator shall pay the reasonable charge for chiropractic services furnished to eligible veterans under the pilot program.

"(B) The Administrator may not pay for such services to the extent that the veteran is entitled to such services (or reimbursement for the expenses of such services) under—

"(i) an insurance policy or contract;

"(ii) a medical or hospital service agreement or membership or subscription contract; or

"(iii) a similar arrangement for the purpose of providing, paying for, or reimbursing expenses for such services.

"(2) The Administrator—

"(A) shall reimburse the veteran for such reasonable charges if the veteran has paid for such services; or

"(B) in lieu of reimbursing a veteran for a charge for chiropractic services under subparagraph (A), may pay the reasonable charge for such chiropractic services directly to the chiropractor who furnished the services.

"(3) The amount paid for chiropractic services under this subsection may not exceed the amount for such services prescribed under the schedule of reasonable charges established under subsection (d).

"(4) Chiropractic services may be provided in private facilities or chiropractic colleges approved in guidelines issued by the Administrator.

"(5) Reimbursement of veterans and payments to chiropractors under this subsection shall be carried out under regulations which the Administrator shall prescribe.

"(d) SCHEDULE OF REASONABLE CHARGES.—The Administrator shall establish a schedule of reasonable charges for chiropractic services furnished under the pilot program. Such schedule shall—

"(1) be consistent with the reasonable charges allowed under section 1842 of the Social Security Act (42 U.S.C. 1395u); and

"(2) be established in consultation with—

"(A) appropriate public and nonprofit private organizations; and

"(B) other Federal departments and agencies that provide reimbursement for chiropractic services.

"(e) **Program Cap.**—The amount spent in any calendar year for chiropractic services under the pilot program may not exceed $2,000,000.

"(f) **Report.**—Not later than April 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the implementation, operation, and results of the pilot program. The report shall include—

"(1) the number of requests made by eligible veterans for reimbursement or payment for chiropractic services under this section and the number of such veterans who made such requests;

"(2) the number of such reimbursements and payments made and the number of veterans to (or for whom) such reimbursements and payments were made; and

"(3) the total amount spent for such reimbursements and payments.

"(g) **Definitions.**—For the purposes of this section:

"(1) The term 'chiropractic services' means the manual manipulation of the spine performed by a chiropractor to correct a subluxation of the spine. Such term does not include physical examinations, laboratory tests, radiologic services, and any other tests or services determined by the Administrator to be excluded.

"(2) The term 'chiropractor' means an individual who is licensed as such by the State in which the individual performs chiropractic services and who meets the uniform minimum standards promulgated for chiropractors under section 1861(r)(5) of the Social Security Act (42 U.S.C. 1395x(r)(5))."

Section Referred to in Other Sections

This section is referred to in sections 601, 612, 622, 641, 903, 5011A of this title.

§ 612. Eligibility for medical treatment

[*See main edition for text of* (*a*) *to* (*e*)]

(f) The Administrator, within the limits of Veterans' Administration facilities, may furnish medical services for any disability on an outpatient or ambulatory basis—

(1) to any veteran eligible for hospital care under section 610 of this title (A) if such services are reasonably necessary in preparation for, or (to the extent that facilities are available) to obviate the need of, hospital admission, or (B) if such a veteran has been furnished hospital care, nursing home care, or domiciliary care and such medical services are reasonably necessary to complete treatment incident to such care (for a period not in excess of twelve months after discharge from such treatment, except where the Administrator finds that a longer period is required by virtue of the disability being treated);

[*See main edition for text of* (*2*) *and* (*3*)]

The Administrator may also furnish to any such veteran such home health services as the Administrator determines to be necessary or appropriate for the effective and economical treatment of a disability of a veteran (including only such improvements and structural alterations the cost of which does not exceed $600 (or reimbursement up to such amount) as are necessary to assure the continuation of treatment or provide access to the home or to essential lavatory and sanitary facilities). The Administrator may also furnish outpatient dental services and treatment, and related appliances, to any veteran described in clause (G) of subsection (b)(1) of this section.

[*See main edition for text of* (*g*) *to* (*j*)]

(As amended Pub. L. 99-166, title I, § 104, Dec. 3, 1985, 99 Stat. 944.)

Amendments

1985—Subsec. (f)(1). Pub. L. 99-166 substituted "if" for "where" after "(A)" and "(B)", added ", nursing home care, or domiciliary care", deleted "hospital" after "treatment incident to such", and substituted "from such treatment" for "from in-hospital treatment".

Section Referred to in Other Sections

This section is referred to in sections 525, 601, 610, 612A, 618, 620, 663, 804, 5010, 5011A of this title.

§ 612A. Eligibility for readjustment counseling and related mental health services

(a) Upon the request of any veteran who served on active duty during the Vietnam era, the Administrator shall, within the limits of Veterans' Administration facilities, furnish counseling to such veteran to assist such veteran in readjusting to civilian life. Such counseling shall include a general mental and psychological assessment to ascertain whether such veteran has mental or psychological problems associated with readjustment to civilian life.

[*See main edition for text of* (*b*) *to* (*f*)]

(g)(1) During the twelve-month period ending on September 30, 1988, the Administrator shall take appropriate steps to ensure—

(A) the orderly transition, by October 1, 1988, of that part of the program established under this section for the provision of readjustment counseling services by Veterans' Administration personnel from a program providing such services primarily through centers located in facilities situated apart from the health-care facilities operated by the Veterans' Administration for the provision of other health-care services under other provisions of this chapter to a program providing readjustment counseling services primarily through such health-care facilities; and

(B) the continued availability after such date of readjustment counseling and related mental health services under this section to veterans eligible for the provision of such counseling and services who request such counseling.

(2)(A) Not later than April 1, 1987, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Administrator's evaluation of the effectiveness in helping to meet the readjustment needs of veterans who served on active duty during the Vietnam era of the readjustment counseling and mental health services provided pursuant to this section (and of outreach efforts with respect to such counseling and services). Such report shall give particular attention, in light of the results of the study required by section 102 of the Veterans'

Health Care Amendments of 1983, to the provision of such counseling and services to veterans with post-traumatic stress disorder and to the diagnosis and treatment of such disorder.

(B) The report required by subparagraph (A) of this paragraph shall include—

(i) the opinion of the Administrator with respect to (I) the extent to which the readjustment needs of veterans who served on active duty during the Vietnam era remain unmet, and (II) the extent to which the provision of readjustment counseling services under this section in a program providing such services through facilities situated apart from Veterans' Administration health-care facilities is needed to meet such needs; and

(ii) in light of the opinion submitted pursuant to clause (i) of this subparagraph, such recommendations for amendments to paragraph (1) of this subsection and for other legislative and administrative action as the Administrator considers appropriate.

(3) Not later than July 1, 1987, the Administrator shall submit to such committees a report containing a description of the plans made and timetable for carrying out paragraph (1) of this subsection.

(h)(1) During the period beginning on January 1, 1986, and ending on September 30, 1988, the Administrator shall conduct a pilot program to provide and coordinate the provision of services described in paragraph (2) of this subsection. The pilot program shall be carried out in order to evaluate the effectiveness, feasibility, and desirability of providing veterans eligible for readjustment counseling under this section with additional services through facilities furnishing such counseling.

(2) The services referred to in paragraph (1) of this subsection are—

(A) counseling with respect to, and assistance in applying for, all benefits and services under laws administered by the Veterans' Administration for which veterans participating in the pilot program may be eligible;

(B) employment counseling, training, placement, and related services described in sections 2003 and 2003A of this title or provided under any other law administered by the Secretary of Labor;

(C) initial intake and referral services with respect to disabilities related to alcohol or drug dependence or abuse and followup services for veterans who have received treatment for such disabilities; and

(D) assistance in coordinating the provision of benefits and services to veterans participating in the pilot program with respect to such veterans' receipt of—

(i) services provided under the pilot program; and

(ii) other benefits and services provided under laws administered by the Veterans' Administration, the Secretary of Labor, or any other Federal agency or official.

(3)(A) In order to carry out the pilot program, the Administrator shall—

(i) designate as sites for demonstration projects 10 facilities which on the date of the enactment of this section [1] are providing readjustment counseling under this section; and

(ii) assign such staff and other resources to such facilities as are necessary to enable such facilities to provide the services referred to in subparagraphs (A) and (C) of paragraph (2) of this subsection.

(B) Facilities designated under subparagraph (A) of this paragraph shall be known as Vietnam Veteran Resource Centers (hereinafter in this subsection referred to as "Centers").

(4) The Administrator—

(A) shall be responsible for coordinating the assignment and use of employees, on full- or part-time bases, as appropriate, in each Center; and

(B) shall, in carrying out that responsibility, make maximum feasible use of the Veterans' Administration employees who are providing services at each facility on the date it is designated as a Center under this subsection.

(5) The Secretary of Labor shall provide for the assignment to each Center, on full- or part-time bases, as the Secretary considers appropriate, of disabled veterans' outreach specialists appointed under section 2003A of this title or employees on the staffs of local employment service offices who are assigned to perform services under section 2004 of this title.

(6) Not later than April 1, 1987, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the pilot program during its first 15 months of operation. The report shall include—

(A) the Administrator's assessment of—

(i) the effectiveness of the pilot program in providing and coordinating the provision of the services described in paragraph (2) of this subsection and counseling and services furnished under subsections (a) and (b) of this section; and

(ii) the appropriateness of the use of the personnel assigned to the program;

(B) a description of any administrative action that the Administrator plans to take generally to increase the coordination of the provision of such services to veterans eligible for readjustment counseling services under this section;

(C) any recommendation that the Administrator considers appropriate; and

(D) a comparison of such assessment, plans, and recommendations with the evaluation of and the recommendations relating to the readjustment counseling program included in the report required by subsection (g)(2) of this section.

(7) Not later than January 1, 1989, the Administrator shall submit to such Committees a final report on the pilot program. The report shall include—

(A) updates of all information provided in the report submitted pursuant to paragraph (6) of this subsection; and

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[1] See References in Text note below.

(B) the Administrator's final assessment of the pilot program based on 33 months of operation.

(As amended Pub. L. 98-160, title I, § 101, Nov. 21, 1983, 97 Stat. 993; Pub. L. 99-166, title I, §§ 105, 106, Dec. 3, 1985, 99 Stat. 944, 945.)

REFERENCES IN TEXT

Section 102 of the Veterans' Health Care Amendments of 1983, referred to in subsec. (g)(2)(A), is section 102 of Pub. L. 98-160, title I, Nov. 21, 183, 97 Stat. 994, which is set out as a note below.

The date of the enactment of this section, referred to in subsec. (h)(3)(A)(i), probably means the date of enactment of this subsection by Pub. L. 99-166, which was approved Dec. 3, 1985.

AMENDMENTS

1985—Subsec. (g)(1)(B). Pub. L. 99-166, § 106, which directed the substitution of "who request such counseling" for "who requested counseling before such date", was executed by making the substitution for the phrase "who requested such counseling before such date" to reflect the probable intent of Congress.

Subsec. (h). Pub. L. 99-166, § 105, added subsec. (h).

1983—Subsec. (a). Pub. L. 98-160, § 101(a), struck out "if such veteran requests such counseling within two years after the date of such veteran's discharge or release from active duty, or by September 30, 1984, whichever is later" after "to assist such veteran in readjusting to civilian life".

Subsec. (g)(1). Pub. L. 98-160, § 101(b)(1), substituted "September 30, 1988" for "September 30, 1984" in provisions preceding subpar. (A).

Subsec. (g)(1)(A). Pub. L. 98-160, § 101(b)(1), substituted "October 1, 1988" for "October 1, 1984".

Subsec. (g)(2). Pub. L. 98-160, § 101(b)(2), amended par. (2) generally, designating existing provisions as subpar. (A) and, in subpar. (A) as so designated, substituting "Not later than April 1, 1987, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Administrator's evaluation of the effectiveness in helping to meet the readjustment needs of veterans who served on active duty during the Vietnam era of the readjustment counseling and mental health services provided pursuant to this section (and of outreach efforts with respect to such counseling and services). Such report shall give particular attention, in light of the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983, to the provision of such counseling and services to veterans with post-traumatic stress disorder and to the diagnosis and treatment of such disorder" for "Not later than April 1, 1984, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the plans made and actions taken to carry out this subsection", and adding subpar. (B).

Subsec. (g)(3). Pub. L. 98-160, § 101(b)(2), added par. (3).

POST-TRAUMATIC-STRESS DISORDER; DIAGNOSIS AND TREATMENT; EDUCATION AND TRAINING OF HEALTH-CARE PERSONNEL; COORDINATION WITH READJUSTMENT COUNSELING; SPECIAL COMMITTEE; NATIONAL CENTER; COMPILATION AND PUBLICATION OF RESEARCH RESULTS; REPORTS TO CONGRESSIONAL COMMITTEES BY MARCH 1, 1985

Pub. L. 98-528, title I, § 110, Oct. 19, 1984, 98 Stat. 2691, provided that:

"(a)(1) The Chief Medical Director of the Veterans' Administration may designate special programs within the Department of Medicine and Surgery for the diagnosis and treatment of post-traumatic-stress disorder (hereinafter in this section referred to as 'PTSD').

"(2) The Chief Medical Director shall direct (A) that (in addition to providing diagnostic and treatment services for PTSD) Veterans' Administration programs designated under paragraph (1) (hereinafter in this section referred to as 'designated PTSD programs') carry out activities to promote the education and training of health-care personnel (including health-care personnel not working for the Veterans' Administration or the Federal Government) in the causes, diagnosis, and treatment of PTSD, and (B) that (when appropriate) the provision of treatment services under such program be coordinated with the provision of readjustment counseling services under section 612A of title 38, United States Code.

"(b)(1) The Chief Medical Director shall establish in the Department of Medicine and Surgery a Special Committee on Post-Traumatic-Stress Disorder (hereinafter in this section referred to as the 'Special Committee'). The Chief Medical Director shall appoint qualified employees of the Department to serve on the Special Committee.

"(2) The Special Committee shall assess, and carry out a continuing assessment of, the capacity of the Veterans' Administration to provide diagnostic and treatment services for PTSD to veterans eligible for health care furnished by the Veterans' Administration.

"(3) The Special Committee shall also advise the Chief Medical Director regarding the development of policies, the provision of guidance, and the coordination of services for the diagnosis and treatment of PTSD (A) in designated PTSD programs, (B) in inpatient psychiatric programs and outpatient mental health programs other than designated PTSD programs, and (C) in readjustment counseling programs of the Veterans' Administration.

"(4) The Special Committee shall also make recommendations to the Chief Medical Director for guidance with respect to PTSD regarding—

"(A) appropriate diagnostic and treatment methods;

"(B) referral for and coordination of followup care;

"(C) the evaluation of PTSD treatment programs;

"(D) the conduct of research concerning such diagnosis and treatment (taking into account the provisions of subsection (c));

"(E) special programs of education and training for employees of the Department of Medicine and Surgery and the Department of Veterans' Benefits (also taking into account such provisions);

"(F) the appropriate allocation of resources for all such activities; and

"(G) any specific steps that should be taken to improve such diagnosis and treatment and to correct any deficiencies in the operations of designated PTSD programs.

"(c) The Chief Medical Director shall establish and operate in the Department of Medicine and Surgery a National Center on Post-Traumatic-Stress Disorder. The National Center (1) shall carry out and promote the training of health care and related personnel in, and research into, the causes and diagnosis of PTSD and the treatment of veterans for PTSD, and (2) shall serve as a resource center for, and promote and seek to coordinate the exchange of information regarding, all research and training activities carried out by the Veterans' Administration, and by other Federal and non-Federal entities, with respect to PTSD.

"(d) The Chief Medical Director shall regularly compile and publish the results of research that has been conducted relating to PTSD.

"(e)(1) Not later than March 1, 1985, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the implementation of this section. The report shall include the following:

"(A) A list of the members of the Special Committee.

"(B) A list of all designated PTSD programs and other programs providing treatment for PTSD, together with a description of the resources that have been allocated for the development and operation of each such program, a description of the education and training that has been provided for Veterans' Administration health-care personnel in such programs and elsewhere within the Veterans' Administration in the diagnosis and treatment of PTSD, and specification of the funding that has been allocated to each such program and elsewhere within the Veterans' Administration to support research relating to PTSD.

"(C) The assessment of the Chief Medical Director of the Veterans' Administration, after consultation with the Special Committee, regarding the capability of the Veterans' Administration to meet the needs for inpatient and outpatient PTSD diagnosis and treatment (both through designated PTSD programs and otherwise) of veterans who served in the Republic of Vietnam during the Vietnam era, former prisoners of war, and other veterans eligible for health care from the Veterans' Administration and the efficacy of the treatment so provided, as well as a description of the results of any evaluations that have been made of PTSD treatment programs.

"(D) The plans of the Special Committee for further assessments of the capability of the Veterans' Administration to diagnose and treat veterans with PTSD.

"(E) The recommendations made by the Special Committee to the Chief Medical Director and the views of the Chief Medical Director on such recommendations.

"(F) A summary of the results of research conducted by the Veterans' Administration relating to PTSD.

"(G) A description of the steps taken, plans made (and a timetable for their execution), and resources to be applied to implement subsections (b) and (c).

"(H) The assessment of the Administrator of the capacity of the Veterans' Administration to meet in all geographic areas of the United States the needs described in subparagraph (C) and any plans and timetable for increasing that capacity (including the costs of such action).

"(2) Not later than February 1, 1986, and February 1 of each of the three following years, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing information updating the reports submitted under this subsection before the submission of such report."

STUDY OF POST-TRAUMATIC STRESS DISORDER AND OTHER POST-WAR PSYCHOLOGICAL PROBLEMS

Section 102 of Pub. L. 98-160 provided that:

"(a)(1) The Administrator of Veterans' Affairs shall provide for the conduct of a comprehensive study of the prevalence and incidence in the population of Vietnam veterans of post-traumatic stress disorder and other psychological problems in readjusting to civilian life (hereinafter in this section collectively referred to as 'post-war psychological problems') and of the effects of post-war psychological problems on such veterans, with particular attention to veterans who have service-connected disabilities and with specific reference to women veterans.

"(2) The study required by this subsection—

"(A) shall be designed to yield information regarding any statistical correlations—

"(i) between post-war psychological problems and physical disabilities (by type of disability) in the population of Vietnam veterans;

"(ii) between post-war psychological problems and alcohol and drug abuse in such population;

"(iii) between veterans in such population having post-war psychological problems and being members of minority groups; and

"(iv) between post-war psychological problems in such population and the incarceration of such veterans in penal institutions;

"(B) shall include an evaluation of the long-term effects of post-war psychological problems among Vietnam veterans on the families of such veterans (and on persons in other primary social relationships with such veterans); and

"(C) shall include a survey of the extent to which Vietnam veterans with post-war psychological problems use care furnished by the Veterans' Administration.

"(b) Not later than October 1, 1986, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the results of the study required by subsection (a). Such report shall contain—

"(1) a description of the results of the study;

"(2) information regarding the capability of the Veterans' Administration to provide treatment to the number of veterans estimated in such study to be suffering from post-war psychological problems;

"(3) descriptions of the policies and procedures of the Veterans' Administration with respect to providing disability compensation for post-war psychological problems;

"(4) a description of the activities of the Administrator in attempting to coordinate Veterans' Administration health-care and compensation programs with respect to post-traumatic stress disorder; and

"(5) such recommendations for administrative and legislative action as the Administrator considers appropriate in light of the results of the study.

"(c) For the purpose of this section:

"(1) The terms 'veteran', 'service-connected', and 'active duty' have the meanings provided in sections 101(2), (16), and (21), respectively, of title 38, United States Code.

"(2) The term 'Vietnam veteran' means a veteran who served on active duty in the Republic of Vietnam or elsewhere in the Vietnam theater of operations during the Vietnam era (as defined in section 101(29) of such title)."

§ 612B. Counseling for former prisoners of war

The Administrator may establish a program under which, upon the request of a veteran who is a former prisoner of war, the Administrator, within the limits of Veterans' Administration facilities, furnishes counseling to such veteran to assist such veteran in overcoming the psychological effects of the veteran's detention or internment as a prisoner of war.

(Added Pub. L. 99-166, title I, § 107(a), Dec. 3, 1985, 99 Stat. 945.)

§ 617. Invalid lifts and other devices

(a) The Administrator may furnish an invalid lift, or any type of therapeutic or rehabilitative device, as well as other medical equipment and supplies (excluding medicines), if medically indicated, to any veteran who is receiving (1) compensation under section 314(*l*)-(p) of this title (or the comparable rates provided pursuant to section 334 of this title), or (2) pension under chapter 15 of this title by reason of being in need of regular aid and attendance.

(b) The Administrator may furnish devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders) to any veteran who is profoundly deaf and is entitled to compensation on account of hearing impairment.

(As amended Pub. L. 98-528, title I, § 107, Oct. 19, 1984, 98 Stat. 2690.)

AMENDMENTS

1984—Pub. L. 98-528 designated existing provision as subsec. (a) and added subsec. (b).

§ 618. Theraupeutic and rehabilitative activities

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Neither a veteran's participation in an activity carried out under this section nor a veteran's receipt of remuneration as a result of such participation may be considered as a basis for the denial or discontinuance of a rating of total disability for purposes of compensation or pension based on the veteran's inability to secure or follow a substantially gainful occupation as a result of disability.

(As amended Pub. L. 98-543, title III, § 303, Oct. 24, 1984, 98 Stat. 2748.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-543 added subsec. (f).

§ 620. Transfers for nursing home care; adult day health care

(a)(1) Subject to subsection (b) of this section, the Administrator may transfer to a non-Veterans' Administration nursing home, for care at the expense of the United States—

(A) a veteran—

(i) who has been furnished hospital care, nursing home care, or domiciliary care by the Administrator in a facility under the direct jurisdiction of the Administrator; and

(ii) who the Administrator determines—

(I) requires a protracted period of nursing home care which can be furnished in the non-Veterans' Administration nursing home; and

(II) in the case of a veteran who has been furnished hospital care in a facility under the direct jurisdiction of the Administrator, has received maximum benefits from such care; and

(B) a member of the Armed Forces—

(i) who has been furnished care in a hospital of the Armed Forces;

(ii) who the Secretary concerned determines has received maximum benefits from such care but requires a protracted period of nursing home care; and

(iii) who upon discharge from the Armed Forces will become a veteran.

(2) The Administrator may transfer a person to a nursing home under this subsection only if the Administrator determines that the cost to the United States of the care of such person in the nursing home will not exceed—

(A) the amount equal to 45 percent of the cost of care furnished by the Veterans' Administration in a general hospital under the direct jurisdiction of the Administrator (as such cost may be determined annually by the Administrator); or

(B) the amount equal to 50 percent of such cost, if such higher amount is determined to be necessary by the Administrator (upon the recommendation of the Chief Medical Director) to provide adequate care.

(3) Nursing home care may not be furnished under this subsection at the expense of the United States for more than six months in the aggregate in connection with any one transfer except—

(A) in the case of a veteran—

(i) who is transferred to a non-Veterans' Administration nursing home from a hospital under the direct jurisdiction of the Administrator; and

(ii) whose hospitalization was primarily for a service-connected disability;

(B) in a case in which the nursing home care is required for a service-connected disability; or

(C) in a case in which, in the judgment of the Administrator, a longer period of nursing home care is warranted.

(4) A veteran who is furnished care by the Administrator in a hospital or domiciliary facility in Alaska or Hawaii may be furnished nursing home care at the expense of the United States under this subsection even if such hospital or domiciliary facility is not under the direct jurisdiction of the Administrator.

[*See main edition for text of* (*b*) *and* (*c*)]

(d)(1) Subject to subsection (b) of this section, the Administrator may authorize for any veteran requiring nursing home care for a service-connected disability direct admission for such care at the expense of the United States to any non-Veterans' Administration nursing home. The Administrator may also authorize a direct admission to such a nursing home for nursing home care for any veteran who has been discharged from a hospital under the direct jurisdiction of the Administrator and who is currently receiving medical services as part of home health services from the Veterans' Administration.

(2) Direct admission authorized by paragraph (1) of this subsection may be authorized upon determination of need therefor—

(A) by a physician employed by the Veterans' Administration; or

(B) in areas where no such physician is available, by a physician carrying out such function under contract or fee arrangement,

based on an examination by such physician.

(3) The amount which may be paid for such care and the length of care available under this subsection shall be the same as authorized under subsection (a) of this section.

(e)(1) For the purposes of this section, the term "nursing home care" includes intermediate care, as determined by the Administrator in accordance with regulations which the Administrator shall prescribe. The cost of intermediate care for purposes of payment by the United States pursuant to subsection (a)(2)(B) of this section shall be determined by the Administrator except that the rate of reimbursement shall be commensurately less than that provided for nursing home care (as defined in section 101(28) of this title).

(2) For the purposes of this section, the term "non-Veterans' Administration nursing home" means a public or private institution not under

the direct jurisdiction of the Administrator which furnishes nursing home care.

(f)(1)(A) The Administrator is authorized to furnish adult day health care as provided for in this subsection. For the purpose only of authorizing the furnishing of such care and specifying the terms and conditions under which it may be furnished to veterans needing such care—

(i) references to "nursing home care" in subsections (a) through (d) of this section shall be deemed to be references to "adult day health care"; and

(ii) a veteran who is eligible for medical services under section 612(f)(2) of this title shall be deemed to be a veteran described in subsection (a)(1) of this section.

(B) The Administrator may provide in-kind assistance (through the services of Veterans' Administration employees and the sharing of other Veterans' Administration resources) to a facility furnishing care to veterans under subparagraph (A) of this paragraph. Any such in-kind assistance shall be provided under a contract between the Veterans' Administration and the facility concerned. The Administrator may provide such assistance only for use solely in the furnishing of adult day health care and only if, under such contract, the Veterans' Administration receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Veterans' Administration facility that provided the assistance.

(2) The Administrator may conduct, at facilities over which the Administrator has direct jurisdiction, programs for the furnishing of adult day health care to veterans who are eligible for such care under paragraph (1) of this subsection, except that necessary travel and incidental expenses (or transportation in lieu thereof) may be furnished under such a program only under the terms and conditions set forth in section 111 of this title. The furnishing of care under any such program shall be subject to the limitations that are applicable to the duration of adult day health care furnished under paragraph (1) of this subsection.

(3) Adult day health care may not be furnished under this section after September 30, 1988.

(As amended Pub. L. 98-160, title I, § 103(a)(1), (2), Nov. 21, 1983, 97 Stat. 995; Pub. L. 99-166, title I, § 108(a)-(c), Dec. 3, 1985, 99 Stat. 946, 947.)

Amendments

1985—Subsec. (a). Pub. L. 99-166, § 108(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Subject to subsection (b) and except as provided in subsection (e) of this section, the Administrator may transfer—

"(1) Any veteran who has been furnished care by the Administrator in a hospital under the direct jurisdiction of the Administrator, and

"(2) Any person (A) who has been furnished care in any hospital of any of the Armed Forces, (B) who the appropriate Secretary concerned has determined has received maximum hospital benefits but requires a protracted period of nursing home care, and (C) who upon discharge therefrom will become a veteran

to any public or private institution not under the jurisdiction of the Administrator which furnishes nursing home care, for care at the expense of the United States, only if the Administrator determines that—

"(i) such veteran has received maximum benefits from such care in such hospital, but will require a protracted period of nursing home care which can be furnished in such institution, and

"(ii) the cost of such nursing home care in such institution will not exceed 45 percent of the cost of care furnished by the Veterans' Administration in a general hospital under the direct and exclusive jurisdiction of the Administrator, as such cost may be determined annually by the Administrator, or not to exceed 50 percent of such cost where determined necessary by the Administrator, upon recommendation of the Chief Medical Director, to provide adequate care.

Nursing home care may not be furnished pursuant to this section at the expense of the United States for more than six months in the aggregate in connection with any one transfer, except (I) in the case of the veteran whose hospitalization was primarily for a service-connected disability, or (II) where in the judgment of the Administrator a longer period is warranted in the case of any other veteran. Any veteran who is furnished care by the Administrator in a hospital in Alaska or Hawaii may be furnished nursing home care under the provisions of this section even if such hospital is not under the direct jurisdiction of the Administrator."

Subsec. (d). Pub. L. 99-166, § 108(b), designated existing first sentence as par. (1) and in par. (1) as so designated, substituted "to any non-Veterans' Administration nursing home" for "to any public or private institution not under the jurisdiction of the Administrator which furnishes nursing home care", added "The Administrator may also authorize a direct admission to such a nursing home for nursing home care for any veteran who has been discharged from a hospital under the direct jurisdiction of the Administrator and who is currently receiving medical services as part of home health services from the Veterans' Administration.", substituted par. (2) for "Such admission may be authorized upon determination of need therefor by a physician employed by the Veterans' Administration or, in areas where no such physician is available, carrying out such function under contract or fee arrangement based on an examination by such physician.", and designated existing last sentence as par. (3).

Subsec. (e). Pub. L. 99-166, § 108(c), designated existing provisions as par. (1), substituted "subsection (a)(2)(B)" for "subsection (a)(ii)" in second sentence, and added par. (2).

1983—Pub. L. 98-160, § 103(a)(2), added "; adult day health care" in section catchline.

Subsec. (f). Pub. L. 98-160, § 103(a)(1), added subsec. (f).

Comparison Study Between Adult Day Health Care and Nursing Home Care

Section 103(b), (c) of Pub. L. 98-160 provided that:

"(b) If the Administrator of Veterans' Affairs furnishes adult day health care under section 620(f) of title 38, United States Code (as added by subsection (a)), the Administrator shall conduct a study of the medical efficacy and cost-effectiveness of furnishing such care as an alternative for nursing home care and of the comparative advantages and disadvantages of providing such care through facilities that are not under the direct jurisdiction of the Administrator and through facilities that are under the direct jurisdiction of the Administrator.

"(c) Not later than February 1, 1988, the Administrator shall submit to the Committees on Veterans'

Affairs of the Senate and House of Representatives a report containing—

"(1) the results of the study conducted under subsection (b) (if such a study is conducted);

"(2) the Administrator's recommendation with respect to extending or repealing the date in subsection (f)(3) of section 620 of title 38, United States Code (as added by subsection (a)); and

"(3) any other recommendation that the Administrator considers appropriate for legislative and administrative action with respect to the furnishing of such care."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 610, 624, 641, 642, 903, 5005, 5034 of this title.

§ 620A. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities

(a)(1) The Administrator, in furnishing hospital, nursing home, and domiciliary care and medical and rehabilitative services under this chapter, may contract for care and treatment and rehabilitative services in halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities for eligible veterans suffering from alcohol or drug dependence or abuse disabilities.

[*See main edition for text of* (*2*); (*b*) *to* (*d*)]

(e) The Administrator may not furnish care and treatment and rehabilitative services under subsection (a) of this section after September 30, 1988.

(f)(1) The Administrator shall monitor the performance of each contract facility furnishing care and services under the program carried out under subsection (a) of this section.

(2) The Administrator shall use the results of such monitoring to determine—

(A) with respect to the program, the medical advantages and cost-effectiveness that result from furnishing such care and services; and

(B) with respect to such contract facilities generally, the level of success under the program, considering—

(i) the rate of successful rehabilitation for veterans furnished care and services under the program;

(ii) the rate of readmission to contract facilities under the program or to Veterans' Administration health-care facilities by such veterans for care or services for disabilities referred to in subsection (a) of this section;

(iii) whether the care and services furnished under the program obviated the need of such veterans for hospitalization for such disabilities;

(iv) the average duration of the care and services furnished such veterans under the program;

(v) the ability of the program to aid in the transition of such veterans back into their communities; and

(vi) any other factor that the Administrator considers appropriate.

(3) The Administrator shall maintain records of—

(A) the total cost for the care and services furnished by each contract facility under the program;

(B) the average cost per veteran for the care and services furnished under the program; and

(C) the appropriateness of such costs, by comparison to—

(i) the average charges for the same types of care and services furnished generally by other comparable halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities; and

(ii) the historical costs for such care and services for the period of time that the program carried out under subsection (a) of this section was a pilot program, taking into account economic inflation.

(4) Not later than February 1, 1988, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the program carried out under this section during fiscal years 1984 through 1987. The report shall include—

(A) a description of the care and services furnished;

(B) the matters referred to in paragraphs (1), (2), and (3) of this subsection; and

(C) the Administrator's findings, assessment, and recommendations regarding the program under this section.

[*See main edition for text of* (*g*)]

(As amended Pub. L. 99-108, § 3, Sept. 30, 1985, 99 Stat. 481; Pub. L. 99-166, title I, § 101(a)-(b)(1), Dec. 3, 1985, 99 Stat. 942, 943.)

AMENDMENTS

1985—Pub. L. 99-166, § 101(b)(1), struck out "; pilot program" after "disabilities" in section catchline.

Subsec. (a)(1). Pub. L. 99-166, § 101(a)(1), struck out "may conduct a pilot program under which the Administrator" before "may contract" in first sentence, and struck out second sentence relating to the planning, designing, and conducting of a pilot program by the Chief Medical Director so as to demonstrate any medical advantages and cost effectiveness that might result from furnishing care and services to disabled veterans in contract facilities as authorized by this section, rather than in facilities over which the Administrator had jurisdiction.

Subsec. (e). Pub. L. 99-166, § 101(a)(2), substituted "September 30, 1988" for "October 31, 1985".

Pub. L. 99-108 substituted "October 31, 1985" for "the last day of the fifth fiscal year following the fiscal year in which the pilot program authorized by such subsection is initiated".

Subsec. (f). Pub. L. 99-166, § 101(a)(3), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "Not later than March 31, 1984, the Administrator shall report to the Committee on Veterans' Affairs of the Senate and House of Representatives on the findings and recommendations of the Administrator pertaining to the operation through September 30, 1983, of the pilot program authorized by this section."

SUBCHAPTER III—MISCELLANEOUS PROVISIONS RELATING TO HOSPITAL AND NURSING HOME CARE AND MEDICAL TREATMENT OF VETERANS

§ 630. Community residential care

(a)(1) Subject to this section and regulations to be prescribed by the Administrator under this section, the Administrator may assist a veteran by referring such veteran for placement in, and aiding such veteran in obtaining placement in, a community residential-care facility if—

(A) at the time of initiating the assistance the Administrator—

(i) is furnishing the veteran medical services on an outpatient basis or hospital, domiciliary, or nursing home care; or

(ii) has furnished the veteran such care or services within the preceding 12 months; and

(B) placement of the veteran in a community residential-care facility is appropriate.

(b)(1) The Administrator may not provide assistance under subsection (a) of this section with respect to a community residential-care facility unless such facility is approved by the Administrator for the purposes of this section.

(2) The Administrator's approval of a facility for the purposes of this section shall be based upon the Administrator's determination, after inspection of the facility, that the facility meets the standards established in regulations prescribed under this section. Such standards shall include the following:

(A) Health and safety criteria, including a requirement of compliance with applicable State laws and local ordinances relating to health and safety.

(B) A requirement that the costs charged for care by a facility be reasonable, as determined by the Administrator, giving consideration to such factors as (i) the level of care, supervision, and other services to be provided, (ii) the cost of goods and services in the geographic area in which the facility is located, and (iii) comparability with other facilities in such area providing similar services.

(C) Criteria for determining the resources that a facility needs in order to provide an appropriate level of services to veterans.

(D) Such other criteria as the Administrator determines are appropriate to protect the welfare of veterans placed in a facility under this section.

(3) Payment of the charges of a community residential-care facility for any care or service provided to a veteran whom the Administrator has referred to that facility under this section is not the responsibility of the United States or of the Veterans' Administration.

(c)(1) In order to determine continued compliance by community residential-care facilities that have been approved under subsection (b) of this section with the standards established in regulations prescribed under this section, the Administrator shall provide for periodic inspection of such facilities.

(2) If the Administrator determines that a facility is not in compliance with such standards, the Administrator (in accordance with regulations prescribed under this section)—

(A) shall cease to refer veterans to such facility; and

(B) may, with the permission of the veteran (or the person or entity authorized by law to give permission on behalf of the veteran), assist in removing a veteran from such facility.

Regulations prescribed to carry out this paragraph shall provide for reasonable notice and, upon request made on behalf of the facility, a hearing before any action authorized by this paragraph is taken.

(d) The Administrator shall prescribe regulations to carry out this section. Such regulations shall include the standards required by subsection (b) of this section.

(e)(1) To the extent possible, the Administrator shall make available each report of an inspection of a community residential-care facility under subsection (b)(2) or (c)(1) of this section to each Federal, State, and local agency charged with the responsibility of licensing or otherwise regulating or inspecting such facility.

(2) The Administrator shall make the standards prescribed in regulations under subsection (d) of this section available to all Federal, State, and local agencies charged with the responsibility of licensing or otherwise regulating or inspecting community residential-care facilities.

(f) For the purpose of this section, the term "community residential-care facility" means a facility that provides room and board and such limited personal care for and supervision of residents as the Administrator determines, in accordance with regulations prescribed under this section, are necessary for the health, safety, and welfare of residents.

(Added Pub. L. 98-160, title I, § 104(a), Nov. 21, 1983, 97 Stat. 996.)

SUBCHAPTER V—PAYMENTS TO STATE HOMES

§ 641. Criteria for payment

(a) The Administrator shall pay each State at the per diem rate of—

(1) $7.30 for domiciliary care,

(2) $17.05 for nursing home care, and

(3) $15.25 for hospital care,

for each veteran receiving such care in a State home, if such veteran is eligible for such care in a Veterans' Administration facility.

[*See main edition for text of* (*b*)]

(c) The Administrator shall submit every three years to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the adequacy of the rates provided in subsection (a) of this section in light of projections over each of the following five years of the demand on the Veterans' Administration for the provision of nursing home care to veterans eligible for such care under this section and sections 610 and 620 of this title. The first such report shall be submitted not later than June 30, 1986.

(As amended Pub. L. 98-160, title I, § 105(a), Nov. 21, 1983, 97 Stat. 998.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-160, § 105(a)(1), substituted "$7.30" for "$6.35" in par. (1), "$17.05" for "$12.10" in par. (2), and "$15.25" for "$13.25" in par. (3).

Subsec. (c). Pub. L. 98-160, § 105(a)(2), added subsec. (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 105(b) of Pub. L. 98-160 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on April 1, 1984."

SUBCHAPTER VII—PREVENTIVE HEALTH-CARE SERVICES PILOT PROGRAM

§ 661. Purpose

The purpose of this subchapter is to provide for a preventive health-care services pilot program in order to help (1) ensure the best possible health care for certain veterans otherwise being furnished care or services under this chapter, including veterans with service-connected disabilities rated at 50 per centum or more and veterans being furnished care or services involving a service-connected disability under this chapter, by furnishing to such veterans feasible and appropriate preventive health-care services, and (2) determine the cost-effectiveness and medical advantages of furnishing such preventive health-care services.

(As amended Pub. L. 98-160, title I, § 106(b), Nov. 21, 1983, 97 Stat. 998.)

AMENDMENTS

1983—Pub. L. 98-160 substituted "in order to help" for "under which the Administrator may attempt to", inserted "veterans otherwise being furnished care or services under this chapter, including" after "(1) ensure the best possible health care for certain", struck out "for certain" after "rated at 50 per centum or more and", and substituted "care or services" for "treatment" after "veterans being furnished".

§ 662. Definition

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 601 of this title.

§ 663. Preventive health-care services

(a)(1) In order to carry out the purpose of this subchapter, the Administrator, within the limits of Veterans' Administration facilities and in accordance with regulations which the Administrator shall prescribe, shall, during fiscal years 1984 through 1988, furnish to any veteran described in section 612(f)(2) of this title otherwise being furnished care or services under this chapter, and to any veteran receiving care or services under this chapter involving a service-connected disability, such preventive health-care services as the Administrator determines are feasible and appropriate. In carrying out the pilot program under this subchapter, the Administrator may furnish such preventive health-care services to any other veteran described in section 612(f)(2) of this title.

[See main edition for text of (2)]

(b) In carrying out this subchapter, the Administrator shall emphasize the utilization of interdisciplinary health-care teams composed of various professional and paraprofessional personnel.

(c) In carrying out the program provided for in this subchapter, the Administrator may not expend more than $10,000,000 in fiscal year 1980, more than $12,000,000 in fiscal year 1981, more than $13,000,000 in fiscal year 1982, more than $14,000,000 in fiscal year 1983, or more than $15,000,000 in each of fiscal years 1984 through 1988.

[(d) Redesignated (c)]

(As amended Pub. L. 98-160, title I, § 106(c), Nov. 21, 1983, 97 Stat. 998.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-160, § 106(c)(1), substituted "shall, during fiscal years 1984 through 1988," for "may", inserted "otherwise being furnished care or services under this chapter" after "title", substituted "or services" for "and treatment", and added provision that in carrying out the pilot program under this subchapter, the Administrator may furnish preventive health-care services to any veteran described in section 612(f)(2) of this title.

Subsec. (b). Pub. L. 98-160, § 106(c)(2), redesignated subsec. (c) as (b). Former subsec. (b), which provided that in carrying out the pilot program of this subchapter, Administrator could not furnish preventive health-care services after Sept. 30, 1984, was struck out.

Subsecs. (c), (d). Pub. L. 98-160, § 106(c)(2), (3), redesignated subsec. (d) as (c) and in subsec. (c), as so redesignated, substituted "each of fiscal years 1984 through 1988" for "fiscal year 1984". Former subsec. (c) redesignated (b).

§ 664. Reports

The Administrator shall include in the annual report to the Congress for each of fiscal years 1984 through 1988 required by section 214 of this title a comprehensive report on the administration of this subchapter, including such recommendations for additional legislation as the Administrator considers necessary.

(As amended Pub. L. 98-160, title I, § 106(d), Nov. 21, 1983, 97 Stat. 999.)

AMENDMENTS

1983—Pub. L. 98-160 inserted "for each of fiscal years 1984 through 1988" after "Congress".

CHAPTER 19—INSURANCE

SUBCHAPTER I—NATIONAL SERVICE LIFE INSURANCE

§ 719. National Service Life Insurance appropriation

[See main edition for text of (a)]

(b) All premiums heretofore and hereafter paid on insurance issued or reinstated under sections 602(c)(2) and 602(v)(1) of the National Service Life Insurance Act of 1940 where the requirement of good health was waived under such sections because of a service-incurred injury or disability shall be credited directly to the National Service Life Insurance appropriation and any payments of benefits heretofore and hereafter made on such insurance shall be made directly from such appropriation.

(As amended Pub. L. 98-160, title VII, § 702(5), Nov. 21, 1983, 97 Stat. 1009.)

References in Text

Sections 602(c)(2) and 602(v)(1) of the National Service Life Insurance Act of 1940, referred to in subsec. (b), are sections 602(c)(2) and 602(v)(1) of act Oct. 8, 1940, ch. 757, title VI, pt. I, 54 Stat. 1009, which enacted sections 802(c)(2) and 802(v)(1) of former Title 38, Pensions, Bonuses, and Veterans' Relief, and which were repealed and the provisions thereof reenacted as sections 719(b) and 715, respectively, of this title by Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1105.

Amendments

1983—Subsec. (b). Pub. L. 98-160 substituted "sections" for "subsections" after "issued or reinstated under" and after "waived under such".

SUBCHAPTER III—SERVICEMEN'S GROUP LIFE INSURANCE

§ 767. Persons insured; amount

(a) Any policy of insurance purchased by the Administrator under section 766 of this title shall automatically insure against death—

[*See main edition for text of (1) to (3)*]

in the amount of $50,000, unless such member elects in writing (A) not to be insured under this subchapter, or (B) to be insured in an amount less than $50,000 that is evenly divisible by $10,000. The insurance shall be effective the first day of active duty or active duty for training, or the beginning of a period of inactive duty training scheduled in advance by competent authority, or the first day a member of the Ready Reserve meets the qualifications set forth in section 765(5)(B) of this title, or the first day a member of the Reserves, whether or not assigned to the Retired Reserve of a uniformed service, meets the qualifications of section 765(5)(C) of this title, or the date certified by the Administrator to the Secretary concerned as the date Servicemen's Group Life Insurance under this subchapter for the class or group concerned takes effect, whichever is the later date.

[*See main edition for text of (b)*]

(c) If any member elects not to be insured under this subchapter or to be insured in any amount less than $50,000, such member may thereafter be insured under this subchapter in the amount of $50,000 or any lesser amount evenly divisible by $10,000 upon written application, proof of good health, and compliance with such other terms and conditions as may be prescribed by the Administrator. Any former member insured under Veterans' Group Life Insurance who again becomes eligible for Servicemen's Group Life Insurance and declines such coverage solely for the purpose of maintaining his Veterans' Group Life Insurance in effect shall upon termination of coverage under Veterans' Group Life Insurance be automatically insured under Servicemen's Group Life Insurance, if otherwise eligible therefor.

(d) Notwithstanding any other provision of this section, any member who on January 1, 1986 is a member of the Retired Reserve of a uniformed service (or who upon application would be eligible for assignment to the Retired Reserve of a uniformed service) may obtain increased insurance coverage in the amount of $50,000 or any lesser amount evenly divisible by $10,000 if—

(1) the member—

(A) is insured under this subchapter on January 1, 1986; or

(B) within one year after January 1, 1986, reinstates insurance under this subchapter that had lapsed for nonpayment of premiums; and

(2) the member submits a written application for the increased coverage to the office established pursuant to section 766(b) of this title within one year after January 1, 1986.

(As amended Pub. L. 99-166, title IV, § 401(a), Dec. 3, 1985, 99 Stat. 956.)

Amendments

1985—Subsec. (a). Pub. L. 99-166, § 401(a)(1), increased the amount of insurance to $50,000 from $35,000 and substituted "an amount less than $50,000 that is evenly divisible by $10,000" for "the amount of $30,000, $25,000, $20,000, $15,000, $10,000, or $5,000".

Subsec. (c). Pub. L. 99-166, § 401(a)(2), substituted "any amount less than $50,000, such member may thereafter be insured under this subchapter in the amount of $50,000 or any lesser amount evenly divisible by $10,000" for "the amount of $30,000, $25,000, $20,000, $15,000, $10,000, or $5,000, he may thereafter be insured under this subchapter or insured in the amount of $35,000, $30,000, $25,000, $20,000, $15,000, or $10,000 under this subchapter, as the case may be,".

Subsec. (d). Pub. L. 99-166, § 401(a)(3), substituted "January 1, 1986" for "the effective date of this subsection" wherever appearing, and substituted "in the amount of $50,000 or any lesser amount evenly divisible by $10,000" for "up to a maximum of $35,000 (in any amount divisible by $5,000)".

Effective Date of 1985 Amendment

Section 401(c) of Pub. L. 99-166, as amended by Pub. L. 99-227, § 3, Dec. 28, 1985, 99 Stat. 1745, provided that:

"(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending sections 767 and 777 of this title] shall take effect on January 1, 1986.

"(2) The amendment made by subsection (a)(1)(A) [amending subsec. (a) of this section to increase the amount of automatic insurance to $50,000] shall be deemed to have taken effect on December 12, 1985, with respect to members who—

"(A) died after December 11, 1985, and before January 1, 1986; and

"(B) were, on the date of death, insured in the amount of $35,000 under subchapter III of chapter 19 of title 38, United States Code."

Section Referred to in Other Sections

This section is referred to in sections 768, 777 of this title.

§ 768. Duration and termination of coverage; conversion

Section Referred to in Other Sections

This section is referred to in section 777 of this title.

§ 777. Veterans' Group Life Insurance

(a) Veterans' Group Life Insurance shall be issued in the amounts specified in section 767(a) of this title. In the case of any individual, the amount of Veterans' Group Life Insurance may not exceed the amount of Servicemen's Group Life Insurance coverage continued in force after the expiration of the period of duty or travel under section 767(b) or 768(a) of this title. No person may carry a combined amount of Servicemen's Group Life Insurance and Veterans' Group Life Insurance in excess of $50,000 at any one time. Any person insured under Veterans' Group Life Insurance who again becomes insured under Servicemen's Group Life Insurance may within sixty days after becoming so insured convert any or all of his Veterans' Group Life Insurance to an individual policy of insurance under subsection (e) of this section. However, if such a person dies within the sixty-day period and before converting his Veterans' Group Life Insurance, Veterans' Group Life Insurance will be payable only if he is insured for less than $50,000 under Servicemen's Group Life Insurance, and then only in an amount which when added to the amount of Servicemen's Group Life Insurance payable shall not exceed $50,000.

[*See main edition for text of* (*b*) *to* (*g*)]

(h)(1) Notwithstanding any other provision of law, members of the Individual Ready Reserve and the Inactive National Guard are eligible to be insured under Veterans' Group Life Insurance. Any such member shall be so insured upon submission of an application in the manner prescribed by the Administrator and the payment of premiums as required under this section.

(2) Notwithstanding subsection (b)(2) of this section, Veterans' Group Life Insurance coverage under this subsection shall be issued on a renewable five-year term basis, but the person insured must remain a member of the Individual Ready Reserve or Inactive National Guard throughout the period of the insurance in order for the insurance of such person to be renewed.

(3) For the purpose of this subsection, the terms "Individual Ready Reserve" and "Inactive National Guard" shall have the meanings prescribed by the Administrator in consultation with the Secretary of Defense.

(As amended Pub. L. 99-166, title IV, § 401(b), Dec. 3, 1985, 99 Stat. 957.)

Amendments

1985—Subsec. (a). Pub. L. 99-166, § 401(b)(1), substituted "Veterans' Group Life Insurance shall be issued in the amounts specified in section 767(a) of this title. In the case of any individual, the amount of Veterans' Group Life Insurance may not exceed the amount of Servicemen's Group Life Insurance coverage continued in force after the expiration of the period of duty or travel under section 767(b) or 768(a) of this title" for "Veterans' Group Life Insurance shall be issued in the amount of $5,000, $10,000, $15,000, $20,000, $25,000, $30,000 or $35,000 only" and "$50,000" for "$35,000" in three places.

Subsec. (h). Pub. L. 99-166, § 401(b)(2), added subsec. (h).

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-166 effective Jan. 1, 1986, see section 401(c)(1) of Pub. L. 99-166, set out as a note under section 767 of this title.

CHAPTER 21—SPECIALLY ADAPTED HOUSING FOR DISABLED VETERANS

§ 802. Limitations on assistance furnished

(a) The assistance authorized by section 801(a) of this title shall be limited in the case of any veteran to one housing unit, and necessary land therefor, and shall be afforded under one of the following plans, at the option of the veteran but shall not exceed $35,500 in any one case—

[*See main edition for text of* (*1*) *to* (*4*)]

(b) Except as provided in section 804(b) of this title, the assistance authorized by section 801(b) of this title shall be limited to the lesser of—

[*See main edition for text of* (*1*)]

(2) $6,000.

(As amended Pub. L. 98-543, title III, § 304(a), Oct. 24, 1984, 98 Stat. 2748.)

Amendments

1984—Subsec. (a). Pub. L. 98-543, § 304(a)(1), substituted "$35,500" for "$32,500" in provisions before par. (1).

Subsec. (b)(2). Pub. L. 98-543, § 304(a)(2), substituted "$6,000" for "$5,000".

Effective Date of 1984 Amendment

Section 304(b) of Pub. L. 98-543 provided that: "The amendments made by subsection (a) [amending subsecs. (a) and (b)(2) of this section] shall take effect on January 1, 1985."

CHAPTER 23—BURIAL BENEFITS

Chapter Referred to in Other Sections

This chapter is referred to in sections 107, 415, 503 of this title; title 10 section 1490.

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

§ 1008. Aid to States for establishment, expansion, and improvement of veterans' cemeteries

(a) [*See main edition for text of* (*1*)]

(2) There is authorized to be appropriated $5,000,000 for fiscal year 1980 and for each of the four succeeding fiscal years, and such sums as may be necessary for fiscal year 1985 and for each of the four succeeding fiscal years, for the purpose of making grants under paragraph (1) of this subsection.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-223, title II, § 202, Mar. 2, 1984, 98 Stat. 41.)

Amendments

1984—Subsec. (a)(2). Pub. L. 98-223 inserted ", and such sums as may be necessary for fiscal year 1985 and for each of the four succeeding fiscal years," after "fiscal years".

PART III—READJUSTMENT AND RELATED BENEFITS

Chap.		Sec.
30.	All-Volunteer Force Educational Assistance Program	1401

AMENDMENTS

1984—Pub. L. 98-525, title VII, § 702(a)(2), Oct. 19, 1984, 98 Stat. 2563, added item for chapter 30.

CHAPTER 30—ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

SUBCHAPTER I—PURPOSES; DEFINITIONS

Sec.
1401. Purposes.
1402. Definitions.

SUBCHAPTER II—BASIC EDUCATIONAL ASSISTANCE

1411. Basic educational assistance entitlement for service on active duty.
1412. Basic educational assistance entitlement for service in the Selected Reserve.
1413. Duration of basic educational assistance.
1414. Payment of basic educational assistance.
1415. Amount of basic educational assistance.
1416. Inservice enrollment in a program of education.

SUBCHAPTER III—SUPPLEMENTAL EDUCATIONAL ASSISTANCE

1421. Supplemental educational assistance for additional service.
1422. Amount of supplemental educational assistance.
1423. Payment of supplemental educational assistance under this chapter.[1]

SUBCHAPTER IV—TIME LIMITATION FOR USE OF ELIGIBILITY AND ENTITLEMENT; GENERAL AND ADMINISTRATIVE PROVISIONS

1431. Time limitation for use of eligibility and entitlement.
1432. Limitation on educational assistance for certain individuals.
1433. Bar to duplication of educational assistance benefits.
1434. Program administration.
1435. Allocation of administration and of program costs.
1436. Reporting requirement.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1508, 1673, 1781, 1795 of this title; title 10 sections 708, 2006, 2132.

SUBCHAPTER I—PURPOSES; DEFINITIONS

§ 1401. Purposes

The purposes of this chapter are—

(1) to provide a new educational assistance program to assist in the readjustment of members of the Armed Forces to civilian life after their separation from military service;

(2) to promote and assist the All-Volunteer Force program and the Total Force Concept of the Armed Forces by establishing a new program of educational assistance based upon service on active duty or a combination of service on active duty and in the Selected Reserve (including the National Guard) to aid in the recruitment and retention of highly qualified personnel for both the active and reserve components of the Armed Forces; and

(3) to give special emphasis to providing educational assistance benefits to aid in the retention of personnel in the Armed Forces.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2553.)

§ 1402. Definitions

For the purposes of this chapter—

(1) The term "basic educational assistance" means educational assistance provided under subchapter II of this chapter.

(2) The term "supplemental educational assistance" means educational assistance provided under subchapter III of this chapter.

(3) The term "program of education" has the meaning given such term in section 1652(b) of this title.

(4) The term "Selected Reserve" means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 268(b) of title 10.

(5) The term "Secretary" means the Secretary of Defense with respect to members of the Armed Forces under the jurisdiction of the Secretary of a military department and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(6) The term "active duty" does not include any period during which an individual (A) was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians, (B) served as a cadet or midshipman at one of the service academies, or (C) served under the provisions of section 511(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2554.)

SUBCHAPTER II—BASIC EDUCATIONAL ASSISTANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1402, 1431, 1435 of this title.

§ 1411. Basic educational assistance entitlement for service on active duty

(a) Except as provided in subsection (c) of this section each individual—

(1) who—

(A) during the period beginning on July 1, 1985, and ending on June 30, 1988, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and—

---

[1] So in original. Does not conform to section catchline.

(i) who (I) serves at least three years of continuous active duty in the Armed Forces, or (II) in the case of an individual whose initial period of active duty is less than three years, serves at least two years of continuous active duty in the Armed Forces; or

(ii) who serves in the Armed Forces and is discharged or released from active duty (I) for a service-connected disability or for hardship, or (II) for the convenience of the Government, in the case of an individual who completed not less than 20 months of active duty, if the initial obligated period of active duty of the individual was less than three years, or in the case of an individual who completed not less than 30 months of active duty if the initial obligated period of active duty of the individual was at least three years; or

(B) as of December 31, 1989, is eligible for educational assistance benefits under chapter 34 of this title and—

(i) after June 30, 1985, serves at least three years of continuous active duty in the Armed Forces; or

(ii) after June 30, 1985, is discharged or released from active duty (I) for a service-connected disability or for hardship, or (II) for the convenience of the Government, if the individual completed not less than 30 months of active duty after that date;

(2) who, before completion of the service described in clause (1) of this subsection, has received a secondary school diploma (or an equivalency certificate); and

(3) who, after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list;

(B) continues on active duty; or

(C) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service;

is entitled to basic educational assistance under this chapter.

(b) The basic pay of any individual described in subsection (a)(1)(A) of this section who does not make an election under subsection (c)(1) of this section shall be reduced by $100 for each of the first 12 months that such individual is entitled to such pay. Amounts withheld from basic pay under this subsection shall revert to the Treasury.

(c)(1) An individual described in subsection (a)(1)(A) of this section may make an election not to receive educational assistance under this chapter. Any such election shall be made at the time the individual initially enters on active duty as a member of the Armed Forces. Any individual who makes such an election is not entitled to educational assistance under this chapter.

(2) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy or upon completion of a program of educational assistance under section 2107 of title 10 is not eligible for educational assistance under this section.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2554, and amended Pub. L. 99-145, title VI, § 674(1), Nov. 8, 1985, 99 Stat. 665.)

AMENDMENTS

1985—Subsec. (a)(1)(B). Pub. L. 99-145 struck out "and without a break in service on active duty since December 31, 1976," after "chapter 34 of this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1413, 1415, 1416, 1421, 1431 of this title; title 10 section 2006.

§ 1412. Basic educational assistance entitlement for service in the Selected Reserve

(a) Except as provided in subsection (c) of this section, each individual—

(1) who—

(A) during the period beginning on July 1, 1985, and ending on June 30, 1988, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and—

(i) serves at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service; and

(ii) subject to subsection (b) of this section and after completion of the service on active duty described in subclause (i) of this clause, serves at least four years of continuous duty in the Selected Reserve during which the individual participates satisfactorily in training as required by the Secretary concerned; or

(B) as of December 31, 1989, is eligible for educational assistance under chapter 34 of this title and—

(i) after June 30, 1985, serves at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service; and

(ii) after June 30, 1985, subject to subsection (b) of this section and after completion of such two years of service, serves at least four continuous years in the Selected Reserve during which the individual participates satisfactorily in training as prescribed by the Secretary concerned;

(2) who, before completion of the service described in clause (1) of this subsection, has received a secondary school diploma (or an equivalency certificate); and

(3) who, after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, or is transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service; or

(B) continues on active duty or in the Selected Reserve;

is entitled to basic educational assistance under this chapter.

(b)(1) The requirement of four years of service under clauses (1)(A)(ii) and (1)(B)(ii) of subsection (a) of this section is not applicable to an individual who is discharged or released from service in the Selected Reserve for a service-connected disability, for hardship, or (in the case of an individual discharged or released after three and one-half years of service) for the convenience of the Government.

(2) Continuity of service of a member in the Selected Reserve for purposes of such clauses shall not be considered to be broken—

(A) by any period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not able to locate a unit of the Selected Reserve of the member's Armed Force that the member is eligible to join or that has a vacancy; or

(B) by any other period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not attached to a unit of the Selected Reserve that the Secretary concerned, pursuant to regulations, considers to be inappropriate to consider for such purpose.

(c) The basic pay of any individual described in subsection (a)(1)(A) of this section who does not make an election under subsection (d)(1) of this section shall be reduced by $100 for each of the first 12 months that such individual is entitled to such pay. Amounts withheld from basic pay under this paragraph shall revert to the Treasury.

(d)(1) An individual described in subsection (a)(1)(A) of this section may make an election not to receive educational assistance under this chapter. Any such election shall be made at the time the individual initially enters on active duty as a member of the Armed Forces. Any individual who makes such an election is not entitled to educational assistance under this chapter.

(2) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy or upon completion of a program of educational assistance under section 2107 of title 10 is not eligible for educational assistance under this section.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2555, and amended Pub. L. 99-145, title VI, § 674(2), Nov. 8, 1985, 99 Stat. 665.)

AMENDMENTS

1985—Subsec. (a)(1)(B). Pub. L. 99-145 struck out "and without a break in service on active duty since December 31, 1976," after "chapter 34 of this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1413, 1416, 1421, 1431, 1433 of this title; title 10 sections 2006, 2132.

§ 1413. Duration of basic educational assistance

(a)(1) Subject to section 1795 of this title and except as provided in paragraph (2) of this subsection, each individual entitled to basic educational assistance under section 1411 of this title is entitled to 36 months of educational assistance benefits under this chapter (or the equivalent thereof in part-time educational assistance).

(2) In the case of an individual described in section 1411(a)(1)(A)(ii)(I) of this title who is not also described in section 1411(a)(1)(A)(i) of this title or an individual described in section 1411(a)(1)(B)(ii)(I) of this title who is not also described in section 1411(a)(1)(B)(i) of this title, the individual is entitled to one month of educational assistance benefits under this chapter for each month of active duty served by such individual.

(b) Subject to section 1795 of this title and subsection (c) of this section, each individual entitled to basic educational assistance under section 1412 of this title is entitled to (1) one month of educational assistance benefits under this chapter for each month of active duty served by such individual, and (2) one month of educational assistance benefits under this chapter for each four months served by such individual in the Selected Reserve (other than any month in which the individual served on active duty).

(c) No individual may receive basic educational assistance benefits under this chapter for a period in excess of 36 months (or the equivalent thereof in part-time educational assistance).

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2557.)

§ 1414. Payment of basic educational assistance

The Administrator shall pay to each individual entitled to basic educational assistance who is pursuing an approved program of education a basic educational assistance allowance to help meet, in part, the expenses of such individual's subsistence, tuition, fees, supplies, books, equipment, and other educational costs.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2557.)

§ 1415. Amount of basic educational assistance

(a) Subject to section 1432 of this title and except as otherwise provided in subsections (b) and (c) of this section, a basic educational assistance allowance under this subchapter shall be paid—

(1) at the monthly rate of $300 for an approved program of education pursued on a full-time basis; or

(2) at an appropriately reduced rate, as determined under regulations which the Administrator shall prescribe, for an approved program of education pursued on less than a full-time basis.

(b) In the case of an individual entitled to an educational assistance allowance under section 1411 of this title and whose initial obligated period of active duty is two years, a basic educational assistance allowance under this chapter shall be paid—

(1) at the monthly rate of $250 for an approved program of education pursued on a full-time basis; or

(2) at an appropriately reduced rate, as determined under regulations which the Administrator shall prescribe, for an approved program of education pursued on less than a full-time basis.

(c) In the case of an individual who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, the Secretary concerned, pursuant to regulations to be prescribed by the Secretary, may increase the rate of the basic educational assistance allowance applicable to such individual to such rate in excess of the rate prescribed under subsections (a) and (b) of this section as the Secretary considers appropriate, but the amount of any such increase may not exceed $400 per month.

(d)(1) Subject to paragraph (2) of this subsection, in the case of an individual who on December 31, 1989, was entitled to educational assistance under chapter 34 of this title, the rate of the basic educational assistance allowance applicable to such individual under this chapter shall be increased by the amount equal to one-half of the educational assistance allowance that would be applicable to such individual under such chapter 34 (as of the time the assistance under this chapter is provided and based on the rates in effect on December 31, 1989) if such chapter were in effect.

(2) The number of months for which the rate of the basic educational assistance allowance applicable to an individual is increased under paragraph (1) of this subsection may not exceed the number of months of entitlement to educational assistance under chapter 34 of this title that the individual had remaining on December 31, 1989.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2557.)

Section Referred to in Other Sections

This section is referred to in section 1435 of this title; title 10 section 2006.

§ 1416. Inservice enrollment in a program of education

A member of the Armed Forces who has completed at least two years of service on active duty after June 30, 1985, has continued on active duty or in the Selected Reserve without a break in service (except as described in section 1412(b)(2) of this title), and who but for section 1411(a)(1) or 1412(a)(1) of this title would be eligible for basic educational assistance may receive educational assistance under this chapter for enrollment in an approved program of education while continuing to perform the duty described in section 1411(a)(1) or 1412(a)(1) of this title.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2558.)

SUBCHAPTER III—SUPPLEMENTAL EDUCATIONAL ASSISTANCE

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1402, 1431, 1435 of this title; title 10 section 2006.

§ 1421. Supplemental educational assistance for additional service

(a) The Secretary concerned, pursuant to regulations to be prescribed by the Secretary, may provide for the payment of supplemental educational assistance under this subchapter to any individual eligible for basic educational assistance under section 1411 of this title who—

(1) serves five or more consecutive years of active duty in the Armed Forces in addition to the years of active duty counted under section 1411(a)(1) of this title without a break in such service; and

(2) after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list;

(B) continues on active duty without a break in service; or

(C) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(b) The Secretary concerned, pursuant to regulations to be prescribed by the Secretary, may provide for the payment of supplemental educational assistance under this subchapter to any individual eligible for basic educational assistance under section 1412 of this title who—

(1) serves two or more consecutive years of active duty in the Armed Forces in addition to the years of active duty counted under section 1412(a)(1) of this title and four or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted under such section without a break in service; and

(2) after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list; or

(B) continues on active duty or in the Selected Reserve.

(c) Continuity of service of a member in the Selected Reserve for purposes of subsection (b)(1) of this section shall not be considered to be broken—

(1) by any period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not able to locate a unit of the Selected Reserve of his Armed Force that the

member is eligible to join or that has a vacancy; or

(2) by any other period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not attached to a unit of the Selected Reserve that the Secretary concerned, pursuant to regulations, considers to be inappropriate to consider for such purpose.

(d) A period of active duty or duty in the Selected Reserve that occurs before the period of duty by which the individual concerned qualifies for basic educational assistance may not be counted for purposes of this section.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2558.)

Effective Date

Section 702(b) of Pub. L. 98-525 provided that: "Subchapter III [§ 1421 to 1423] of chapter 30 of title 38, United States Code, as added by subsection (a), shall take effect on July 1, 1986."

Section Referred to in Other Sections

This section is referred to in section 1422 of this title; title 10 sections 708, 2006.

§ 1422. Amount of supplemental educational assistance

(a) Subject to section 1432 of this title and except as otherwise provided under subsection (b) of this section, supplemental educational assistance under section 1421 of this title shall be paid—

(1) at a monthly rate of $300 for an approved program of education pursued on a full-time basis; or

(2) at an appropriately reduced rate, as determined under regulations which the Administrator shall prescribe, for an approved program of education pursued on less than a full-time basis.

(b) In the case of a member of the Armed Forces for whom the Secretary concerned has provided for the payment of supplemental educational assistance who has a skill or specialty designated by the Secretary concerned, pursuant to regulations to be prescribed by the Secretary, as a skill or specialty in which there is a critical shortage of personnel, the Secretary concerned, pursuant to such regulations, may increase the rate of the supplemental educational assistance allowance applicable to such individual to such rate in excess of the rate prescribed under subsection (a) of this section as the Secretary concerned considers appropriate, but the amount of any such increase may not exceed $300 per month.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2559.)

§ 1423. Payment of supplemental educational assistance under this subchapter

The Administrator shall increase the monthly basic educational assistance allowance paid to an individual who is entitled to supplemental educational assistance under this subchapter by the monthly amount of the supplemental educational assistance to which the individual is entitled.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2560.)

SUBCHAPTER IV—TIME LIMITATION FOR USE OF ELIGIBILITY AND ENTITLEMENT; GENERAL AND ADMINISTRATIVE PROVISIONS

§ 1431. Time limitation for use of eligibility and entitlement

(a) Except as provided in subsections (b) through (d) of this section, the period during which an individual entitled to educational assistance under this chapter may use such individual's entitlement expires at the end of the 10-year period beginning on (1) the date of such individual's last discharge or release from active duty, or (2) the last day on which such individual becomes entitled to such assistance, whichever is later.

(b) In the case of any eligible individual who has been prevented, as determined by the Administrator, from pursuing a program of education under subchapter II or III of this chapter within the 10-year period prescribed by subsection (a) of this section because such individual had not met the nature of discharge requirement of such subchapter before (1) the nature of such individual's discharge or release was changed by appropriate authority, or (2) with respect to educational assistance under subchapter II of this chapter, the Administrator determined, under regulations prescribed by the Administrator, that such discharge or release was under conditions described in section 1411(a)(3) or 1412(a)(3) of this title, such 10-year period shall not run during the period of time that such individual was so prevented from pursuing such program of education.

(c) In the case of an individual eligible for educational assistance under the provisions of this chapter who, after such individual's last discharge or release from active duty, was detained by a foreign government or power, the 10-year period described in subsection (a) of this section shall not run (1) while such individual is so detained, or (2) during any period immediately following such individual's release from such detention during which such individual is hospitalized at a military, civilian, or Veterans' Administration medical facility.

(d) In the case of an individual eligible for educational assistance under this chapter—

(1) who was prevented from pursuing such individual's chosen program of education before the expiration of the 10-year period for use of entitlement under this chapter otherwise applicable under this section because of a physical or mental disability which was not the result of the individual's own willful misconduct, and

(2) who applies for an extension of such 10-year period within one year after (A) the last day of such period, or (B) the last day on which such individual was so prevented from pursuing such program, whichever is later,

such 10-year period shall not run with respect to such individual during the period of time that such individual was so prevented from pursuing such program and such 10-year period will again begin running on the first day following such individual's recovery from such disability on which it is reasonably feasible, as determined under regulations which the Administrator shall prescribe, for such individual to initiate or resume pursuit of a program of education with educational assistance under this chapter.

(e)(1) If an individual eligible for educational assistance under this chapter is enrolled under this chapter in an educational institution regularly operated on the quarter or semester system and the period of such individual's entitlement under this chapter would, under this section, expire during a quarter or semester, such period shall be extended to the end of such quarter or semester.

(2) If an individual eligible for educational assistance under this chapter is enrolled under this chapter in an educational institution regularly operated on the quarter or semester system and the period of such individual's entitlement under this chapter would, under this section, expire after a major portion of the course is completed, such period shall be extended to the end of the course or for 12 weeks, whichever is the lesser period of extension.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2560.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2133.

§ 1432. Limitation on educational assistance for certain individuals

(a) In the case of an individual entitled to educational assistance under this chapter who is pursuing a program of education—

(1) while on active duty; or

(2) on less than a half-time basis,

the amount of the monthly educational assistance allowance payable to such individual under this chapter is the amount determined under subsection (b) of this section.

(b) The amount of the educational assistance allowance payable to an individual described in subsection (a) of this section is the lesser of (1) the amount of the educational assistance allowance otherwise payable to such individual under this chapter, or (2) the established charges for tuition and fees that the educational institution involved requires similarly circumstanced nonveterans enrolled in the same program to pay.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2561.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1415, 1422 of this title.

§ 1433. Bar to duplication of educational assistance benefits

(a)(1) An individual entitled to educational assistance under a program established by this chapter who is also eligible for educational assistance under a program under chapter 31, 34, or 35 of this title or under chapter 106 or 107 of title 10 may not receive assistance under both programs concurrently but shall elect (in such form and manner as the Administrator may prescribe) under which program to receive educational assistance.

(2) An individual entitled to educational assistance under chapter 34 of this title may not receive assistance under this chapter before January 1, 1990.

(b) A period of service counted for purposes of repayment under section 902 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note), of an education loan may not also be counted for purposes of entitlement to educational assistance under this chapter.

(c) An individual who is entitled to educational assistance under chapter 106 of title 10 may not also receive educational assistance under this chapter based on entitlement under section 1412 of this title.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2561.)

REFERENCES IN TEXT

Section 902 of the Department of Defense Authorization Act, 1981, referred to in subsec. (b), is Pub. L. 96-342, Sept. 8, 1980, 94 Stat. 1111, which is set out as a note under section 2141 of Title 10, Armed Forces.

§ 1434. Program administration

(a) Except as otherwise provided in this chapter, the provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1682(g), and 1683 of this title and the provisions of subchapters I and II of chapter 36 of this title (with the exception of sections 1777, 1780(a)(5), 1780(b), 1786, 1787, and 1792 of such chapter) shall be applicable to the provision of educational assistance under this chapter. The term "eligible veteran", as used in those provisions, shall be deemed to include an individual who is eligible for educational assistance under this chapter.

(b) An educational assistance allowance for any period may not be paid to an individual enrolled in or pursuing a program of education under this chapter until the Administrator has received—

(1) from such individual a certification as to such individual's actual attendance during such period; and

(2) from the educational institution a certification, or an endorsement of the individual's certificate, that such individual was enrolled in and pursuing a program of education during such period.

(c) Regulations prescribed by the Secretary of Defense under this chapter shall be uniform for the Armed Forces under the jurisdiction of the Secretary of a military department.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2562.)

§ 1435. Allocation of administration and of program costs

(a) Except to the extent otherwise specifically provided in this chapter, the educational assistance programs established by this chapter shall be administered by the Veterans' Administration.

(b)(1) Except to the extent provided in paragraph (2) of this subsection, payments for entitlement earned under subchapter II of this chapter shall be made from funds appropriated to, or otherwise available to, the Veterans' Administration for the payment of readjustment benefits.

(2) Payments for entitlement earned under subchapter II of this chapter that is established under section 1415(c) of this title at a rate in excess of the rate prescribed under section 1415(a) of this title shall, to the extent of that excess, be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.

(c) Payments for educational assistance provided under subchapter III of this chapter shall be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.

(d) Funds for the payment by the Administrator of benefits under this chapter that are to be paid from the Department of Defense Education Benefits Fund shall be transferred to the Veterans' Administration from such Fund as necessary and in accordance with agreements entered into under section 2006 of title 10 by the Administrator, the Secretary of Defense, and the Secretary of the Treasury. Funds for the payment by the Administrator of benefits under this chapter that are to be paid from appropriations made to the Department of Transportation shall be transferred to the Veterans' Administration as necessary. The Administrator and the Secretary of Transportation shall enter into an agreement for the manner in which such transfers are to be made.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2562.)

§ 1436. Reporting requirement

(a) The Secretary of Defense and the Administrator shall submit to the Congress at least once every two years separate reports on the operation of the program provided for in this chapter.

(b) The Secretary shall include in each report submitted under this section—

(1) information indicating (A) the extent to which the benefit levels provided under this chapter are adequate to achieve the purposes of inducing individuals to enter and remain in the Armed Forces and of providing an adequate level of financial assistance to help meet the cost of pursuing a program of education, and (B) whether it is necessary for the purposes of maintaining adequate levels of well-qualified active-duty personnel in the Armed Forces to continue to offer the opportunity for educational assistance under this chapter to individuals who have not yet entered active-duty service; and

(2) such recommendations for administrative and legislative changes regarding the provision of educational assistance to members of the Armed Forces and veterans, and their dependents, as the Secretary considers appropriate.

(c) The Administrator shall include in each report submitted under this section—

(1) information concerning the level of utilization of educational assistance and of expenditures under this chapter; and

(2) such recommendations for administrative and legislative changes regarding the provision of educational assistance to members of the Armed Forces and veterans, and their dependents, as the Administrator considers appropriate.

(d)(1) The first report by the Secretary of Defense under this section shall be submitted not later than January 1, 1986.

(2) The first report by the Administrator under this section shall be submitted not later than January 1, 1988.

(Added Pub. L. 98-525, title VII, § 702(a)(1), Oct. 19, 1984, 98 Stat. 2563.)

CHAPTER 31—TRAINING AND REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 106, 109, 246, 351, 363, 524, 601, 618, 628, 1433, 1673, 1682A, 1685, 1779, 1780, 1781, 1790, 1793, 1795, 1848, 2003, 2003A, 2009, 2013, 3013, 3107 of this title; title 5 section 8525; title 20 section 1070e-1; title 26 section 51; title 29 section 1721.

§ 1504. Scope of services and assistance

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 363, 524, 1505, 1506, 1508, 1517, 1520 of this title.

§ 1506. Initial and extended evaluations; determinations regarding serious employment handicap

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1505, 1507, 1508, 1509, 1518, 1520, 2011 of this title.

§ 1507. Individualized vocational rehabilitation plan

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 524, 1506, 1520 of this title.

§ 1508. Allowances

[See main edition for text of (a)]

(b) Except as otherwise provided in this section, the Administrator shall determine the subsistence allowance to be paid to a veteran under this chapter in accordance with the following table, which shall be the monthly amount shown in column II, III, IV, or V (whichever is applicable as determined by the veteran's dependency status) opposite the appropriate type of program being pursued as specified in column I:

Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional training:				
Full-time.	$310	$384	$452	$33
Three-quarter time.	233	288	339	25
Half-time.	155	193	227	17
Farm cooperative, apprentice, or other on-job training:				
Full-time.	271	327	377	24
Extended evaluation:				
Full-time.	310	384	452	33
Independent living training:				
Full-time.	310	384	452	33
Three-quarter time.	233	288	339	25
Half-time.	155	193	227	17

[*See main edition for text of* (*c*) *to* (*e*)]

(f)(1)(A) In any case in which the Administrator determines that a veteran is entitled to rehabilitation under this chapter, to the extent that such veteran has remaining eligibility for and entitlement to educational assistance benefits under chapter 30 or 34 of this title, such veteran may elect, as part of a vocational rehabilitation program under this chapter, to pursue an approved program of education and receive allowances and other forms of assistance equivalent to those authorized for veterans enrolled under either chapter 30 or chapter 34 of this title, if the Administrator approves the educational, professional, or vocational objective chosen by such veteran for such program.

(B) In the event that such veteran makes such an election, the terms and conditions applicable to the pursuit of a comparable program of education and the payment of allowances and provision of assistance under chapter 30 or 34 of this title for such a comparable program shall be applied to the pursuit of the approved program of education under this chapter.

[*See main edition for text of* (*2*); (*g*) *to* (*i*)]

(As amended Pub. L. 98-525, title VII, § 703(a), Oct. 19, 1984, 98 Stat. 2564; Pub. L. 98-543, title II, § 201, Oct. 24, 1984, 98 Stat. 2740.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-543 increased the monthly rehabilitation subsistence allowance for eligible veterans in column II from $282, $212, $141, $246, $282, $282, $212, and $141 to $310, $233, $155, $271, $310, $310, $233, and $155; in column III from $349, $262, $175, $297, $349, $349, $262, and $175 to $384, $288, $193, $323, $384, $384, $288, and $193; in column IV from $411, $308, $206, $343, $411, $411, $308, and $206 to $452, $339, $227, $377, $452, $452, $339, and $227; in column V from $30, $23, $15, $22, $30, $30, $23, and $15 to $33, $25, $17, $24, $33, $33, $25, and $17, respectively.

Subsec. (f)(1)(A), (B). Pub. L. 98-525 inserted references to chapter 30 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 205 of Pub. L. 98-543 provided that: "The amendments made by this part [enacting section 363 of this title and amending sections 335, 1508, 1682, 1692, 1732, 1742, 1786, 1787, and 1798 of this title and enacting provisions set out as notes under section 363 of this title] shall take effect as of October 1, 1984."

§ 1516. Promotion of employment and training opportunities

COORDINATION WITH PROGRAMS UNDER VETERANS' JOB TRAINING ACT

Pub. L. 99-238, title II, § 202, Jan. 13, 1986, 99 Stat. 1768, provided that:

"(a) IN GENERAL.—In carrying out section 1516(b) of title 38, United States Code, the Administrator of Veterans' Affairs shall take all feasible steps to establish and encourage, for veterans who are eligible to have payments made on their behalf under such section, the development of training opportunities through programs of job training consistent with the provisions of the Veterans' Job Training Act (as redesignated by section 201(a)(1) of this Act) [29 U.S.C. 1721 note] so as to utilize programs of job training established by employers pursuant to such Act.

"(b) DIRECTIVE.—In carrying out such Act, the Administrator shall take all feasible steps to ensure that, in the cases of veterans who are eligible to have payments made on their behalf under both such Act and section 1516(b) of title 38, United States Code, the authority under such section is utilized, to the maximum extent feasible and consistent with the veteran's best interests, to make payments to employers on behalf of such veterans."

CHAPTER 32—POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1673, 1682A, 1774, 1781, 1790, 1792, 1795, 3103A of this title; title 20 section 1078.

SUBCHAPTER I—PURPOSE; DEFINITIONS

§ 1602. Definitions

For the purposes of this chapter—

(1) [*See main edition for text of* (*A*) *to* (*C*)]

(D)(i) The requirement of ineligibility for educational assistance under chapter 34 of this title, prescribed in subparagraph (A), shall be waived in the case of a veteran described in division (ii) of this subparagraph who elects to receive benefits under this chapter instead of assistance under such chapter 34. A veteran who makes such an election shall be ineligible for assistance under such chapter. Such an election is irrevocable.

(ii) A veteran referred to in division (i) of this subparagraph is a veteran who before January 1, 1977, performed military service described in subparagraph (C)(iii), is entitled under section 1652(a)(3)(C) of this title to have such service considered to be "active duty" for the purposes of chapter 34 of this title, and is eligible for assistance under such chapter only by reason of having such service considered to be active duty.

[*See main edition for text of* (*2*) *and* (*3*)]

(As amended Pub. L. 98-223, title II, § 203(a), Mar. 2, 1984, 98 Stat. 41.)

AMENDMENTS

1984—Par. (1)(D). Pub. L. 98-223 added subpar. (D).

SUBCHAPTER II—ELIGIBILITY; CONTRIBUTIONS; AND MATCHING FUND

§ 1621. Eligibility

SUSPENSION OF RIGHT TO ENROLL IN POST-VIETNAM ERA PROGRAM

Pub. L. 98-525, title VII, § 704, Oct. 19, 1984, 98 Stat. 2564, provided that: "No individual on active duty in the Armed Forces may initially enroll in the educational assistance program provided for in chapter 32 [§ 1601 et seq.] of title 38, United States Code, during the period beginning on July 1, 1985, and ending on June 30, 1988."

§ 1622. Contributions; matching fund

(a) Except as provided in subsections (c) and (d) of this section, each person electing to participate in the program shall agree to have a monthly deduction made from such person's military pay. Such monthly deduction shall be in any amount not less than $25 nor more than $100 except that the amount must be divisible by 5. Any such amount contributed by the participant or contributed by the Secretary pursuant to subsection (c) of this section shall be deposited in a deposit fund account entitled the "Post-Vietnam Era Veterans Education Account" (hereinafter in this chapter referred to as the "fund") to be established in the Treasury of the United States. Contributions made by the participant shall be limited to a maximum of $2,700.

(b) Except as otherwise provided in this chapter, each monthly contribution made by a participant under subsection (a) shall entitle the participant to matching funds from the Department of Defense at the rate of $2 for each $1 contributed by the participant.

(c) The Secretary is authorized to contribute to the fund of any participant such contributions as the Secretary deems necessary or appropriate to encourage persons to enter or remain in the Armed Forces, including contributions in lieu of, or to reduce the amount of, monthly deductions under subsection (a) of this section. The Secretary is authorized to issue such rules and regulations as the Secretary deems necessary or appropriate to implement the provisions of this subsection.

(d) Subject to the maximum contribution prescribed by subsection (a) of this section, a participant shall be permitted, while serving on active duty, to make a lump-sum contribution to the fund. A lump-sum contribution to the fund by a participant shall be in addition to or in lieu of monthly deductions made from such participant's military pay and shall be considered, for the purposes of paragraph (2) of section 1631(a) of this title, to have been made by monthly deductions from such participant's military pay in the amount of $100 per month or in such lesser amount as may be specified by such participant pursuant to regulations issued jointly by the Secretary and the Administrator.

(e) Any amount transferred to the Administrator from the Secretary of a military department under an interagency agreement for the administration by the Veterans' Administration of an educational assistance program established by the Secretary under chapter 107 of title 10 may be deposited into and disbursed from the fund for the purposes of such program.

(Added Pub. L. 94-502, title IV, § 404, Oct. 15, 1976, 90 Stat. 2395, and amended Pub. L. 94-502, title IV, § 408(b), Oct. 15, 1976, 90 Stat. 2397; Pub. L. 96-466, title IV, § 406, Oct. 17, 1980, 94 Stat. 2202; Pub. L. 97-306, title II, §§ 209, 210, Oct. 14, 1982, 96 Stat. 1436; Pub. L. 98-160, title VII, § 702(6), Nov. 21, 1983, 97 Stat. 1009.)

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-160 inserted "of this title" after "section 1631(a)".

1982—Subsec. (d). Pub. L. 97-306, § 210, substituted "$100" for "$75".

Subsec. (e). Pub. L. 97-306, § 209, added subsec. (e).

1980—Subsec. (a). Pub. L. 96-466, § 406(a), substituted "Except as provided in subsections (c) and (d) of this section, each" for "Each", "$25" for "$50", and "$100" for "$75".

Subsec. (c). Pub. L. 96-466, § 406(b), inserted ", including contributions in lieu of, or to reduce the amount of, monthly deductions under subsection (a) of this section" after "Armed Forces".

Subsec. (d). Pub. L. 96-466, § 406(c), added subsec. (d).

1976—Subsec. (b). Pub. L. 94-502 substituted "Department of Defense" for "Veterans' Administration".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-466 effective Oct. 1, 1980, see section 802(d)(2) of Pub. L. 96-466, set out as a note under section 1624 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-502 effective Jan. 1, 1982, because new enrollments after Dec. 31, 1981, in the educational assistance program provided by this chapter, were authorized after application of provisions of section 408(a) of Pub. L. 94-502, see section 408(b) of Pub. L. 94-502, set out as a note under section 1621 of this title.

EDUCATIONAL ASSISTANCE PILOT PROGRAM; PAYMENT OF MONTHLY CONTRIBUTION BY SECRETARY; MANNER, SCOPE, ETC., OF PAYMENTS

Manner, scope, etc., of payments by Secretary in lieu of payments of monthly contributions by persons participating in educational assistance program, see section 903 of Pub. L. 96-342, set out as a note under section 2141 of Title 10, Armed Forces.

§ 1623. Refunds of contributions upon disenrollment

(a) Contributions made to the program by a participant may be refunded only after the participant has disenrolled from the program or as provided in section 1624 of this title.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) In the event the participant (1) dies while on active duty, (2) dies after discharge or release from active duty, or (3) disenrolls or is disenrolled from the program without having utilized any entitlement, the participant may have accrued under the program, or, in the event the participant utilizes part of such participant's entitlement and disenrolls or is disenrolled from the program, the amount contributed by the Secretary under the authority of section 1622(c) of this title remaining in the fund shall be refunded to the Secretary.

(As amended Pub. L. 98-160, title VII, § 702(7), Nov. 21, 1983, 97 Stat. 1009.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-160 inserted "of this title" after "section 1624".

Subsec. (d). Pub. L. 98-160 inserted "of this title" after "section 1622(c)".

SUBCHAPTER III—ENTITLEMENT; DURATION

§ 1632. Duration; limitations

No educational assistance benefits shall be afforded an eligible veteran under this chapter beyond the date of 10 years after such veteran's last discharge or release from active duty. In the event an eligible veteran has not utilized any or all of such veterans' entitlement by the end of the 10-year period, such eligible veteran is automatically disenrolled and any contributions made by such veteran remaining in the fund shall be refunded to the veteran following notice to the veteran and an application by the veteran for such refund. If no application is received within 1 year from date of notice, it will be presumed for the purposes of section 1322(a) of title 31 that the individual's whereabouts is unknown and the funds shall be transferred as directed in such section.

(As amended Pub. L. 98-160, title VII, § 702(8), Nov. 21, 1983, 97 Stat. 1009.)

AMENDMENTS

1983—Pub. L. 98-160 struck out the comma after "title 31" and substituted "such section" for "section 1322(a)".

SUBCHAPTER IV—ADMINISTRATION

§ 1643. Deposits; reports

Deductions made by the Department of Defense from the military pay of any participant shall be promptly transferred to the Administrator for deposit in the fund. The Secretary shall also submit to the Administrator a report each month showing the name, service number, and the amount of the deduction made from the military pay of each initial enrollee, any contribution made by the Secretary pursuant to section 1622(c) of this title, as well as any changes in each participant's enrollment and/or contribution. The report shall also include any additional information the Administrator and the Secretary deem necessary to administer this program. The Administrator shall maintain accounts showing contributions made to the fund by individual participants and by the Secretary as well as disbursements made from the fund in the form of benefits.

(As amended Pub. L. 98-160, title VII, § 702(9), Nov. 21, 1983, 97 Stat. 1009.)

AMENDMENTS

1983—Pub. L. 98-160 inserted "of this title" after "section 1622(c)".

CHAPTER 34—VETERANS' EDUCATIONAL ASSISTANCE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 111, 246, 521, 618, 1412, 1415, 1433, 1502, 1508, 1602, 1685, 1770, 1771, 1772, 1773, 1774, 1780, 1781, 1782, 1783, 1784, 1785, 1787, 1788, 1789, 1790, 1792, 1793, 1794, 1795, 1796, 2013, 3013, 3107, 4114 of this title; title 20 sections 1070e-1, 1078, 1089; title 29 section 1721.

SUBCHAPTER I—PURPOSE—DEFINITIONS

§ 1652. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 524, 1402, 1501, 1602, 1661, 1786, 1787 of this title; title 20 section 1070d.

SUBCHAPTER II—ELIGIBILITY AND ENTITLEMENT

§ 1662. Time limitations for completing a program of education

Delimiting Period for Completion

(a)(1) No educational assistance shall be afforded an eligible veteran under this chapter beyond the date 10 years after the veteran's last discharge or release from active duty after January 31, 1955; except that, in the case of any eligible veteran who was prevented from initiating or completing such veteran's chosen program of education within such time period because of a physical or mental disability which was not the result of such veteran's own willful misconduct, such veteran shall, upon application made within one year after (A) the last date of the delimiting period otherwise applicable under this section, (B) the termination of the period of such mental or physical disability, or (C) October 1, 1980, whichever is the latest, be granted an extension of the applicable delimiting period for such length of time as the Administrator determines, from the evidence, that such veteran was so prevented from initiating or completing such program of education. When an extension of the applicable delimiting period is granted a veteran under the preceding sentence, the delimiting period with respect to such veteran will again begin running on the first day following such veteran's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations which the Administrator shall prescribe, for such veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

[*See main edition for text of* (*2*) *and* (*3*); (*b*) *to* (*e*)]

(As amended Pub. L. 98-160, title VII, § 702(10), Nov. 21, 1983, 97 Stat. 1009.)

AMENDMENTS

1983—Subsec. (a)(1)(C). Pub. L. 98-160 substituted "October 1, 1980" for "the effective date of the Veterans' Rehabilitation and Education Amendments of 1980".

§ 1663. Educational and vocational counseling

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1641 of this title; title 10 section 2136.

SUBCHAPTER III—ENROLLMENT

§ 1670. Selection of program

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1641 of this title; title 10 section 2136.

§ 1671. Applications; approval

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1641, 1682, 1691 of this title; title 10 section 2136.

§ 1673. Disapproval of enrollment in certain courses

[*See main edition for text of* (a) *to* (c)]

(d)(1) Except as provided in paragraph (2) of this subsection, the Administrator shall not approve the enrollment of any eligible veteran, not already enrolled, in any course for any period during which the Administrator finds that more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or by the Veterans' Administration under this title. The Administrator may waive the requirements of this subsection, in whole or in part, if the Administrator determines, pursuant to regulations which the Administrator shall prescribe, it to be in the interest of the eligible veteran and the Federal Government. The provisions of this subsection shall not apply to any course offered by an educational institution if the total number of veterans and persons receiving assistance under this chapter or chapter 30, 31, 32, 35, or 36 of this title who are enrolled in such institution equals 35 percent or less, or such other per centum as the Administrator prescribes in regulations, of the total student enrollment at such institution (computed separately for the main campus and any branch or extension of such institution), except that the Administrator may apply the provisions of this subsection with respect to any course in which the Administrator has reason to believe that the enrollment of such veterans and persons may be in excess of 85 percent of the total student enrollment in such course.

[*See main edition for text of* (2)]

(As amended Pub. L. 98-525, title VII, § 703(b), Oct. 19, 1984, 98 Stat. 2564.)

AMENDMENTS

1984—Subsec. (d)(1). Pub. L. 98-525 inserted in third sentence reference to chapter 30 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1641, 1682A, 1691 of this title; title 10 section 2136.

§ 1674. Discontinuance for unsatisfactory conduct or progress

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1641 of this title; title 10 section 2136.

§ 1676. Education outside the United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1641 of this title; title 10 section 2136.

SUBCHAPTER IV—PAYMENTS TO ELIGIBLE VETERANS; VETERAN-STUDENT SERVICES

§ 1682. Computation of educational assistance allowances

(a)(1) Except as provided in subsection (b), (c), or (g) of this section, or section 1787 of this title, while pursuing a program of education under this chapter of half-time or more, each eligible veteran shall be paid the monthly educational assistance allowance set forth in column II, III, IV, or V (whichever is applicable as determined by the veteran's dependency status) opposite the applicable type of program as shown in column I:

Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
Institutional training:				The amount in column IV, plus the following for each dependent in excess of two:
Full-time	$376	$448	$510	$32
Three-quarter time.	283	336	383	24
Half-time	188	224	255	17
Cooperative.	304	355	404	23

[*See main edition for text of* (2)]

(b) The educational assistance allowance of an individual pursuing a program of education—

(1) while on active duty, or

(2) on less than a half-time basis,

shall be computed at the rate of (A) the established charges for tuition and fees which the institution requires similarly circumstanced nonveterans enrolled in the same program to pay, or (B) $376 per month for a full-time course, whichever is the lesser. An individual's entitlement shall be charged for institutional courses on the basis of the applicable monthly training time rate as determined under section 1788 of this title.

(c)(1) An eligible veteran who is enrolled in an educational institution for a "farm cooperative" program consisting of institutional agricultural courses prescheduled to fall within 44 weeks of any period of 12 consecutive months and who pursues such program on—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) a half-time basis (a minimum of 5 clock hours per week),

shall be eligible to receive an educational assistance allowance at the appropriate rate provided in the table in paragraph (2) of this subsection, if such eligible veteran is concurrently engaged in agricultural employment which is relevant to such institutional agricultural courses as determined under standards prescribed by the Administrator. In computing the foregoing clock hour requirements there shall be included the time involved in field trips and individual and group instruction sponsored and conducted by the educational institution through a duly authorized instructor of such institution in which the veteran is enrolled.

(2) The monthly educational assistance allowance of an eligible veteran pursuing a farm cooperative program under this chapter shall be paid as set forth in column II, III, IV, or V (whichever is applicable as determined by the veteran's dependency status) opposite the basis shown in column I:

Column I	Column II	Column III	Column IV	Column V
Basis	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Full-time	$304	$355	$404	$23
Three-quarter time.	228	266	303	18
Half-time	152	178	202	12

[*See main edition for text of* (*d*) *to* (*g*)]

(As amended Pub. L. 98-160, title VII, § 702(11), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 98-543, title II, § 202(1)-(3), Oct. 24, 1984, 98 Stat. 2741.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-543, § 202(1), increased the monthly educational assistance allowance for eligible veterans in column II from $342, $257, $171, and $276 to $376, $283, $188 and $304; in column III from $407, $305, $204 and $323 to $448, $336, $224 and $355; in column IV from $464, $348, $232, and $367 to $510, $383, $255, and $404; in column V from $29, $22, $15 and $21 to $32, $24, $17, and $23, respectively.

Subsec. (b). Pub. L. 98-543, § 202(2), substituted "$376" for "$342".

Subsec. (c)(2). Pub. L. 98-543, § 202(3), increased the monthly educational assistance allowance for eligible veterans pursuing a farm cooperative program in column II from $276, $207, and $138 to $304, $228 and $152; in column III from $323, $242 and $162 to $355, $266 and $178; in column IV from $367, $275 and $184 to $404, $303 and $202; in column V from $21, $16 and $11 to $23, $18 and $12, respectively.

1983—Subsec. (c)(1)(C). Pub. L. 98-160 inserted a comma after "hours per week)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-543 effective Oct. 1, 1984, see section 205 of Pub. L. 98-543, set out as a note under section 1508 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1682A, 1691, 1692, 1732, 1780 of this title; title 10 section 2136.

§ 1683. Approval of courses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1641, 1770 of this title; title 10 section 2136.

SUBCHAPTER V—SPECIAL ASSISTANCE FOR THE EDUCATIONALLY DISADVANTAGED

§ 1692. Special supplementary assistance

[*See main edition for text of* (*a*)]

(b) The Administrator shall pay to an eligible veteran receiving tutorial assistance pursuant to subsection (a) of this section, in addition to the educational assistance allowance provided in section 1682 of this title, the cost of such tutorial assistance in an amount not to exceed $84 per month, for a maximum of twelve months, or until a maximum of $1,008 is utilized, upon certification by the educational institution that—

[*See main edition for text of* (*1*) *to* (*3*)]

(As amended Pub. L. 98-543, title II, § 202(4), Oct. 24, 1984, 98 Stat. 2742.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-543 substituted "$84" and "$1,008" for "$76" and "$911", respectively, in the provisions preceding par. (1).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-543 effective Oct. 1, 1984, see section 205 of Pub. L. 98-543, set out as a note under section 1508 of this title.

CHAPTER 35—SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 104, 111, 618, 1433, 1673, 1682A, 1770, 1771, 1772, 1773, 1774, 1780, 1781, 1782, 1783, 1784, 1785, 1787, 1788, 1790, 1792, 1793, 1794, 1795, 1796, 2013, 3013 of this title; title 5 section 8525; title 20 sections 1078, 1039.

SUBCHAPTER I—DEFINITIONS

§ 1701. Definitions

(a) For the purposes of this chapter and chapter 36 of this title—

(1) The term "eligible person" means—

(A) a child of a person who—

[*See main edition for text of* (*i*) *and* (*ii*)]

(iii) at the time of application for benefits under this chapter is a member of the Armed Forces serving on active duty listed, pursuant to section 556 of title 37 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than ninety days: (A) missing in action, (B) captured in line of duty by a hostile force, or (C) forcibly detained or interned in line of duty by a foreign government or power.

[*See main edition for text of* (*B*)]

(C) the spouse of any member of the Armed Forces serving on active duty who, at the time of application for benefits under this chapter is listed, pursuant to section 556 of title 37 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than ninety days: (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power, or

[*See main edition for text of* (*D*)]

arising out of active military, naval, or air service after the beginning of the Spanish-American War, but only if such service did not terminate under dishonorable conditions. The standards and criteria for determining whether or not a disability arising out of such service is service connected shall be those applicable under chapter 11 of this title.

[*See main edition for text of* (*2*) *to* (*8*)]

(9) The term "training establishment" means any establishment providing apprentice or other training on the job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established pursuant to the Act of August 16, 1937, popularly known as the "National Apprenticeship Act" (29 U.S.C. 50 et seq.), or any agency of the Federal Government authorized to supervise such training.

[*See main edition for text of* (*10*) *and* (*11*); (*b*) *to* (*d*)]

(As amended Pub. L. 98-160, title VII, § 702(12), Nov. 21, 1983, 97 Stat. 1009.)

REFERENCES IN TEXT

The National Apprenticeship Act, referred to in subsec. (a)(9), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, as amended which is classified generally to chapter 4C (§ 50 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 50 of Title 29 and Tables.

AMENDMENTS

1983—Subsec. (a)(1)(A)(iii), (C). Pub. L. 98-160, § 702(12)(A), struck out ", United States Code," after "title 37" and inserted a comma after "regulations issued thereunder".

Subsec. (a)(9). Pub. L. 98-160, § 702(12)(B), substituted "the Act of August 16, 1937, popularly known as the 'National Apprenticeship Act' (29 U.S.C. 50 et seq.)" for "chapter 4C of title 29".

SUBCHAPTER II—ELIGIBILITY AND ENTITLEMENT

§ 1712. Periods of eligibility

[*See main edition for text of* (*a*)]

(b) [*See main edition for text of* (*1*)]

(2) Notwithstanding the provisions of paragraph (1) of this subsection, in the case of any eligible person (as defined in section 1701(a)(1)(B), (C), or (D) of this title) who was prevented from initiating or completing such person's chosen program of education within such period because of a physical or mental disability which was not the result of such person's own willful misconduct, such person shall, upon application made within one year after (A) the last date of the delimiting period otherwise applicable under this section, (B) the termination of the period of mental or physical disability, or (C) October 1, 1980, whichever is the latest, be granted an extension of the applicable delimiting period for such length of time as the Administrator determines, from the evidence, that such person was so prevented from initiating or completing such program of education. When an extension of the applicable delimiting period is granted under the exception in the preceding sentence, the delimiting period will again begin running on the first day following such eligible person's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations which the Administrator shall prescribe, for such eligible person to initiate or resume pursuit of a program of education with educational assistance under this chapter.

[*See main edition for text of* (*c*) *to* (*g*)]

(As amended Pub. L. 98-160, title VII, § 702(13), Nov. 21, 1983, 97 Stat. 1009.)

AMENDMENTS

1983—Subsec. (b)(2)(C). Pub. L. 98-160 substituted "October 1, 1980" for "the effective date of the Veterans' Rehabilitation and Education Amendments of 1980".

SUBCHAPTER IV—PAYMENTS TO ELIGIBLE PERSONS

§ 1732. Computation of educational assistance allowance

[*See main edition for text of* (*a*)]

(b) The educational assistance allowance to be paid on behalf of an eligible person who is pursuing a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business or industrial establishment being strictly supplemental to the institutional portion, shall be computed at the rate of $304 per month.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended Pub. L. 98-543, title II, § 203(1), Oct. 24, 1984, 98 Stat. 2742.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-304 substituted "$304" for "$276".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-543 effective Oct. 1, 1984, see section 205 of Pub. L. 98-543, set out as a note under section 1508 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1765, 1780 of this title.

§ 1733. Special assistance for the educationally disadvantaged

(a) Any eligible spouse or surviving spouse shall, without charge to any entitlement such spouse may have under section 1711 of this title, be entitled to the benefits provided an eligible veteran (with no dependents) under section 1691 (if pursued in a State) of this title.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-223, title II, § 203(b), Mar. 2, 1984, 98 Stat. 41.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-223 inserted "(with no dependents)" after "an eligible veteran" and struck out "and be paid an educational assistance allowance under the provisions of section 1732(a) of this title".

SUBCHAPTER V—SPECIAL RESTORATIVE TRAINING

§ 1742. Special training allowance

(a) While the eligible person is enrolled in and pursuing a full-time course of special restorative training, the parent or guardian shall be entitled to receive on behalf of such person a special training allowance computed at the basic rate of $376 per month. If the charges for tuition and fees applicable to any such course are more than $119 per calendar month, the basic monthly allowance may be increased by the amount that such charges exceed $119 a month, upon election by the parent or guardian of the eligible person to have such person's period of entitlement reduced by one day for each $12.58 that the special training allowance paid exceeds the basic monthly allowance.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98-543, title II, § 203(2), Oct. 24, 1984, 98 Stat. 2742.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-543 substituted "$376" for "$342", "$119" for "$108" in two places, and "$12.58" for "$11.44".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-543 effective Oct. 1, 1984, see section 205 of Pub. L. 98-543, set out as a note under section 1508 of this title.

CHAPTER 36—ADMINISTRATION OF EDUCATIONAL BENEFITS

SUBCHAPTER I—STATE APPROVING AGENCIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1434, 1683, 1735 of this title; title 10 section 2136.

§ 1777. Approval of training on the job

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1641, 1772, 1787 of this title.

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1434 of this title; title 10 section 2136.

§ 1780. Payment of educational assistance or subsistence allowances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1508, 1641, 1784, 1798 of this title; title 10 section 2136.

§ 1781. Limitations on educational assistance

(a) No educational assistance allowance granted under chapter 30, 34, 35, or 36 of this title or 106 or 107 of title 10, or subsistence allowance granted under chapter 31 of this title shall be paid to any eligible person (1) who is on active duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service; or (2) who is attending a course of education or training paid for under chapter 41 of title 5 and whose full salary is being paid to such person while so training.

(b) No person may receive benefits concurrently under two or more of the provisions of law listed below for the pursuit of the same program of education:

(1) Chapters 30, 31, 32, 34, 35, and 36 of this title.

(2) Chapter 107 of title 10.

(3) Section 903 of the Department of Defense Authorization Act, 1981 (Public Law 96-342, 10 U.S.C. 2141 note).

(4) The Hostage Relief Act of 1980 (Public Law 96-449, 5 U.S.C. 5561 note).

(As amended Pub. L. 98-223, title II, § 203(c)(1), Mar. 2, 1984, 98 Stat. 41; Pub. L. 98-525, title VII, § 703(c), Oct. 19, 1984, 98 Stat. 2564.)

REFERENCES IN TEXT

Section 903 of the Department of Defense Authorization Act, 1981, referred to in subsec. (b)(3), is section 903 of Pub. L. 96-342, title IX, Sept. 8, 1980, 94 Stat. 1115, which is set out as a note under section 2141 of Title 10, Armed Forces.

The Hostage Relief Act of 1980, referred to in subsec. (b)(4), is Pub. L. 96-449, Oct. 14, 1980, 94 Stat. 1967, which is set out as a note under section 5561 of Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-525, § 703(c)(1)(A)-(C), inserted initial reference to chapter 30 of this title, inserted references to chapters 106 and 107 of title 10, and deleted the comma following "chapter 31".

Pub. L. 98-223, § 203(c)(1)(A), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 98-525, § 703(c)(2), inserted reference to chapter 30 of this title in par. (1).

Pub. L. 98-223, § 203(c)(1)(B), added subsec. (b).

§ 1786. Correspondence courses

(a) [*See main edition for text of* (*1*)]

(2) The period of entitlement of any veteran or spouse or surviving spouse who is pursuing any program of education exclusively by correspondence shall be charged with one month for each $376 which is paid to the veteran or spouse or surviving spouse as an educational assistance allowance for such course.

[*See main edition for text of* (*3*); (*b*) *and* (*c*)]

(As amended Pub. L. 98-543, title II, § 204(1), Oct. 24, 1984, 98 Stat. 2742.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-543 substituted "$376" for "$342".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-543 effective Oct. 1, 1984, see section 205 of Pub. L. 98-543, set out as a note under section 1508 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1684, 1734, 1780 of this title; title 10 section 2136.

§ 1787. Apprenticeship or other on-job training

[*See main edition for text of* (*a*)]

(b)(1) The monthly training assistance allowance of an eligible veteran pursuing a program described under subsection (a) shall be as follows:

Column I	Column II	Column III	Column IV	Column V
Periods of training	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
First 6 months.	$274	$307	$336	$14
Second 6 months.	205	239	267	14
Third 6 months.	136	171	198	14
Fourth and any succeeding 6-month periods.	68	101	131	14

[*See main edition for text of* (2) *and* (*3*); (c)]

(As amended Pub. L. 98-543, title II, § 204(2), Oct. 24, 1984, 98 Stat. 2742.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-543 increased the monthly training assistance allowance of eligible veterans in column II from $249, $186, $124 and $62 to $274, $205, $136, and $68; in column III from $279, $217, $155, and $92 to $307, $239, $171, and $101; in column IV from $305, $243, $180, and $119 to $336, $267, $198 and $131; in column V from $13, $13, $13 and $13 to $14, $14, $14 and $14, respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-543 effective Oct. 1, 1984, see section 205 of Pub. L. 98-543, set out as a note under section 1508 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1516, 1641, 1682, 1684, 1734, 1772, 1780, 2003A, 2009 of this title; title 10 section 2136; title 29 section 1721.

§ 1792. Advisory committee

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1434 of this title; title 10 section 2136.

§ 1795. Limitation on period of assistance under two or more programs

(a) The aggregate period for which any person may receive assistance under two or more of the provisions of law listed below may not exceed 48 months (or the part-time equivalent thereof):

(1) Parts VII or VIII, Veterans Regulation numbered 1(a), as amended.

(2) Title II of the Veterans' Readjustment Assistance Act of 1952.

(3) The War Orphans' Educational Assistance Act of 1956.

(4) Chapters 30, 32, 34, 35, and 36 of this title, and the former chapter 33.

(5) Chapters 106 and 107 of title 10.

(6) Section 903 of the Department of Defense Authorization Act, 1981 (Public Law 96-342, 10 U.S.C. 2141 note).

(7) The Hostage Relief Act of 1980 (Public Law 96-449, 5 U.S.C. 5561 note).

(b) No person may receive assistance under chapter 31 of this title in combination with assistance under any of the provisions of law cited in subsection (a) of this section in excess of 48 months (or the part-time equivalent thereof) unless the Administrator determines that additional months of benefits under chapter 31 of this title are necessary to accomplish the purposes of a rehabilitation program (as defined in section 1501(5) of this title) in the individual case.

(As amended Pub. L. 98-223, title II, § 203(c)(2), Mar. 2, 1984, 98 Stat. 41; Pub. L. 98-525, title VII, § 703(d), Oct. 19, 1984, 98 Stat. 2564.)

REFERENCES IN TEXT

Parts VII and VIII, Veterans Regulation numbered 1(a), referred to in subsec. (a)(1), are Parts VII and VIII as added by acts Mar. 24, 1943, ch. 22, § 2, 57 Stat. 43 and June 22, 1944, ch. 268, title II, § 400(b), 58 Stat. 287 to Veterans Regulation numbered 1(a) promulgated by Ex. Ord. No. 6156, June 6, 1933, which had been classified as parts VII and VIII of chapter 12A of former Title 38, Pensions, Bonuses, and Veterans'

Relief, and which were repealed by Pub. L. 85-857, § 14(67), Sept. 2, 1958, 72 Stat. 1272.

The Veterans' Readjustment Assistance Act of 1952, referred to in subsec. (a)(2), is act July 16, 1952, ch. 875, 66 Stat. 663, as amended. Title II of the Veterans' Readjustment Assistance Act of 1952 was classified generally to subchapter II (§ 911 et seq.) of chapter 14 of former Title 38, Pensions, Bonuses, and Veterans' Relief, which was repealed and the provisions thereof reenacted as chapter 33 (§ 1601 et seq.) of this title by Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1105. Chapter 33 of this title was repealed by Pub. L. 89-358, § 4(a), Mar. 3, 1966, 80 Stat. 23. See chapter 32 (§ 1601 et seq.) of this title.

The War Orphans' Educational Assistance Act of 1956, referred to in subsec. (a)(3), is act June 29, 1956, ch. 476, 70 Stat. 411, as amended, which was classified generally to chapter 15 (§ 1031 et seq.) of former Title 38, Pensions, Bonuses, and Veterans' Relief, which was repealed and the provisions thereof reenacted as chapter 35 (§ 1701 et seq.) of this title by Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1105.

Former chapter 33, referred to in subsec. (a)(4), is former chapter 33 (§ 1601 et seq.) of this title enacted by Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1174, which was repealed by Pub. L. 89-358, § 4(a), Mar. 3, 1966, 80 Stat. 23.

Section 903 of the Department of Defense Authorization Act, 1981, referred to in subsec. (a)(6), is section 903 of Pub. L. 96-342, title IX, Sept. 8, 1980, 94 Stat. 1115, which is set out as a note under section 2141 of Title 10, Armed Forces.

The Hostage Relief Act of 1980, referred to in subsec. (a)(7), is Pub. L. 96-449, Oct. 14, 1980, 94 Stat. 1967, which is set out as a note under section 5561 of Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-525 inserted reference in cl. (4) to chapter 30 of this title, and in cl. (5) to chapter 106 of title 10.

Pub. L. 98-223, § 203(c)(2)(A), substituted "48 months" for "forty-eight months", capitalized the first word in cls. (1) to (4), and added cls. (5) to (7).

Subsec. (b). Pub. L. 98-223, § 203(c)(2)(B), substituted "subsection (a)" for "clauses (1), (2), (3), and (4)" and "48" for "forty-eight".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1413, 1631 of this title; title 10 section 2131.

§ 1796. Limitation on certain advertising, sales, and enrollment practices

[*See main edition for text of* (*a*) *to* (*c*)]

[(d) Repealed. Pub. L. 98-543, title IV, § 401, Oct. 24, 1984, 98 Stat. 2749.]

(As amended Pub. L. 98-543, title IV, § 401, Oct. 24, 1984, 98 Stat. 2749.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-543 struck out subsec. (d) which provided that not later than 90 days after the end of each fiscal year the Administrator would be required to report to Congress regarding the disposition of cases under this section.

SUBCHAPTER III—EDUCATION LOANS TO ELIGIBLE VETERANS AND ELIGIBLE PERSONS

§ 1798. Eligibility for loans; amount and conditions of loans; interest rate on loans

[*See main edition for text of* (*a*)]

(b) [*See main edition for text of* (*1*) *and* (*2*)]

(3) The aggregate of the amounts any veteran or person may borrow under this subchapter may not exceed $376 multiplied by the number of months such veteran or person is entitled to receive educational assistance under section 1661 or subchapter II of chapter 35, respectively, of this title, but not in excess of $2,500 in any one regular academic year.

[*See main edition for text of* (*c*) *to* (*g*)]

(As amended Pub. L. 98-543, title II, § 204(3), Oct. 24, 1984, 98 Stat. 2742.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98-543 substituted "$376" for "$342".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-543 effective Oct. 1, 1984, see section 205 of Pub. L. 98-543, set out as a note under section 1508 of this title.

CHAPTER 37—HOUSING AND SMALL BUSINESS LOANS

SUBCHAPTER III—ADMINISTRATIVE PROVISIONS

Sec.	
1830.	Use of attorneys in court.

AMENDMENTS

1984—Pub. L. 98-369, div. B, title V, § 2512(b)(2), July 18, 1984, 98 Stat. 1120, added item 1830.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 109, 211, 521, 804, 3102, 3103A, 3301 of this title; title 12 sections 1464, 1709, 1709-1a, 1715y, 1717, 1721, 1731a, 1735b, 1735g, 2803.

SUBCHAPTER I—GENERAL

§ 1802. Basic entitlement

[*See main edition for text of* (*a*)]

(b) In computing the aggregate amount of guaranty or insurance housing loan entitlement available to a veteran under this chapter, the Administrator may exclude the amount of guaranty or insurance housing loan entitlement used for any guaranteed, insured, or direct loan, if—

[*See main edition for text of* (*1*)]

(2) a veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of the veteran-transferee's entitlement, to the extent that the entitlement of the veteran-transferor had been used originally, in place of the veteran-transferor's for the guaranteed, insured, or direct loan, and the veteran-transferee otherwise meets the requirements of this chapter.

The Administrator may, in any case involving circumstances the Administrator deems appropriate, waive one or more of the conditions prescribed in clause (1) of the preceding sentence.

[*See main edition for text of* (*c*) *to* (*g*)]

(As amended Pub. L. 98-223, title II, § 204, Mar. 2, 1984, 98 Stat. 42.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-223 substituted "a" for "an immediate".

§ 1803. Basic provisions relating to loan guaranty

[*See main edition for text of* (a) *and* (b)]

(c) [*See main edition for text of* (*1*) *and* (*2*)]

(3) This section shall not be construed to prohibit a veteran from paying to a lender any reasonable discount required by such lender, when the proceeds from the loan are to be used—

(A) to refinance indebtedness pursuant to clause (5), (8), or (9)(B)(i) of section 1810(a) of this title or section 1819(a)(1)(F) of this title;

[*See main edition for text of* (*B*) *to* (*D*)]

(E) to refinance indebtedness and purchase a manufactured-home lot pursuant to section 1810(a)(9)(B)(ii) or 1819(a)(1)(G) of this title, but only with respect to that portion of the loan used to refinance such indebtedness.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-223, title II, § 205(c), Mar. 2, 1984, 98 Stat. 43.)

AMENDMENTS

1984—Subsec. (c)(3)(A). Pub. L. 98-223, § 205(c)(1), substituted ", (8), or (9)(B)(i)" for "or (8)".

Subsec. (c)(3)(E). Pub. L. 98-223, § 205(c)(2), inserted "1810(a)(9)(B)(ii) or" after "section".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1810, 1816, 1819 of this title.

SUBCHAPTER II—LOANS

§ 1810. Purchase or construction of homes

(a) Any loan to a veteran, if made pursuant to the provisions of this chapter, is automatically guaranteed if such loan is for one or more of the following purposes:

[*See main edition for text of* (*1*) *to* (*8*)]

(9)(A)(i) To purchase a manufactured home to be permanently affixed to a lot that is owned by the veteran.

(ii) To purchase a manufactured home and a lot to which the home will be permanently affixed.

(B)(i) To refinance, in accordance with the terms and conditions applicable under the provisions of subsection (e) of this section (other than paragraph (1)(E) of such subsection) to the guaranty of a loan for the purpose specified in clause (8) of this subsection, an existing loan guaranteed, insured, or made under this chapter that is secured by a manufactured home permanently affixed to a lot that is owned by the veteran.

(ii) To refinance, in accordance with section 1819(a)(5) of this title, an existing loan that was made for the purchase of, and that is secured by, a manufactured home that is permanently affixed to a lot and to purchase the lot to which the manufactured home is affixed.

If there is an indebtedness which is secured by a lien against land owned by the veteran, the proceeds of a loan guaranteed under this section or made under section 1811 of this title for construction of a dwelling or farm residence on such land may be used also to liquidate such lien, but only if the reasonable value of the land is equal to or greater than the amount of the lien.

[*See main edition for text of* (b) *to* (e)]

(f)(1) For a loan to be guaranteed for the purpose specified in subclause (A)(ii) or (B)(ii) of subsection (a)(9) of this section, the purchase of (or the refinancing of a loan secured by) the manufactured home and the lot for that home shall be considered as one loan and must comply with such criteria as may be prescribed by the Administrator in regulations.

(2) A loan may not be guaranteed for the purposes of subsection (a)(9) of this section unless the manufactured home purchased, upon being permanently affixed to the lot, is considered to be real property under the laws of the State where the lot is located.

(As amended Pub. L. 98-223, title II, § 205(a), Mar. 2, 1984, 98 Stat. 42.)

AMENDMENTS

1984—Subsec. (a)(9). Pub. L. 98-223, § 205(a)(1), added par. (9).

Subsec. (f). Pub. L. 98-223, § 205(a)(2), added subsec. (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1801, 1803, 1811, 1816, 1817, 1819 of this title.

§ 1816. Procedure on default

(a)(1) In the event of default in the payment of any loan guaranteed under this chapter, the holder of the obligation shall notify the Administrator of such default. Upon receipt of such notice, the Administrator may, subject to subsection (c) of this section, pay to such holder the guaranty not in excess of the pro rata portion of the amount originally guaranteed. If the Administrator makes such a payment, the Administrator shall be subrogated to the rights of the holder of the obligation to the extent of the amount paid on the guaranty.

(2) Before suit or foreclosure the holder of the obligation shall notify the Administrator of the default, and within thirty days thereafter the Administrator may, at the Administrator's option, pay the holder of the obligation the unpaid balance of the obligation plus accrued interest and receive an assignment of the loan and security. Nothing in this section shall preclude any forebearance for the benefit of the veteran as may be agreed upon by the parties to the loan and approved by the Administrator.

(3) The Administrator may establish the date, not later than the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease.

[*See main edition for text of* (*b*)]

(c)(1) For purposes of this subsection—

(A) The term "defaulted loan" means a loan that is guaranteed under this chapter, that was made for a purpose described in section 1810(a) of this title, and that is in default.

(B) The term "liquidation sale" means a judicial sale or other disposition of real property to liquidate a defaulted loan that is secured by such property.

(C) The term "net value", with respect to real property, means the amount equal to (i) the fair market value of the property, minus (ii) the total of the amounts which the Administrator estimates the Administrator would incur (if the Administrator were to acquire and dispose of the property) for property taxes, assessments, liens, property maintenance, property improvement, administration, resale, and other costs resulting from the acquisition and disposition of the property.

(D) The term "total indebtedness", with respect to a defaulted loan, means the amount equal to the total of (i) the unpaid principal of the loan, (ii) the interest on the loan as of the date of the liquidation sale of the property securing the loan (or such earlier date following the expiration of a reasonable period of time for such sale to occur as the Administrator may specify pursuant to regulations prescribed by the Administrator to implement this subsection), and (iii) such reasonably necessary and proper charges (as specified in the loan instrument and permitted by such regulations) associated with liquidation of the loan, including advances for taxes, insurance, and maintenance or repair of the real property securing the loan.

(2)(A) Except as provided in subparagraph (B) of this paragraph, this subsection applies to any case in which the holder of a defaulted loan undertakes to liquidate the loan by means of a liquidation sale.

(B) This subsection does not apply to a case in which the Administrator proceeds under subsection (a)(2) of this section.

(3)(A) Before carrying out a liquidation sale of real property securing a defaulted loan, the holder of the loan shall notify the Administrator of the proposed sale. Such notice shall be provided in accordance with regulations prescribed by the Administrator to implement this subsection.

(B) After receiving a notice described in subparagraph (A) of this paragraph, the Administrator shall determine the net value of the property securing the loan and the amount of the total indebtedness under the loan and shall notify the holder of the loan of the determination of such net value.

(4) A case referred to in paragraphs (5), (6), and (7) of this subsection as being described in this paragraph is a case in which the net value of the property securing a defaulted loan exceeds the amount of the total indebtedness under the loan minus the amount guaranteed under this chapter.

(5) In a case described in paragraph (4) of this subsection, if the holder of the defaulted loan acquires the property securing the loan at a liquidation sale for an amount that does not exceed the lesser of the net value of the property or the total indebtedness under the loan—

(A) the holder shall have the option to convey the property to the United States in return for payment by the Administrator of an amount equal to the lesser of such net value or total indebtedness; and

(B) the liability of the United States under the loan guaranty under this chapter shall be limited to the amount of such total indebtedness minus the net value of the property.

(6) In a case described in paragraph (4) of this subsection, if the holder of the defaulted loan either does not acquire the property securing the loan at the liquidation sale or acquires the property at such sale for an amount that exceeds the lesser of the net value of the property or the total indebtedness under the loan—

(A) the Administrator may not accept conveyance of the property except as provided in paragraph (7) of this subsection; and

(B) the liability of the United States under the loan guaranty under this chapter shall be limited to the amount equal to (i) the amount of such total indebtedness, minus (ii) the amount realized by the holder incident to the sale or the net value of the property, whichever is greater.

(7) In a case described in paragraph (4) of this subsection, if the holder of the defaulted loan acquires the property securing the loan at the liquidation sale for an amount that exceeds the lesser of the total indebtedness under the loan or the net value and that was the minimum amount for which, under applicable State law, the property was permitted to be sold at the liquidation sale—

(A) the Administrator may accept conveyance of the property to the United States for a price not exceeding the lesser of the amount for which the holder acquired the property or the total indebtedness under the loan; and

(B) the liability of the United States under the loan guaranty under this chapter is as provided in paragraph (6)(B) of this subsection.

(8) If the net value of the property securing a defaulted loan is not greater than the amount of the total indebtedness under the loan minus the amount guaranteed under this chapter—

(A) the Administrator may not accept conveyance of the property from the holder of the loan; and

(B) the liability of the United States under the loan guaranty shall be limited to the amount of the total indebtedness under the loan minus the amount realized by the holder of the loan incident to the sale at a liquidation sale of the property.

(9) In no event may the liability of the United States under a guaranteed loan exceed the amount guaranteed with respect to that loan under section 1803(b) of this title. All determinations under this subsection of net value and total indebtedness shall be made by the Administrator.

(d)(1) Of the number of purchases made during any fiscal year of real property acquired by the Administrator as the result of a default on a loan guaranteed under this chapter for a purpose described in section 1810(a) of this title, not more than 75 percent, nor less than 60 percent, of such purchases may be financed by a loan made by the Administrator. The maximum percentage stated in the preceding sentence may be increased to 80 percent for any fiscal year if the Administrator determines that such an increase is necessary in order to maintain the effective functioning of the loan guaranty program.

(2) In carrying out paragraph (1) of this subsection, the Administrator, to the maximum extent consistent with that paragraph and with maintaining the effective functioning of the loan guaranty program under this chapter, shall minimize the number of loans made by the Administrator to finance purchases of real property from the Administrator described in that paragraph.

(3) Notes securing such loans may be sold with recourse only to the extent that the Administrator determines that selling such notes with recourse is necessary in order to maintain the effective functioning of the loan guaranty program under this chapter.

(As amended Pub. L. 98-369, div. B, title V, § 2512(a), July 18, 1984, 98 Stat. 1117.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 2512(a)(1)(A)-(C), designated existing first sentence as par. (1), substituted "Administrator of such default. Upon receipt of such notice, the Administrator may, subject to subsection (c) of this section," for "Administrator who shall thereupon", and substituted "guaranteed. If the Administrator makes a payment, the Administrator shall" for "guaranteed, and shall".

Subsec. (a)(2). Pub. L. 98-369, § 2512(a)(1)(A), designated existing second and third sentences as par. (2).

Subsec. (a)(3). Pub. L. 98-369, § 2512(a)(1)(A), designated existing fourth sentence as par. (3).

Subsecs. (c), (d). Pub. L. 98-369, § 2512(a)(2), added subsecs. (c) and (d).

EFFECTIVE AND TERMINATION DATE OF 1984 AMENDMENT

Section 2512(c)(1), (2) of Pub. L. 98-369 provided that:

"(1) The amendments made by subsection (a) [amending subsec. (a) and adding subsecs. (c) and (d)] shall take effect on October 1, 1984.

"(2) Subsections (c) and (d) of section 1816 of title 38, United States Code (as added by subsection (a) of this section), shall cease to have effect on October 1, 1987."

§ 1819. Loans to purchase manufactured homes and lots

(a) [*See main edition for text of* (*1*) *to* (*4*)]

(5)(A) For a loan to be guaranteed for the purpose specified in paragraph (1)(G) of this subsection or section 1810(a)(9)(B)(ii) of this title—

[*See main edition for text of* (*i*) *and* (*ii*)]

(B) When a loan is made to a veteran for the purpose specified in paragraph (1)(G) of this subsection or section 1810(a)(9)(B)(ii) of this title, and the loan being refinanced was guaranteed, insured, or made under this section, the portion of the loan made for the purpose of refinancing such loan may be guaranteed by the Veterans' Administration under this chapter without regard to the amount of outstanding guaranty entitlement available for use by such veteran, and the amount of such veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for such portion of such loan. For the purposes of section 1802(b) of this title, such portion of such loan shall be deemed to have been obtained with the guaranty entitlement used to obtain the loan being refinanced.

[*See main edition for text of* (*b*) *to* (*m*)]

(As amended Pub. L. 98-223, title II, § 205(b), Mar. 2, 1984, 98 Stat. 43.)

AMENDMENTS

1984—Subsec. (a)(5). Pub. L. 98-223 inserted "or section 1810(a)(9)(B)(ii) of this title" after "paragraph (1)(G) of this subsection" in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1801, 1803, 1810, 1811 of this title.

SUBCHAPTER III—ADMINISTRATIVE PROVISIONS

§ 1820. Powers of Administrator

(a) Notwithstanding the provisions of any other law, with respect to matters arising by reason of this chapter, the Administrator may—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) complete, administer, operate, obtain and pay for insurance on, and maintain, renovate, repair, modernize, lease, or otherwise deal with any property acquired or held pursuant to this chapter. The acquisition of any such property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction of, on, or over such property (including power to tax) or impair the rights under the State or local law of any persons on such property. Without regard to section 3302(b) of title 31 or any other provision of law not expressly in limitation of this paragraph, the Administrator may permit brokers utilized by the Administrator in connection with such properties to deduct from rental collections amounts covering authorized fees, costs, and expenses incurred in connection with the management, repair, sale, or lease of any such properties and remit the net balances to the Administrator.

(b) The powers granted by this section may be exercised by the Administrator without regard to any other provision of law not enacted expressly in limitation of this section, which otherwise would govern the expenditure of public funds; however, section 3709 of the Revised Statutes (41 U.S.C. 5) shall apply to any contract for services or supplies on account of any property acquired pursuant to this section if the amount of such contract exceeds $1,000.

[*See main edition for text of* (*c*) *to* (*f*)]

(As amended Pub. L. 98-160, title VII, § 702(14), Nov. 21, 1983, 97 Stat. 1009.)

AMENDMENTS

1983—Subsec. (a)(6). Pub. L. 98-160 struck out the comma after "title 31".

Subsec. (b). Pub. L. 98-160 substituted "section 3709 of the Revised Statutes (41 U.S.C. 5)" for "section 5 of title 41".

§ 1824. Loan guaranty revolving fund

[*See main edition for text of (a) and (b)*]

(c) There shall be deposited in the Fund (1) by transfer from current and future appropriations for readjustment benefits such amounts as may be necessary to supplement the Fund in order to meet the requirements of the Fund, (2) amounts received by the Administrator as fees collected under section 1829 of this title, and (3) all amounts now held or hereafter received by the Administrator incident to housing loan guaranty and insurance operations under this chapter, including but not limited to all collections of principal and interest and the proceeds from the use of property held or the sale of property disposed of.

[*See main edition for text of (d)*]

(As amended Pub. L. 98-369, div. B, title V, § 2511(b), July 18, 1984, 98 Stat. 1117.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 substituted "(2) amounts received by the Administrator as fees collected under section 1829 of this title, and (3)" for "and (2)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to loans closed on or after July 18, 1984, see section 2511(c)(2) of Pub. L. 98-369, set out as a note under section 1829 of this title.

LOAN GUARANTEE PROGRAM; REPORT TO CONGRESSIONAL COMMITTEES

Section 2512(e) of Pub. L. 98-369 provided that:

"(1) Not later than December 1, 1986, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the administration and functioning of the loan guaranty program conducted by the Veterans' Administration under chapter 37 [§ 1801 et seq.] of title 38, United States Code, and the status of the Veterans' Administration Loan Guaranty Revolving Fund established under section 1824(a) of such title.

"(2) The report shall include—

"(A) a description of the actions taken by the Administrator during the period beginning on June 1, 1984, and ending on September 30, 1986, and the actions planned as of September 30, 1986 (together with a schedule for completing any actions planned), to maintain the effective functioning of that program and to ensure the solvency of the Fund, including actions with respect to the acquisition of properties following liquidation sales, the making of loans (known as 'vendee loans') to finance the sale of properties so acquired, the quality of property appraisals by the Veterans' Administration, and assessments of home-buyer credit worthiness;

"(B) the Administrator's evaluation of the effects of the amendments made by subsection (a) (relating to acquisition of properties after liquidation sales and to vendee loans), including the Administrator's evaluation of the effects of subsection (d) of section 1816 of title 38, United States Code (as added by subsection (a)(2)) (relating to vendee loans), on the operation and effective functioning of such program; and

"(C) the recommendations of the Administrator regarding any need for administrative or legislative action with respect to such program, including the Administrator's recommendations as to whether or not subsection (c)(2) [set out as a note under section 1816 of this title] (providing for the termination of provisions relating to the acquisition of properties and to vendee loans) should be amended."

§ 1829. Loan fee

(a) Except as provided in subsection (b) of this section, a fee shall be collected from each veteran obtaining a housing loan guaranteed, made, or insured under this chapter, and from each person obtaining a loan from the Administrator to finance the purchase of real property from the Administrator, and no such loan may be guaranteed, made, or insured under this chapter until the fee payable with respect to such loan has been remitted to the Administrator. The amount of the fee shall be one percent of the total loan amount. The amount of the fee may be included in the loan and paid from the proceeds thereof.

[*See main edition for text of (b)*]

(c) A fee may not be collected under this section with respect to any loan closed after September 30, 1987.

(As amended Pub. L. 98-369, div. B, title V, § 2511(a), July 18, 1984, 98 Stat. 1117.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2511(a)(1), added "and from each person obtaining a loan from the Administrator to finance the purchase of real property from the Administrator," after "under this chapter.", struck out "one-half of" before "one percent of the total loan amount", and struck out "to the veteran" after "in the loan".

Subsecs. (c), (d). Pub. L. 98-367, § 2511(a)(2), (3), redesignated subsec. (d) as (c) and, in subsec. (c) as so redesignated, substituted "September 30, 1987" for "September 30, 1985". Former subsec. (c), which related to deposit of fees collected under this section into the Treasury as miscellaneous receipts, was struck out.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2511(c) of Pub. L. 98-369 provided that:

"(1) The amendments made by subsection (a)(1) [amending subsec. (a) of this section] shall apply with respect to loans closed after the end of the 30-day period beginning on the date of the enactment of this Act [July 18, 1984].

"(2) The amendments made by subsections (a)(2) and (b) [amending subsec. (c) of this section and section 1824 of this title] shall apply with respect to loans closed on or after the date of the enactment of this Act [July 18, 1984].

"(3) The amendment made by subsection (a)(3) [amending subsec. (c) and (d) of this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1824 of this title.

§ 1830. Use of attorneys in court

(a) Within 180 days after the date of the enactment of this section, the Administrator shall take appropriate steps to authorize attorneys employed by the Veterans' Administration to exercise the right of the United States to bring suit in court to foreclose a loan made or acquired by the Administrator under this chapter and to recover possession of any property acquired by the Administrator under this chapter. With the concurrence of the Attorney General of the United States, the Administrator may acquire the services of attorneys, other than those who are employees of the Veterans' Administration, to exercise that right. The activities of attorneys in bringing suit under this section shall be subject to the direction and supervision of the Attorney General and to such terms and conditions as the Attorney General may prescribe.

(b) Nothing in this section derogates from the authority of the Attorney General under sections 516 and 519 of title 28 to direct and supervise all litigation to which the United States or an agency or officer of the United States is a party.

(Added Pub. L. 98-369, div. B, title V, § 2512(b)(1), July 18, 1984, 98 Stat. 1120.)

References in Text

The date of enactment of this section, referred to in subsec. (a), is the date of approval of Pub. L. 98-369, which was approved July 18, 1984.

Effective Date

Section 2512(c)(3) of Pub. L. 98-369 provided that: "The amendments made by subsection (b) [enacting this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

CHAPTER 39—AUTOMOBILES AND ADAPTIVE EQUIPMENT FOR CERTAIN DISABLED VETERANS AND MEMBERS OF THE ARMED FORCES

Chapter Referred to in Other Sections

This chapter is referred to in section 524 of this title.

§ 1902. Assistance for providing automobile and adaptive equipment

(a) The Administrator, under regulations which the Administrator shall prescribe, shall provide or assist in providing an automobile or other conveyance to each eligible person by paying the total purchase price of the automobile or other conveyance (including all State, local, and other taxes) or $5,000, whichever is the lesser, to the seller from whom the eligible person is purchasing under a sales agreement between the seller and the eligible person.

[See main edition for text of (b) to (d)]

(As amended Pub. L. 98-543, title III, § 305(a), Oct. 24, 1984, 98 Stat. 2748.)

Amendments

1984—Subsec. (a). Pub. L. 98-543 substituted "$5,000" for "$4,400".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-543 effective Jan. 1, 1985, see section 305(c) of Pub. L. 98-543, set out as a note under section 1903 of this title.

§ 1903. Limitations on assistance; special training courses

[See main edition for text of (a) and (b)]

(c)(1) An eligible person shall not be entitled to adaptive equipment under this chapter for more than two automobiles or other conveyances at any one time or (except as provided in paragraph (2) of this subsection) during any four-year period.

(2) In a case in which the four-year limitation in paragraph (1) of this subsection precludes an eligible person from being entitled to adaptive equipment under this chapter, if the Administrator determines that, due to circumstances beyond the control of such person, one of the automobiles or other conveyances for which adaptive equipment was provided to such person during the applicable four-year period is no longer available for the use of such person, the Administrator may provide adaptive equipment to such person for an additional automobile or other conveyance during such period. Provision of adaptive equipment under this paragraph is within the discretion of the Administrator. Any action to provide adaptive equipment under this paragraph shall be made pursuant to regulations which the Administrator shall prescribe.

[See main edition for text of (d) and (e)]

(As amended Pub. L. 98-543, title III, § 305(b), Oct. 24, 1984, 98 Stat. 2748.)

Amendments

1984—Subsec. (c). Pub. L. 98-543 designated existing provisions as par. (1), in par. (1) as so designated substituted "two automobiles or other conveyances at any one time or (except as provided in paragraph (2) of this subsection) during any four-year period" for "one automobile or other conveyance at any one time", and added par. (2).

Effective Date of 1984 Amendment

Section 305(c) of Pub. L. 98-543 provided that:

"(1) The amendments made by this section [amending sections 1902 and 1903 of this title] shall take effect on January 1, 1985.

"(2) In the case of a person who during the four-year period ending on December 31, 1984, was provided adaptive equipment under chapter 39 of title 38, United States Code, for an automobile or other conveyance and who has such automobile or other conveyance available for use on the date of the enactment of this Act [Oct. 24, 1984], the first four-year period applicable to such person under subsection (c) of section 1903 of such title (as amended by subsection (a)) shall begin on the most recent date before January 1, 1985, on which such person was provided such equipment."

CHAPTER 41—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICE FOR VETERANS

Cross References

Employment programs for veterans under Job Training Partnership Act, see section 1721 of Title 29, Labor.

§ 2002. Purpose

The Congress declares as its intent and purpose that there shall be an effective (1) job and job training counseling service program, (2) employment placement service program, and (3) job training placement service program for eligible veterans and eligible persons and that, to this end policies and regulations shall be promulgated and administered by an Assistant Secretary of Labor for Veterans' Employment, established by section 2002A of this title, through a Veterans Employment Service within the Department of Labor, so as to provide such veterans and persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era through existing programs, coordination and merger of programs and implementation of new programs.

(As amended Pub. L. 98-160, title VII, § 702(15), Nov. 21, 1983, 97 Stat. 1010.)

AMENDMENTS

1983—Pub. L. 98-160 substituted "an Assistant" for "a Assistant".

§ 2002A. Assistant Secretary of Labor for Veterans' Employment

There is established within the Department of Labor an Assistant Secretary of Labor for Veterans' Employment, appointed by the President by and with the advice and consent of the Senate, who shall be the principal advisor to the Secretary of Labor with respect to the formulation and implementation of all departmental policies and procedures to carry out (1) the purposes of this chapter, chapter 42, and chapter 43 of this title, and (2) all other Department of Labor employment, unemployment, and training programs to the extent they affect veterans. The employees of the Department of Labor administering chapter 43 of this title shall be administratively and functionally responsible to the Assistant Secretary of Labor for Veterans' Employment.

(As amended Pub. L. 98-160, title VII, § 702(15), Nov. 21, 1983, 97 Stat. 1010.)

AMENDMENTS

1983—Pub. L. 98-160 substituted "an Assistant" for "a Assistant".

CROSS REFERENCES

Administration by Assistant Secretary of employment programs for veterans under Job Training Partnership Act, see section 1721 of Title 29, Labor.

§ 2003. State and Assistant State Directors for Veterans' Employment

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 612A, 2003A of this title; title 42 section 1101.

§ 2003A. Disabled veterans' outreach program

CROSS REFERENCES

Employment programs for disabled veterans under Job Training Partnership Act, see section 1721 of Title 29, Labor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 612A, 1517, 1772, 2006, 2007 of this title; title 29 section 1721.

§ 2004. Employees of local offices

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 612A, 2003A, 2007 of this title.

CHAPTER 42—EMPLOYMENT AND TRAINING OF DISABLED AND VIETNAM ERA VETERANS

CROSS REFERENCES

Employment programs for disabled and Vietnam era veterans under Job Training Partnership Act, see section 1721 of Title 29, Labor.

§ 2011. Definitions

As used in this chapter—

(1) The term "special disabled veteran" means—

(A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans' Administration for a disability (i) rated at 30 percent or more, or (ii) rated at 10 or 20 percent in the case of a veteran who has been determined under section 1506 of this title to have a serious employment handicap; or

(B) a person who was discharged or released from active duty because of service-connected disability.

[*See main edition for text of* (2) *to* (5)]

(As amended Pub. L. 98-223, title II, § 206, Mar. 2, 1984, 98 Stat. 43.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-223 expanded the term "special disabled veteran" to include a veteran with a disability rated at 10 to 20 percent in the case of a veteran who has been determined under section 1506 of this title to have a serious employment handicap.

§ 2014. Employment within the Federal Government

(a)(1) It is the policy of the United States and the purpose of this section to promote the maximum of employment and job advancement opportunities within the Federal Government for qualified disabled veterans and veterans of the Vietnam era.

(2) For the purposes of this section, the term "agency" means a department, agency, or instrumentality in the executive branch.

(b)(1) To further the policy stated in subsection (a) of this section, veterans of the Vietnam era shall be eligible, in accordance with regulations which the Office of Personnel Management shall prescribe, for veterans readjustment appointments, and for subsequent career-conditional appointments, under the terms and conditions specified in Executive Order Numbered 11521 (March 26, 1970), except that—

(A) such an appointment may be made up to and including the level GS-9 or its equivalent;

(B) a veteran of the Vietnam era shall be eligible for such an appointment without any time limitation with respect to eligibility for such an appointment;

(C) a veteran of the Vietnam era who is entitled to disability compensation under the laws administered by the Veterans' Administration or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty shall be eligible for such an appointment without regard to the number of years of education completed by such veteran; and

(D) a veteran given an appointment under the authority of this subsection whose employment under the appointment is terminated within one year after the date of such appointment shall have the same right to appeal that termination to the Merit Systems Protection Board as a career or career-conditional employee has during the first year of employment.

(2) No veterans readjustment appointment may be made under authority of this subsection after September 30, 1986.

(c) Each agency shall include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals in such agency as required by section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)), a separate specification of plans (in accordance with regulations which the Office of Personnel Management shall prescribe in consultation with the Administrator, the Secretary of Labor, and the Secretary of Health and Human Services, consistent with the purposes, provisions, and priorities of such Act) to promote and carry out such affirmative action with respect to disabled veterans in order to achieve the purpose of this section.

(d) The Office of Personnel Management shall be responsible for the review and evaluation of the implementation of this section and the activities of each agency to carry out the purpose and provisions of this section. The Office shall periodically obtain (on at least an annual basis) information on the implementation of this section by each agency and on the activities of each agency to carry out the purpose and provisions of this section. The information obtained shall include specification of the use and extent of appointments made by each agency under subsection (b) of this section and the results of the plans required under subsection (c) of this section.

(e)(1) The Office of Personnel Management shall submit to the Congress annually a report on activities carried out under this section. Each such report shall include the following information with respect to each agency:

(A) The number of appointments made under subsection (b) of this section since the last such report and the grade levels in which such appointments were made.

(B) The number of individuals receiving appointments under such subsection whose appointments were converted to career or career-conditional appointments, or whose employment under such an appointment has terminated, since the last such report, together with a complete listing of categories of causes of appointment terminations and the number of such individuals whose employment has terminated falling into each such category.

(C) The number of such terminations since the last such report that were initiated by the agency involved and the number of such terminations since the last such report that were initiated by the individual involved.

(D) A description of the education and training programs in which individuals appointed under such subsection are participating at the time of such report.

(2) Information shown for an agency under clauses (A) through (D) of paragraph (1) of this subsection—

(A) shall be shown for all veterans; and

(B) shall be shown separately (i) for veterans of the Vietnam era who are entitled to disability compensation under the laws administered by the Veterans' Administration or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty, and (ii) for other veterans.

[*See main edition for text of (f) and (g)*]

(As amended Pub. L. 98-543, title II, § 211, Oct. 24, 1984, 98 Stat. 2743.)

References in Text

GS-9, referred to in subsec. (b)(1)(A), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

Amendments

1984—Subsec. (a). Pub. L. 98-543, § 211(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(1)(A), (D). Pub. L. 98-543, § 211(b)(1), substituted "GS-9" for "GS-7" in subpar. (A) and added subpar. (D).

Subsec. (b)(2). Pub. L. 98-543, § 211(b)(2), substituted "September 30, 1986" for "September 30, 1984".

Subsec. (c). Pub. L. 98-543, § 211(c), substituted "agency" for "department, agency, and instrumentality in the executive branch" and "such agency" for "such department, agency, or instrumentality".

Subsec. (d). Pub. L. 98-543, § 211(d), substituted "annual" for "semiannual" in second sentence and struck out provisions listing information to be included in the report.

Subsec. (e). Pub. L. 98-543, § 211(d), substituted provisions listing information to be included with respect to each agency and setting forth to whom the information shall be shown for provisions which set forth reporting requirements regarding the employment of the handicapped.

CHAPTER 43—VETERANS' REEMPLOYMENT RIGHTS

Chapter Referred to in Other Sections

This chapter is referred to in sections 2002A, 2006 of this title; title 26 section 3121; title 42 section 410.

§ 2022. Enforcement procedures

If any employer, who is a private employer or a State or political subdivision thereof, fails or refuses to comply with the provisions of section 2021(a), (b)(1), or (b)(3), or 2024 of this title, the district court of the United States for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, shall have the power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, specifically to require such employer to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. Any such compensation shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions. Upon application to the United States attorney or comparable official for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, by any person claiming to be entitled to the benefits provided for in such provisions, such United States attorney or official, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof specifically to require such employer to comply with such provisions. No fees or court costs shall be taxed against any person who may apply for such benefits. In any such action only the employer shall be deemed a necessary party respondent. No State statute of limitations shall apply to any proceedings under this chapter.

(As amended Pub. L. 98-620, title IV, § 402(36), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Pub. L. 98-620 struck out provision requiring the court to order speedy hearing in any such case and advance it on the calendar.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

PART IV—GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 51—APPLICATIONS, EFFECTIVE DATES, AND PAYMENTS

SUBCHAPTER I—APPLICATIONS

§ 3005. Joint applications for social security and dependency and indemnity compensation

The Administrator and the Secretary of Health and Human Services shall jointly prescribe forms for use by survivors of members and former members of the uniformed services in filing application for benefits under chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). Each such form shall request information sufficient to constitute an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.); and when an application on such form has been filed with either the Administrator or the Secretary of Health and Human Services, it shall be deemed to be an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). A copy of each such application filed with the Administrator, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Administrator with such application, and which may be needed by the Secretary in connection therewith, shall be transmitted by the Administrator to the Secretary; and a copy of each such application filed with the Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary with such form, and which may be needed by the Administrator in connection therewith, shall be transmitted by the Secretary to the Administrator. The preceding sentence shall not prevent the Secretary and the Administrator from requesting the applicant, or any other individual, to furnish such additional information as may be necessary for purposes of chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.), respectively.

(As amended Pub. L. 98-160, title VII, § 702(16), Nov. 21, 1983, 97 Stat. 1010.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1983—Pub. L. 98-160 substituted "title II of the Social Security Act (42 U.S.C. 401 et seq.)" for "subchapter II of chapter 7 of title 42" wherever appearing.

SUBCHAPTER II—EFFECTIVE DATES

§ 3010. Effective dates of awards

[*See main edition for text of* (a)]

(b) [*See main edition for text of* (1) *and* (2)]

(3)(A) The effective date of an award of disability pension to a veteran described in subparagraph (B) of this paragraph shall be the date of application or the date on which the veteran became permanently and totally disabled, if the veteran applies for a retroactive award within one year from such date, whichever is to the advantage of the veteran.

(B) A veteran referred to in subparagraph (A) of this paragraph is a veteran who is permanently and totally disabled and who is prevented by a disability from applying for disability pension for a period of at least 30 days beginning on the date on which the veteran became permanently and totally disabled.

[*See main edition for text of* (c)]

(d)(1) The effective date of an award of death compensation or dependency and indemnity compensation for which application is received within one year from the date of death shall be the first day of the month in which the death occurred.

(2) The effective date of an award of death pension for which application is received within 45 days from the date of death shall be the first day of the month in which the death occurred.

[*See main edition for text of* (*e*) *to* (*j*)]

(k) The effective date of the award of benefits to a surviving spouse or of an award or increase of benefits based on recognition of a child, upon annulment of a marriage shall be the date the judicial decree of annulment becomes final if a claim therefor is filed within one year from the date the judicial decree of annulment becomes final; in all other cases the effective date shall be the date the claim is filed.

(*l*) The effective date of an award of benefits to a surviving spouse based upon a termination of a remarriage by death or divorce, or of an award or increase of benefits based on recognition of a child upon termination of the child's marriage by death or divorce, shall be the date of death or the date the judicial decree or divorce becomes final, if an application therefor is received within one year from such termination.

(m) The effective date of an award of benefits to a surviving spouse based upon termination of actions described in section 103(d)(3) of this title shall not be earlier than the date of receipt of application therefor filed after termination of such actions and after December 31, 1970.

[*See main edition for text of* (*n*)]

(As amended Pub. L. 98-160, title VII, § 703(1), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 98-223, title II, § 213(3), Mar. 2, 1984, 98 Stat. 46; Pub. L. 98-369, div. B, title V, § 2501(a), July 18, 1984, 98 Stat. 1116.)

AMENDMENTS

1984—Subsec. (b)(3)(A). Pub. L. 98-369, § 2501(a)(1), designated existing provisions as subpar. (A), in subpar. (A), as so redesignated, added "described in subparagraph (B) of this paragraph" after "to a veteran", substituted "the veteran applies for a retroactive award" for "an application therefor is received", and added subpar. (B).

Subsec. (d). Pub. L. 98-369, § 2501(a)(2), designated existing provisions as par. (1), in par. (1), as so redesignated, substituted "dependency and indemnity compensation for which application is received" for ", dependency and indemnity compensation, or death pension, where application is received", and added par. (2).

Subsec. (m). Pub. L. 98-223 substituted "section" for "subsection".

1983—Subsecs. (k) to (m). Pub. L. 98-160 substituted "surviving spouse" for "widow" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2501(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a)(1) [amending subsec. (b)(3) of this section] and the provisions of paragraph (2) of section 3010(d) of title 38, United States Code, as added by subsection (a)(2), shall take effect with respect to applications that are first received after September 30, 1984, for benefits under chapter 15 of title 38, United States Code."

§ 3011. Commencement of period of payment

[*See main edition for text of* (a) *and* (b)]

(c)(1) This section shall apply to payments made pursuant to section 3110 of this title only if the monthly amount of dependency and indemnity compensation or pension payable to the surviving spouse is greater than the amount of compensation or pension the veteran would have received, but for such veteran's death, for the month in which such veteran's death occurred.

(2) In the case of a temporary increase in compensation for hospitalization or treatment where such hospitalization or treatment commences and terminates within the same calendar month, the period of payment shall commence on the first day of such month.

[*See main edition for text of* (d)]

(As amended Pub. L. 98-223, title I, § 113, Mar. 2, 1984, 98 Stat. 40.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-223 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-223 effective Oct. 1, 1983, see section 114 of Pub. L. 98-223, set out as a note under section 312 of this title.

SUBCHAPTER III—PAYMENT OF BENEFITS

§ 3021. Payment of certain accrued benefits upon death of a beneficiary

(a) Except as provided in sections 3329 and 3330 of title 31, periodic monetary benefits (other than insurance and servicemen's indemnity) under laws administered by the Veterans' Administration to which an individual was entitled at his death under existing ratings or decisions, or those based on evidence in the file at date of death (hereafter in this section and section 3022 of this title referred to as "accrued benefits") and due and unpaid for a period not to exceed one year, shall, upon the death of such individual be paid as follows:

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Upon the death of a surviving spouse or remarried surviving spouse, to the children of the deceased veteran;

[*See main edition for text of* (*4*) *and* (5); (*b*) *and* (c)]

(As amended Pub. L. 98-160, title VII, § 703(1), Nov. 21, 1983, 97 Stat. 1010.)

AMENDMENTS

1983—Subsec. (a)(3). Pub. L. 98-160 substituted "surviving spouse" for "widow" in two places.

§ 3023. Rounding down of pension rates

EFFECTIVE DATE

Section 403(b) of Pub. L. 97-253, as amended by Pub. L. 98-21, title I, § 111(e), Apr. 20, 1983, 97 Stat. 73; Pub. L. 98-369, div. B, title VI, § 2662(j), July 18, 1984, 98 Stat. 1160, provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a)(1) [enacting this section] shall apply with respect to amounts payable for periods beginning after May 31, 1983.

"(2) In the cases of individuals to whom pension is payable under sections 521, 541, and 542 of title 38, United States Code, the amendment made by subsection (a)(1) shall take effect on the first day after May 31, 1983, that an increase is made in maximum annual rates of pension pursuant to section 3112 of title 38, United States Code."

CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

§ 3101. Nonassignability and exempt status of benefits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 708 of this title; title 26 section 134; title 42 section 417.

§ 3107. Apportionment of benefits

(a) All or any part of the compensation, pension, or emergency officers' retirement pay payable on account of any veteran may—

(1) if the veteran is being furnished hospital treatment, institutional, or domiciliary care by the United States, or any political subdivision thereof, be apportioned on behalf of the veteran's spouse, children, or dependent parents; and

(2) if the veteran is not living with the veteran's spouse, or if the veteran's children are not in the custody of the veteran, be apportioned as may be prescribed by the Administrator.

(b) Where any of the children of a deceased veteran are not in the custody of the veteran's surviving spouse, the pension, compensation, or dependency and indemnity compensation otherwise payable to the surviving spouse may be apportioned as prescribed by the Administrator.

(c) If a veteran is not living with the veteran's spouse, or if any of the veteran's children are not in the custody of the veteran, any subsistence allowance payable to the veteran under chapter 31 of this title or that portion of the educational assistance allowance payable on account of dependents under chapter 34 of this title may be apportioned as may be prescribed by the Administrator.

(As amended Pub. L. 98-160, title VII, § 703(2), Nov. 21, 1983, 97 Stat. 1010.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-160, § 703(2)(A), substituted "the veteran's spouse" for "his wife".

Subsec. (a)(2). Pub. L. 98-160, § 703(2)(A)-(C), substituted "the veteran's spouse" for "his wife", "the veteran's children" for "his children", and "the custody of the veteran" for "his custody".

Subsec. (b). Pub. L. 98-160, § 703(2)(D), substituted "surviving spouse" for "widow" in two places.

Subsec. (c). Pub. L. 98-160, § 703(2)(A)-(C), (E), substituted "the veteran's spouse" for "his wife", "the veteran's children" for "his children", "the custody of the veteran" for "his custody", and "payable to the veteran" for "payable to him".

§ 3110. Payment of benefits for month of death

If, in accordance with the provisions of section 3010(d) of this title, a surviving spouse is entitled to death benefits under chapter 11, 13, or 15 of this title for the month in which a veteran's death occurs, the amount of such death benefits for that month shall be not less than the amount of benefits the veteran would have received under chapter 11 or 15 of this title for that month but for the death of the veteran.

(As amended Pub. L. 98-160, title VII, § 703(3), Nov. 21, 1983, 97 Stat. 1010.)

AMENDMENTS

1983—Pub. L. 98-160 substituted "surviving spouse" for "widow", and "the death of the veteran" for "his death".

§ 3113. Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony

(a) [*See main edition for text of* (*1*)]

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any period during which a person is participating in a work-release program or is residing in a halfway house.

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Pub. L. 98-160, title VII, § 702(17), Nov. 21, 1983, 97 Stat. 1010.)

AMENDMENTS

1983—Subsec. (a)(2). Pub. L. 98-160 substituted "paragraph (1) of this subsection" for "paragraph (1) of this section".

CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

Sec.
3202. Payments to and supervision of fiduciaries.

AMENDMENTS

1984—Pub. L. 98-223, title II, § 207(b)(2), Mar. 2, 1984, 98 Stat. 43, substituted "fiduciaries" for "guardians" in item 3202.

§ 3202. Payments to and supervision of fiduciaries

(a)(1) Where it appears to the Administrator that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Veterans' Administration may be made directly to the beneficiary or to a relative or some other person for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary. Where, in the opinion of the Administrator, any fiduciary receiving funds on behalf of a Veterans' Administration beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Administrator may refuse to make future payments in such cases as he may deem proper.

(2) In a case in which the Administrator determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Administrator may authorize a fiduciary appointed by the Veterans' Administration to obtain from the beneficiary's estate a reasonable commission for fiduciary services rendered, but the commission for any year may not exceed 4 percent of the monetary benefits under laws administered

by the Veterans' Administration paid on behalf of the beneficiary to the fiduciary during such year. A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services on behalf of the beneficiary.

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Pub. L. 98-223, title II, § 207(a), (b)(1), Mar. 2, 1984, 98 Stat. 43.)

AMENDMENTS

1984—Pub. L. 98-223, § 207(b)(1), substituted "fiduciaries" for "guardians" in section catchline.

Subsec. (a). Pub. L. 98-223, § 207(a), designated existing provisions as par. (1) and added par. (2).

§ 3203. Hospitalized veterans and estates of incompetent institutionalized veterans

(a) [*See main edition for text of* (*1*)]

(2) The provisions of paragraph (1) shall also apply to a veteran being furnished such care who has a spouse but whose pension is payable under section 521(b) of this title. In such a case, the Administrator may apportion and pay to the spouse, upon an affirmative showing of hardship, all or any part of the amounts in excess of the amount payable to the veteran while being furnished such care which would be payable to the veteran if pension were payable under section 521(c) of this title.

(b)(1)(A) In any case in which a veteran having neither spouse nor child is being furnished hospital treatment or institutional or domiciliary care without charge or otherwise by the United States, or any political subdivision thereof, is rated by the Veterans' Administration in accordance with regulations as being incompetent, and the veteran's estate (excluding the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside in such home), from any source equals or exceeds $1,500, further payments of pension, compensation, or emergency officers' retirement pay shall not be made until the estate is reduced to $500.

(B) The amount which would be payable but for this paragraph shall be paid to the veteran in a lump sum; however, no payment of a lump sum herein authorized shall be made to the veteran until after the expiration of six months following a finding of competency and in the event of the veterans' death before payment of such lump sum no part thereof shall be payable.

(C) The Administrator may waive the discontinuance under this paragraph of payments to a veteran with respect to not more than 60 days of care of the veteran during any calendar year if the Administrator determines that the waiver is necessary in order to avoid a hardship for the veteran. Any such waiver shall be made pursuant to regulations which the Administrator shall prescribe.

(2) Where any benefit is discontinued by reason of paragraph (1) of this subsection the Administrator may nevertheless apportion and pay to the dependent parents of the veteran on the basis of need all or any part of the benefit which would otherwise be payable to or for such incompetent veteran. Paragraph (1) of this subsection shall not prevent the payment, out of any remaining amounts discontinued under that paragraph, on account of any veteran of so much of the veteran's pension, compensation, or retirement pay as equals the amount charged to the veteran for the veteran's current care and maintenance in the institution in which treatment or care is furnished the veteran, but not more than the amount determined by the Administrator to be the proper charge as fixed by any applicable statute or valid administrative regulation.

[*See main edition for text of* (*3*)]

(c) Any veteran subject to the provisions of subsection (b) shall be deemed to be single and without dependents in the absence of satisfactory evidence to the contrary. In no event shall increased compensation, pension, or retirement pay of such veteran be granted for any period more than one year before receipt of satisfactory evidence showing such veteran has a spouse, child, or dependent parent.

(d) Notwithstanding any other provision of this section or any other provision of law, no reduction shall be made in the pension of any veteran for any part of the period during which the veteran is furnished hospital treatment, or institutional or domiciliary care, for Hansen's disease, by the United States or any political subdivision thereof.

[*See main edition for text of* (*e*)]

(As amended Pub. L. 98-160, title VII, § 703(4), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 98-543, title IV, § 402(a), Oct. 24, 1984, 98 Stat. 2749.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-543 designated first and second sentences as subpars. (A) and (B), respectively, and in subpar. (A), as so designated, substituted "or" for the comma after "treatment", struck out "by reason of mental illness" after "as being incompetent", added "(excluding the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside in such home)," after "the veteran's estate", and added subpar. (C).

1983—Subsec. (a)(2). Pub. L. 98-160, § 703(4)(A), (B), substituted "spouse" for "wife", and "the veteran" for "him".

Subsec. (b)(1). Pub. L. 98-160, § 703(4)(A), (C), substituted "spouse" for "wife" and "the veteran's" for "his".

Subsec. (b)(2). Pub. L. 98-160, § 703(4)(B), (C), substituted "the veteran" for "him", and "the veteran's" for "his".

Subsec. (c). Pub. L. 98-160, § 703(4)(A), substituted "spouse" for "wife".

Subsec. (d). Pub. L. 98-160, § 703(4)(D), substituted "the veteran" for "he".

IMPROVEMENT IN PENSION PROGRAM ADMINISTRATION; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 99-166, title I, § 108(d), Dec. 3, 1985, 99 Stat. 947, provided that:

"(1) In order to improve the timeliness of adjustments made pursuant to section 3203(a) of title 38, United States Code, in the amount of pension being paid to a veteran who is being furnished nursing home care by the Veterans' Administration, the Chief Medical Director of the Veterans' Administration shall develop improved procedures for notifying the Chief

Benefits Director of the Veterans' Administration when a veteran is admitted to a nursing home.

"(2) The Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the development and implementation of such procedures. The report shall be submitted not later than 90 days after the date of the enactment of this Act [Dec. 3, 1985]."

REGULATIONS; WAIVER FOR HARDSHIP REASONS

Section 402(b) of Pub. L. 98-543 provided that: "The Administrator shall prescribe regulations under subparagraph (C) of section 3203(b)(1) of title 38, United States Code (as added by subsection (a)), not later than 60 days after the date of the enactment of this Act [Oct. 24, 1984]."

CHAPTER 57—RECORDS AND INVESTIGATIONS

SUBCHAPTER I—RECORDS

§ 3305. Confidentiality of medical quality-assurance records

(a) Records and documents created by the Veterans' Administration as part of a medical quality-assurance program (other than reports submitted pursuant to section 4152(b) of this title) are confidential and privileged and may not be disclosed to any person or entity except as provided in subsection (b) of this section.

(b) [*See main edition for text of (1) to (5)*]

(6) Nothing in this section shall be construed as authorizing or requiring withholding from any person or entity the disclosure of statistical information regarding Veterans' Administration health-care programs (including such information as aggregate morbidity and mortality rates associated with specific activities at individual Veterans' Administration health-care facilities) that does not implicitly or explicitly identify individual Veterans' Administration patients or employees or individuals who participated in the conduct of a medical quality-assurance review.

[*See main edition for text of (c) to (e)*]

(As amended Pub. L. 99-166, title II, § 201, Dec. 3, 1985, 99 Stat. 949.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-166, § 201(1), inserted "(other than reports submitted pursuant to section 4152(b) of this title)" after "program".

Subsec. (b)(6). Pub. L. 99-166, § 201(2), added par. (6).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4152 of this title.

CHAPTER 59—AGENTS AND ATTORNEYS

§ 3402. Recognition of representatives of organizations

(a)(1) The Administrator may recognize representatives of the American National Red Cross, the American Legion, the Disabled American Veterans, the United Spanish War Veterans, the Veterans of Foreign Wars, and such other organizations as the Administrator may approve, in the preparation, presentation, and prosecution of claims under laws administered by the Veterans' Administration.

(2) The Administrator may, in the discretion of the Administrator, furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized.

(b) No individual shall be recognized under this section—

(1) unless the individual has certified to the Administrator that no fee or compensation of any nature will be charged any individual for services rendered in connection with any claim; and

[*See main edition for text of (2)*]

(c) Service rendered in connection with any such claim, while not on active duty, by any retired officer, warrant officer, or enlisted member of the Armed Forces recognized under this section shall not be a violation of sections 203, 205, 206, or 207 of title 18.

(As amended Pub. L. 98-160, title VII, § 703(5), Nov. 21, 1983, 97 Stat. 1010.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-160, § 703(5)(A), substituted "the Administrator" for "he".

Subsec. (a)(2). Pub. L. 98-160, § 703(5)(B), substituted "the discretion of the Administrator" for "his discretion".

Subsec. (b)(1). Pub. L. 98-160, § 703(5)(C), substituted "the individual" for "he".

Subsec. (c). Pub. L. 98-160, § 703(5)(D), substituted "member" for "man".

CHAPTER 61—PENAL AND FORFEITURE PROVISIONS

§ 3503. Forfeiture for fraud

[*See main edition for text of (a)*]

(b) Whenever a veteran entitled to disability compensation has forfeited the right to such compensation under this section, the compensation payable but for the forfeiture shall thereafter be paid to the veteran's spouse, children, and parents. Payments made to a spouse, children, and parents under the preceding sentence shall not exceed the amounts payable to each if the veteran had died from service-connected disability. No spouse, child, or parent who participated in the fraud for which forfeiture was imposed shall receive any payment by reason of this subsection.

[*See main edition for text of (c) to (e)*]

(As amended Pub. L. 98-160, title VII, § 703(6), Nov. 21, 1983, 97 Stat. 1011.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-160 substituted "the right" for "his right", "the veteran's spouse" for "his wife", and "spouse" for "wife" in two places.

PART V—BOARDS AND DEPARTMENTS

CHAPTER 71—BOARD OF VETERANS' APPEALS

§ 4001. Composition of Board of Veterans' Appeals

(a) There shall be in the Veterans' Administration a Board of Veterans' Appeals (hereafter in this chapter referred to as the "Board") under the administrative control and supervision of a chairman directly responsible to the Administrator. The Board shall consist of a Chairman, a Vice Chairman, such number (not more than 65) of members as may be found necessary, and such other professional, administrative, clerical, and stenographic personnel as are necessary in conducting hearings and considering and disposing of appeals properly before the Board.

[*See main edition for text of* (*b*)]

(c)(1) Subject to paragraph (2) of this subsection, the Chairman may from time to time designate employees of the Veterans' Administration to serve as temporary members of the Board. Any such designation shall be for a period of not to exceed one year, as determined by the Chairman. An individual may not serve as a temporary member of the Board for more than 24 months during any 48-month period.

(2) Designation under paragraph (1) of this subsection of an individual as a temporary member of the Board may not be made when there are fewer than 65 members of the Board.

(3) In each annual report to the Congress under section 214 of this title, the Administrator shall provide detailed descriptions of the activities undertaken and plans made in the fiscal year for which the report is made with respect to the authority provided by paragraph (1) of this subsection. In each such report, the Administrator shall indicate, in terms of full-time employee equivalents, the number of temporary Board members designated under this subsection and the number of acting Board members designated under section 4002(a)(2)(A)(ii) of this title during the year for which the report is made.

(As amended Pub. L. 98–223, title II, § 208(a)–(c), Mar. 2, 1984, 98 Stat. 43, 44.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–223, § 208(a), (c), substituted "65" for "fifty" and struck out "associate" before "members".

Subsec. (c). Pub. L. 98–223, § 208(b), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4002 of this title.

§ 4002. Assignment of members of Board

(a)(1) The Chairman may from time to time divide the Board into sections of three members, assign the members of the Board thereto, and designate the chief thereof.

(2)(A) If a section is composed of fewer than three members as a result of the absence of a member or a vacancy on the Board or the inability of a member assigned to a section to serve on that section, the Chairman—

(i) may assign another member of the Board to the section;

(ii) may designate an employee of the Veterans' Administration to serve as an acting member of the Board on such section for a period of not to exceed 90 days, as determined by the Chairman; or

(iii) may direct the section to proceed with the transaction of business without awaiting the assignment of an additional member to the section.

(B) An individual may not serve as an acting member of the Board for more than 270 days during any 12-month period.

(3) A section of the Board may not at any time have among its members more than one individual who is a temporary member designated under section 4001(c) of this title or an acting member designated under paragraph (2)(A)(ii) of this subsection.

(b) A hearing docket shall be maintained and formal recorded hearings shall be held by such member or members as the Chairman may designate, the member or members being of the section which will make final determination in the claim.

(c) A section of the Board shall make a determination on any proceeding instituted before the Board and on any motion in connection therewith assigned to such section by the Chairman and shall make a report of any such determination, which report shall constitute its final disposition of the proceeding.

(As amended Pub. L. 98–223, title II, § 208(c), (d), Mar. 2, 1984, 98 Stat. 44.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–223, § 208(d)(1), designated provision authorizing the Chairman from time to time to divide the Board into sections of three members, assign members to the Board thereto, and designated the chief thereof, as par. (1).

Subsec. (a)(2). Pub. L. 98–223, § 208(d)(2), designated provision relating to authority of the Chairman in the case where a section is composed of fewer than three members as a result of absence, vacancy, or inability of a member to serve as subpar. (A), and in subpar. (A) as so designated, inserted provision authorizing the Chairman to designate an employee of the Veterans' Administration to serve as an acting member of the Board on such section for a period of not to exceed 90 days, and added subpar. (B).

Subsec. (a)(3). Pub. L. 98–223, § 208(d)(2), added par. (3).

Subsec. (b). Pub. L. 98–223, § 208(d)(3), designated provision relating to the maintenance of a hearing docket and the holding of formal recorded hearings upon which a final determination will be made as subsec. (b).

Pub. L. 98–223, § 208(c), struck out "associate" before "member" in two places.

Subsec. (c). Pub. L. 98–223, § 208(d)(4), designated provision relating to the section making a determination on any proceeding or motion in connection therewith assigned to the section by the Board and making a report on such determination, which report constitutes its final disposition of the proceeding, as subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4001 of this title.

CHAPTER 73—DEPARTMENT OF MEDICINE AND SURGERY

SUBCHAPTER V—QUALITY ASSURANCE

Sec.	
4151.	Quality-assurance program.
4152.	Quality-assurance reports.

AMENDMENTS

1985—Pub. L. 99-166, title II, § 204(a)(2), Dec. 3, 1985, 99 Stat. 952, added heading for subchapter V and items 4151 and 4152.

SUBCHAPTER I—ORGANIZATION; GENERAL

§ 4101. Functions of Department

[*See main edition for text of* (*a*) *to* (*e*)]

(f)(1)(A) The Administrator, upon the recommendation of the Chief Medical Director and pursuant to the provisions of this subsection, shall designate not more than 25 Veterans' Administration health-care facilities as the locations for centers of geriatric research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this subsection.

[*See main edition for text of* (*B*) *to* (*D*), (*2*)]

(3) There are authorized to be appropriated such sums as may be necessary for the support of the research and education activities of the centers established pursuant to paragraph (1) of this subsection. The Chief Medical Director shall allocate to such centers from other funds appropriated generally for the Veterans' Administration medical care account and medical and prosthetics research account, as appropriate, such amounts as the Chief Medical Director determines appropriate, and, with respect to fiscal year 1984, as the Chief Medical Director determines appropriate after taking into account the report submitted by the Committee under paragraph (2) of this subsection.

[*See main edition for text of* (*4*)]

(As amended Pub. L. 98-528, title I, § 104, Oct. 19, 1984, 98 Stat. 2689; Pub. L. 99-166, title II, § 202, Dec. 3, 1985, 99 Stat. 950.)

AMENDMENTS

1985—Subsec. (f)(1)(A). Pub. L. 99-166 substituted "25" for "fifteen".

1984—Subsec. (f)(3). Pub. L. 98-528 amended first sentence generally, substituting "authorized to be appropriated such sums as may be necessary for the support of the research and education activities of the centers established pursuant to paragraph (1) of this subsection" for "hereby authorized to be appropriated for the basic support of the research and education activities of the centers of geriatric research, education, and clinical activities established pursuant to paragraph (1) of this subsection $10,000,000 for fiscal year 1981 and $25,000,000 for each of the next three fiscal years".

§ 4104. Additional appointments

There shall be appointed by the Administrator additional personnel as the Administrator may find necessary for the medical care of veterans, as follows:

(1) Physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries;

(2) Pharmacists, psychologists (other than those described in paragraph (3)), occupational therapists, dietitians, and other scientific and professional personnel, such as microbiologists, chemists, biostatisticians, and medical and dental technologists;

(3) Clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accrediting authority approved by the Administrator, certified or registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses.

(As amended Pub. L. 98-160, title II, § 201, Nov. 21, 1983, 97 Stat. 1000; Pub. L. 98-528, title I, § 108, Oct. 19, 1984, 98 Stat. 2690.)

AMENDMENTS

1984—Par. (2). Pub. L. 98-528, § 108(1), inserted "(other than those described in paragraph (3))" after "psychologists".

Par. (3). Pub. L. 98-528, § 108(2), substituted "Clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accrediting authority approved by the Administrator, certified" for "Certified".

1983—Par. (2). Pub. L. 98-160, § 201(1)-(3), struck out "physical therapists," after "psychologists," and substituted "microbiologists" for "bacteriologists" and a semicolon for a period after "dental technologists".

Par. (3). Pub. L. 98-160, § 201(4), added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4101, 4105, 4106, 4107, 4110, 4111, 4113, 4114 of this title.

§ 4105. Qualifications of appointees

(a) Any person to be eligible for appointment to the following positions in the Department of Medicine and Surgery must have the applicable qualifications:

(1) Physician—

hold the degree of doctor of medicine or of doctor of osteopathy from a college or university approved by the Administrator, have completed an internship satisfactory to the Administrator, and be licensed to practice medicine, surgery, or osteopathy in a State;

[*See main edition for text of* (*2*) *to* (*7*)]

(8) Psychologist—

hold a doctoral degree in psychology from a college or university approved by the Administrator, have completed study for such degree in a specialty area of psychology and an internship which are satisfactory to the Administrator, and be licensed or certified as a psychologist in a State, except that the Administrator may waive the requirement of licensure or certification for an individual psychologist for a period not to exceed two years on the condition that such psychologist provide patient care only under the direct supervision of a psychologist who is so licensed or certified; and

(9) Physician assistant, expanded-function dental auxiliary, certified or registered respiratory therapist, licensed physical therapist, licensed practical or vocational nurse, occupational therapist, dietitian, microbiologist, chemist, biostatistician, medical technologist, dental technologist, or other position—

have such medical, dental, scientific, or technical qualifications as the Administrator shall prescribe.

(b) Except as provided in section 4114 of this title, no person may be appointed in the Department of Medicine and Surgery to a position listed in section 4104(1) of this title unless such person is a citizen of the United States.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-160, title II, § 202, Nov. 21, 1983, 97 Stat. 1000.)

Amendments

1983—Subsec. (a)(1). Pub. L. 98-160, § 202(a)(1), substituted "Physician" for "Physicians".

Subsec. (a)(8). Pub. L. 98-160, § 202(a)(2), (3), redesignated par. (10) as (8) and in par. (8) as so redesignated substituted "; and" for a period after "so licensed or certified". Former par. (8), relating to the qualifications of physical therapists, occupational therapists, dietitians, and other personnel, was struck out. See par. (9).

Subsec. (a)(9). Pub. L. 98-160, § 202(a)(2), (4), added par. (9). A former par. (9) was struck out and provisions relating to the qualifications for physician assistants and expanded-function dental auxiliaries were incorporated in the new par. (9).

Subsec. (a)(10). Pub. L. 98-160, § 202(a)(3), redesignated par. (10) as (8).

Subsec. (b). Pub. L. 98-160, § 202(b), substituted "to a position listed in section 4104(1) of this title" for "as physician, dentist, podiatrist, optometrist, nurse, physician assistant, or expanded-function dental auxiliary".

§ 4106. Period of appointments; promotions

[*See main edition for text of* (a) *to* (*f*)]

(g)(1) Upon the recommendation of the Chief Medical Director, the Administrator (A) may use the authority in subsection (a) of this section to establish the qualifications for and (subject to paragraph (2) of this subsection) to appoint individuals to positions listed in section 4104(3) of this title, and (B) may use the authority provided in subsection (c) of this section for the promotion and advancement of Veterans' Administration employees serving in such positions.

(2) In using such authority to appoint individuals to such positions, the Administrator shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(As amended Pub. L. 98-160, title II, § 203(a), Nov. 21, 1983, 97 Stat. 1000.)

Amendments

1983—Subsec. (g). Pub. L. 98-160 added subsec. (g).

Preference Hiring of Veterans; Regulations

Section 203(b) of Pub. L. 98-160 provided that:

"(1) Not later than 90 days after the date of the enactment of this Act [Nov. 21, 1983], the Administrator of Veterans' Affairs shall publish in the Federal Register, for public review and comment for a period of not less than 30 days, proposed regulations for the continued implementation of section 4106(g)(2) of title 38, United States Code (as added by subsection (a)).

"(2) Not later than 180 days after such date of enactment, the Administrator shall publish in the Federal Register final regulations for such implementation."

§ 4107. Grades and pay scales

[*See main edition for text of* (a) *to* (e)]

(f) Physician assistants and expanded-function dental auxiliaries shall be compensated by use of Nurse Schedule grade title and related pay ranges and shall be entitled to additional pay on the same basis as provided for nurses in subsection (e) of this section. Notwithstanding any other provision of law, when the Administrator determines it to be necessary in order to obtain or retain the services of certified or registered respiratory therapists, licensed physical therapists, or licensed practical or vocational nurses, the Administrator may, on a nationwide, local, or other geographic basis, pay persons employed in such positions additional pay on the same basis as provided for nurses in subsection (e) of this section. The Administrator shall prescribe by regulation standards for compensation and payment under this subsection.

(g)(1) Notwithstanding any other provision of law but subject to paragraphs (2), (3), and (4) of this subsection, when the Administrator determines it to be necessary in order to obtain or retain the services—

(A) of individuals employed in positions listed in paragraphs (1) and (3) of section 4104 of this title;

(B) of health-care personnel who—

[*See main edition for text of* (i) *to* (iii)]

(iv) would not otherwise be available to provide medical care and treatment for veterans; or

(C) of employees who are Veterans' Administration police officers providing services under section 218 of this title,

the Administrator may increase the minimum, intermediate, or maximum rates of basic pay authorized under applicable statutes and regulations. Any increase in such rates of basic pay may be made on a nationwide, local, or other geographic basis, for one or more of the grades listed in the schedules in subsection (b)(1) of this section, for one or more of the health personnel fields within such grades, or for one or more of the grades of the General Schedule under section 5332 of such title.

(2) Increases in rates of basic pay may be made under paragraph (1) of this subsection only in order—

(A) to provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of personnel at non-Federal facilities in the same labor market;

[*See main edition for text of* (*B*) *and* (*C*)]

(3) The amount of any increase under paragraph (1) of this subsection in the maximum rate for any grade may not (except in the case of nurse anesthetists and licensed physical therapists) exceed the amount by which the maximum for such grade (under applicable provisions of law other than this subsection) exceeds the minimum for such grade (under applicable provisions of law other than this subsection), and the maximum rate as so increased may not exceed the rate paid for individuals serving as Assistant Chief Medical Director.

(4) In the exercise of the authority provided in paragraph (1) of this subsection with respect to personnel described in clause (B) or (C) of such paragraph to increase the rates of basic pay for any category of personnel not appointed under this subchapter, the Administrator shall, not less than ninety days prior to the effective date of a proposed increase, notify the President of the Administrator's intention to provide such an increase. If, prior to such effective date, the President disapproves such increase and provides the appropriate committees of the Congress with a written statement of the President's reasons for such disapproval, such proposed increase shall not take effect.

[*See main edition for text of* (*h*)]

(i) The Administrator may authorize an exception to the restrictions in subsections (a), (b), and (c) of section 5532 of title 5 if necessary to meet special or emergency employment needs which result from a severe shortage of well-qualified candidates in physician positions which otherwise cannot be readily met.

(As amended Pub. L. 98-160, title II, § 204, Nov. 21, 1983, 97 Stat. 1001; Pub. L. 98-528, title I, §§ 101(b), 109, Oct. 19, 1984, 98 Stat. 2688, 2691.)

AMENDMENTS

1984—Subsec. (g)(1)(C). Pub. L. 98-528, § 101(b)(1), added subpar. (C).

Subsec. (g)(2)(A). Pub. L. 98-528, § 101(b)(2), substituted "personnel at non-Federal facilities" for "health-care personnel at non-Federal health-care facilities".

Subsec. (g)(4). Pub. L. 98-528, § 101(b)(2), (3), substituted "personnel" for "health-care personnel" and inserted "or (C)" after "clause (B)".

Subsec. (i). Pub. L. 98-528, § 109, added subsec. (i).

1983—Subsec. (f). Pub. L. 98-160, § 204(a)(1), (2), substituted "Physician" for "Under standards which the Administrator shall prescribe in regulations, physician" in the first sentence and added provisions that when the Administrator determines it to be necessary in order to obtain or retain the services of certified or registered respiratory therapists, licensed physical therapists, or licensed practical or vocational nurses, the Administrator may, on a nationwide, local, or other geographic basis, pay persons employed in such positions additional pay on the same basis as provided for nurses in subsection (e) of this section and that the Administrator shall prescribe by regulation standards for compensation and payment under this subsection.

Subsec. (g)(1)(A). Pub. L. 98-160, § 204(b)(1), amended subpar. (A) generally, substituting "of individuals employed in positions listed in paragraphs (1) and (3) of section 4104 of this title" for "of physicians, dentists, podiatrists, optometrists, nurses, physician assistants, or expanded-function dental auxiliaries appointed under this subchapter".

Subsec. (g)(3). Pub. L. 98-160, § 204(b)(2), inserted "and licensed physical therapists" after "anesthetists".

Subsec. (g)(4). Pub. L. 98-160, § 204(b)(3), inserted "with respect to health-care personnel described in clause (B) of such paragraph" after "subsection".

EX. ORD. NO. 12438. REVIEW OF INCREASES IN RATES OF BASIC PAY FOR EMPLOYEES OF THE VETERANS' ADMINISTRATION

Ex. Ord. No. 12438, Aug. 23, 1983, 48 F.R. 39205, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 4107(g)(4) of title 38 of the United States Code, in order to establish procedures for review of proposed increases in the rates of basic pay of certain employees of the Veterans' Administration, it is hereby ordered as follows:

SECTION 1. The Director of the Office of Personnel Management is designated to exercise the authority vested in the President by Section 112 of Public Law 96-330 (94 Stat. 1037) [enacting subsec. (g) of this section] to review and disapprove increases in the rates of basic pay proposed by the Administrator of Veterans' Affairs and to provide the appropriate Committees of the Congress with a written statement of the reasons for any such disapprovals.

SEC. 2. In exercising this authority, the Director of the Office of Personnel Management shall assure that any increases in basic pay proposed by the Administrator of Veterans' Affairs are in the best interest of the Federal government; do not exceed the amounts authorized by Section 112; and are made only to:

(1) Provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of health-care personnel at non-Federal health-care facilities in the same labor market;

(2) Achieve adequate staffing at particular facilities; or

(3) Recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

SEC. 3. the Administrator of Veterans' Affairs shall provide to the Director of the Office of Personnel Management such information as the Director may request in order to carry out the responsibilities delegated by this Order.

SEC. 4. The Director shall provide the Administrator of Veterans' Affairs with a copy of any written statement, provided to the appropriate committees of the Congress, which sets forth the reasons for disapproval of any proposed increase in rates of basic pay under this Order.

RONALD REAGAN.

ADJUSTMENT OF PAY RATES EFFECTIVE FOR PAY PERIODS BEGINNING ON OR AFTER JANUARY 1, 1985

Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5, Government Organization and Employees, provided for an adjustment of the pay rates under this section effective on the first day of the first applicable pay period beginning on or after Jan. 1, 1985. See Schedule set out below:

SCHEDULE 3

Department of Medicine and Surgery Schedules, Veterans Administration

Section 4103 Schedule:	
Chief Medical Director	*** $94,375
Deputy Chief Medical Director	** 90,532
Associate Deputy Chief Medical Director	* 86,713
Assistant Chief Medical Director	* 84,157

	Minimum	Maximum
Medical Director	*$71,804	* $81,376
Director of Nursing Service	*71,804	* 81,376
Director of Podiatric Service	61,296	* 77,640
Director of Chaplain Service	61,296	* 77,640
Director of Pharmacy Service	61,296	* 77,640
Director of Dietetic Service	61,296	* 77,640
Director of Optometric Service	61,296	* 77,640
Physician and Dentist Schedule:		
Director grade	$61,296	* $77,640
Executive grade	56,599	* 73,582
Chief grade	52,262	67,940
Senior grade	44,430	57,759
Intermediate grade	37,599	48,876
Full grade	31,619	41,105
Associate grade	26,381	34,292
Nurse Schedule:		
Director grade	$52,262	$67,940
Assistant Director grade	44,430	57,759
Chief grade	37,599	48,876
Senior grade	31,619	41,105
Intermediate grade	26,381	34,292
Full grade	21,804	28,347
Associate grade	18,763	24,388
Junior grade	16,040	20,855
Clinical Podiatrist and Optometrist Schedule:		
Chief grade	$52,262	$67,940
Senior grade	44,430	57,759
Intermediate grade	37,599	48,876
Full grade	31,619	41,105
Associate grade	26,381	34,292

*** The rate of basic pay is limited to the rate payable for level III of the Executive Schedule, which is $73,600.

** The rate of basic pay is limited to the rate payable for level IV of the Executive Schedule, which is $72,300.

* The rate of basic pay is limited to the rate payable for level V of the Executive Schedule, which is $68,700.

EXECUTIVE ORDER No. 12387

Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, which provided for the adjustment of pay rates effective Oct. 1, 1982, was superseded by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

EXECUTIVE ORDER No. 12456

Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, which provided for the adjustment of pay rates effective Jan. 1, 1984, was superseded by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, set out as a note under section 5332 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 218, 4118 of this title; title 5 sections 6123, 6128.

§ 4110. Disciplinary boards

(a) The Chief Medical Director, under regulations prescribed by the Administrator shall from time to time appoint boards to be known as disciplinary boards, each such board to consist of not less than three nor more than five employees, senior in grade, of the Department of Medicine and Surgery, to determine, upon notice and fair hearing, charges of inaptitude, inefficiency, or misconduct of any person employed in a position provided in paragraph (1) of section 4104 of this title. The majority of employees on a disciplinary board shall be employed in the same category of position as the employee who is the subject of the charges.

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Pub. L. 98-160, title II, § 205, Nov. 21, 1983, 97 Stat. 1001.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-160 substituted "The majority of employees on a disciplinary board shall be employed in the same category of position as the employee who is the subject of the charges" for "When such charges concern a dentist, the majority of employees on the disciplinary board shall be dentists".

PROCEDURES FOR REDUCTION OR REVOCATION OF CLINICAL PRIVILEGES

Pub. L. 99-166, title II, § 206, Dec. 3, 1985, 99 Stat. 954, provided that:

"(a) GUIDELINES.—Not later than April 1, 1986, the Administrator of Veterans' Affairs shall prescribe uniform guidelines establishing administrative procedures to be followed in any case in which a reduction or revocation of the clinical privileges of any person employed in a position described in paragraph (1) of section 4104 of title 38, United States Code, is proposed on the basis of a deficiency in the employee's performance of professional responsibilities.

"(b) REPORT.—Not later than May 1, 1986, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report (containing a copy of such guidelines) on the implementation of this section."

§ 4111. Appointment of additional employees

(a) There shall be appointed by the Administrator under civil-service laws, rules, and regulations, such additional employees, other than those provided in section 4103, paragraphs (1) and (3) of section 4104, and those specified in section 4114 of this title, as may be necessary to carry out the provisions of this chapter.

(b) Notwithstanding any other provision of law, the Administrator, after considering an individual's existing pay, higher or unique qualifications, or the special needs of the Veterans' Administration, may appoint the individual to a position in the Department of Medicine and Surgery providing direct patient-care services or services incident to direct patient-services at a rate of pay above the minimum rate of the appropriate grade.

(As amended Pub. L. 98-160, title II, § 206, Nov. 21, 1983, 97 Stat. 1001.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsec. (a), are set out in Title 5, Government Organization and Employees. See particularly section 3301 et seq. of Title 5.

AMENDMENTS

1983—Pub. L. 98-160 designated existing provisions as subsec. (a), in subsec. (a), as so designated, substituted "paragraphs (1) and (3)" for "paragraph (1)", and added subsec. (b).

§ 4112. Special Medical Advisory Group and Other Advisory Bodies

(a) The Administrator shall establish a special medical advisory group composed of members of the medical, dental, podiatric, optometric, and allied scientific professions, other individuals considered by the Chief Medical Director to have experience pertinent to the mission of the Department of Medicine and Surgery, and a disabled veteran, nominated by the Chief Medical Director. The duties of the special medical advisory group shall be to advise the Administrator, through the Chief Medical Director, and the Chief Medical Director directly, relative to the care and treatment of disabled veterans, and other matters pertinent to the Department of Medicine and Surgery. The special medical advisory group shall meet on a regular basis as prescribed by the Administrator and, not later than February 1 of each year, shall submit to the Administrator and the Congress a report on its activities during the preceding fiscal year. The number, terms of service, pay, and allowances to members of such advisory group shall be in accord with existing law and regulations.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-223, title II, § 209, Mar. 2, 1984, 98 Stat. 44.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-223 inserted ", other individuals considered by the Chief Medical Director to have experience pertinent to the mission of the Department of Medicine and Surgery," after "professions", substituted "Director. The duties of the special medical advisory group" for "Director, whose duties", and substituted "directly" for "direct".

§ 4114. Temporary full-time, part-time, and without compensation appointments; residencies or internships

(a) [*See main edition for text of* (*1*) *and* (*2*)]

(3)(A) Temporary full-time appointments of physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries may exceed ninety days only if the Chief Medical Director finds that circumstances render it impracticable to obtain the necessary services through appointments under paragraph (1) of section 4104 of this title. Temporary full-time appointments of persons who have successfully completed a full course of nursing in a recognized school of nursing, approved by the Administrator, and are pending registration as a graduate nurse in a State, shall not exceed two years. Temporary full-time appointments of other personnel shall not exceed one year.

[*See main edition for text of* (*B*)]

(C) A student nurse who has a temporary appointment under this paragraph and who is pursuing a full course of nursing in a recognized school of nursing approved by the Administrator may be reappointed for one year. Other personnel whose appointments are limited by this section to one year may not be reappointed under this subsection.

[*See main edition for text of* (*b*) *to* (*g*)]

(As amended Pub. L. 99-166, title II, § 203, Dec. 3, 1985, 99 Stat. 950.)

AMENDMENTS

1985—Subsec. (a)(3)(A). Pub. L. 99-166, § 203(1), substituted "two years" for "one year" in second sentence.

Subsec. (a)(3)(C). Pub. L. 99-166, § 203(2), added subpar. (C).

SUBCHAPTER IV—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

§ 4142. Eligibility; application; written contract

[*See main edition for text of* (*a*) *to* (*e*)]

(f) [*See main edition for text of* (*1*)]

(2) The Administrator may contract with an educational institution in which a participant in the Scholarship Program is enrolled for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (1)(A) of this subsection. Payment to such an educational institution may be made without regard to subsections (a) and (b) of section 3324 of title 31.

[*See main edition for text of* (*3*); (*g*) *to* (*j*)]

(As amended Pub. L. 98-160, title VII, § 702(18), Nov. 21, 1983, 97 Stat. 1010.)

AMENDMENTS

1983—Subsec. (f)(2). Pub. L. 98-160 substituted "subsections (a) and (b) of section 3324" for "section 3324(a) and (b)".

SUBCHAPTER V—QUALITY ASSURANCE

§ 4151. Quality-assurance program

(a) The Administrator shall—

(1) establish and conduct a comprehensive program to monitor and evaluate the quality of health care furnished by the Department of Medicine and Surgery (hereinafter in this section referred to as the "quality-assurance program"); and

(2) delineate the responsibilities of the Chief Medical Director with respect to the quality-assurance program, including the duties prescribed in this section.

(b)(1) As part of the quality-assurance program, the Chief Medical Director shall periodically evaluate—

(A) whether there are significant deviations in mortality and morbidity rates for surgical procedures performed by the Department of Medicine and Surgery from prevailing national mortality and morbidity standards for similar procedures; and

(B) if there are such deviations, whether they indicate deficiencies in the quality of health care provided by the Department of Medicine and Surgery.

(2) The evaluation under paragraph (1)(A) of this subsection shall be made using the information compiled under subsection (c)(1) of this section. The evaluation under paragraph (1)(B)

of this subsection shall be made taking into account the factors described in subsection (c)(2)(B) of this subsection.

(3) If, based upon an evaluation under paragraph (1)(A) of this subsection, the Chief Medical Director determines that there is a deviation referred to in that paragraph, the Chief Medical Director shall explain the deviation in the next report submitted under section 4152 of this title.

(c)(1) The Chief Medical Director shall—

(A) determine the prevailing national mortality and morbidity standards for each type of surgical procedure performed by the Department of Medicine and Surgery; and

(B) collect data and other information on mortality and morbidity rates in the Department of Medicine and Surgery for each type of surgical procedure performed by the Department and (with respect to each such procedure) compile the data and other information so collected—

(i) for each medical facility of the Veterans' Administration, in the case of cardiac surgery, heart transplant, and renal transplant programs; and

(ii) in the aggregate, for each other type of surgical procedure.

(2) The Chief Medical Director shall—

(A) compare the mortality and morbidity rates compiled under paragraph (1)(B) of this subsection with the national mortality and morbidity standards determined under paragraph (1)(A) of this subsection; and

(B) analyze any deviation between such rates and such standards in terms of—

(i) the characteristics of the respective patient populations;

(ii) the level of risk for the procedure involved, based on—

(I) patient age;

(II) the type and severity of the disease;

(III) the effect of any complicating diseases; and

(IV) the degree of difficulty of the procedure; and

(iii) any other factor that the Chief Medical Director considers appropriate.

(d) Based on the information compiled and the comparisons, analyses, evaluations, and explanations made under subsections (b) and (c) of this section, the Chief Medical Director, in each report under section 4152 of this title, shall make such recommendations with respect to quality assurance as the Chief Medical Director considers appropriate.

(e)(1) The Administrator shall allocate sufficient resources (including sufficient personnel with the necessary skills and qualifications) to enable the Department of Medicine and Surgery to carry out its responsibilities under this section.

(2) The Inspector General of the Veterans' Administration shall allocate sufficient resources (including sufficient personnel with the necessary skills and qualifications) to enable the Inspector General to monitor the quality-assurance program.

(Added Pub. L. 99-166, title II, § 204(a)(1), Dec. 3, 1985, 99 Stat. 950.)

Section Referred to in Other Sections

This section is referred to in section 4152 of this title.

§ 4152. Quality-assurance reports

(a)(1) Not later than February 1 of 1987, 1989, and 1991, the Chief Medical Director shall submit to the Administrator a report on the experience through the end of the preceding fiscal year under the quality-assurance program carried out under section 4151 of this title.

(2) Each such report shall include—

(A) the data and other information compiled and the comparisons, analyses, and evaluations made under subsections (b) and (c) of such section with respect to the period covered by the report; and

(B) recommendations under subsection (d) of such section.

(b) Not later than 60 days after receiving each such report, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comment concerning the report that the Administrator considers appropriate.

(c) A report submitted under subsection (b) of this section shall not be considered to be a record or document as described in section 3305(a) of this title.

(Added Pub. L. 99-166, title II, § 204(a)(1), Dec. 3, 1985, 99 Stat. 951.)

Section Referred to in Other Sections

This section is referred to in sections 3305, 4151 of this title.

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY

SUBCHAPTER I—ACQUISITION AND OPERATION OF MEDICAL FACILITIES

Sec.	
5007.	Operational and construction plans for medical facilities.

Amendments

1985—Pub. L. 99-166, title III, § 302(c)(2), Dec. 3, 1985, 99 Stat. 955, substituted "Operational and construction plans for medical facilities" for "Reports to congressional committees" in item 5007.

SUBCHAPTER I—ACQUISITION AND OPERATION OF MEDICAL FACILITIES

§ 5003. Authority to construct and alter, and to acquire sites for, medical facilities

Development of Medical-Facility Modular Components

Pub. L. 99-166, title III, § 304, Dec. 3, 1985, 99 Stat. 956, provided that: "In order to evaluate the applicability to the Veterans' Administration of the use of modular components in the design and construction of medical facilities for the furnishing of hospital care and to determine the efficiency and cost-effectiveness of that approach, the Administrator of Veterans' Affairs shall, not later than one year after the date of the enactment of this Act [Dec. 3, 1985], develop a modular approach to the planning and design of an appropriate Veterans' Administration medical facility for the furnishing of hospital care."

§ 5004. Congressional approval of certain medical facility acquisitions

(a)(1) The purpose of this subsection is to enable Congress to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility.

(2) After the adoption by the committees during a fiscal year of resolutions with identical texts approving major medical facility projects, it shall not be in order in the House of Representatives or in the Senate to consider a bill, resolution, or amendment making an appropriation for that fiscal year or for the next fiscal year which may be expended for a major medical facility project—

(A) if the project for which the appropriation is proposed to be made is not approved in those resolutions; or

(B) in the event that the project is approved in the resolutions, if either—

(i) the bill, resolution, or amendment making the appropriation does not specify—

(I) the medical facility project for which the appropriation is proposed to be made; and

(II) the amount proposed to be appropriated for the project; or

(ii) the amount proposed to be appropriated for the project (when added to any amount previously appropriated for the project) exceeds the amount approved for the project.

(3) No appropriation may be made for the lease of any space for use as a medical facility at an average annual rental of more than $500,000 unless each committee has first adopted a resolution approving such lease and setting forth the estimated cost thereof.

(4) For the purpose of this subsection, the term "major medical facility project" means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $2,000,000. Such term does not include an acquisition by exchange.

(b) In the event that the President or the Administrator proposes to the Congress the funding of any construction, alteration, lease, or other acquisition to which subsection (a) of this section is applicable, the Administrator shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Such prospectus shall include—

(1) a detailed description of the medical facility to be constructed, altered, leased, or otherwise acquired under this subchapter, including a description of the location of such facility and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a description of the consideration that was given to acquiring an existing facility by lease or purchase;

[See main edition for text of (2) and (3); (c) to (f)]

(As amended Pub. L. 99-166, title III, §§ 301, 303, Dec. 3, 1985, 99 Stat. 954, 955.)

Amendments

1985—Subsec. (a). Pub. L. 99-166, § 301, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "In order to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility—

"(1) no appropriation may be made for the construction, alteration, or acquisition (not including exchanges) of any medical facility which involves a total expenditure of more than $2,000,000 unless each committee has first adopted a resolution approving such construction, alteration, or acquisition and setting forth the estimated cost thereof; and

"(2) no appropriation may be made for the lease of any space for use as a medical facility at an average annual rental of more than $500,000 unless each committee has first adopted a resolution approving such lease and setting forth the estimated cost thereof."

Subsec. (b)(1). Pub. L. 99-166, § 303, inserted "and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a description of the consideration that was given to acquiring an existing facility by lease or purchase" after "such facility".

§ 5007. Operational and construction plans for medical facilities

(a)(1) In order to promote effective planning for the orderly construction, replacement, and alteration of medical facilities in accordance with the comparative urgency of the need for the services to be provided by such facilities, the Administrator shall submit to each committee an annual report on the construction, replacement, alteration, and operation of medical facilities.

(2) Each such report shall contain—

(A) a five-year strategic plan for the operation and construction of medical facilities—

(i) setting forth—

(I) the mission of each existing or proposed medical facility;

(II) any planned change in such mission; and

(III) the operational steps needed to achieve the facility's mission and the dates by which such steps are planned to be completed; and

(ii) a five-year plan, based on the factors set out in subclause (i) of this clause, for construction, replacement, or alteration projects for each such facility;

(B) a list, in order of priority, of not less than 10 hospitals that, in the judgment of the Administrator, are most in need of construction or replacement; and

(C) general plans (including projected costs, site location, and, if appropriate, necessary land acquisition) for each medical facility for which construction, replacement, or alteration is planned under clause (A)(ii) of this paragraph.

(3) The report under this subsection shall be submitted not later than June 30 of each year.

(b) The Administrator shall submit to each committee not later than January 31 of each year a report showing the location, space, cost, and status of each medical facility (1) the construction, alteration, lease, or other acquisition of which has been approved under section 5004(a) of this title, and (2) which was uncompleted as of the date of the last preceding report made under this subsection.

(As amended Pub. L. 99-166, title III, § 302(a)-(c)(1), Dec. 3, 1985, 99 Stat. 955.)

AMENDMENTS

1985—Pub. L. 99-166, § 302(c)(1), substituted "Operational and construction plans for medical facilities" for "Reports to congressional committees" in section catchline.

Subsec. (a)(1). Pub. L. 99-166, § 302(a)(1)-(3), designated existing provisions as par. (1), substituted "an annual report on the construction, replacement, alteration, and operation of medical facilities" for "an annual report on the construction, replacement, and alteration of medical facilities", and struck out provisions relating to the content of the reports to be submitted to congressional committees and the time such reports were to be submitted.

Subsec. (a)(2), (3). Pub. L. 99-166, § 302(a)(4), added pars. (2) and (3).

Subsec. (b). Pub. L. 99-166, § 302(b), struck out "(beginning in 1981)" before "a report", designated existing provisions as cl. (1), and substituted cl. (2) designation for ", in the case of the second and each succeeding report made under this subsection,".

§ 5010. Operation of medical facilities

(a) [*See main edition for text of (1) to (3)*]

(4) [*See main edition for text of (A) and (B)*]

(C) Whenever the Director of the Office of Management and Budget is required to submit a certification under subparagraph (B) of this paragraph, the Comptroller General shall submit to the appropriate committees of the Congress a report stating the Comptroller General's opinion as to whether the Director has complied with the requirements of that subparagraph. The Comptroller General shall submit the report not later than fifteen days after the end of the period specified in such subparagraph for the Director to submit the certification.

[*See main edition for text of (D), (5); (b)*]

(c) [*See main edition for text of (1)*]

(2) The Administrator may enter into a contract under the circumstances described in paragraph (1)(B) of this subsection only if the Administrator determines—

[*See main edition for text of (A)*]

(B) that the quantity and quality of health-care services provided to eligible veterans by the Veterans' Administration at the facility at which the activity is carried out would be maintained or enhanced as a result of such a contract.

[*See main edition for text of (3) to (7)*]

(As amended Pub. L. 98-160, title VII, § 702(19), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 98-528, title I, § 102, Oct. 19, 1984, 98 Stat. 2688.)

AMENDMENTS

1984—Subsec. (a)(4)(C). Pub. L. 98-528 substituted provision requiring the Comptroller General to submit a report stating the Comptroller General's opinion as to whether the Director has complied with subpar. (B) not later than fifteen days after the end of the period specified in that subparagraph for the Director to submit the required certification for provision which had required the Comptroller General to submit a report stating the Comptroller General's opinion as to whether the Director has complied with the requirements of any law making appropriations for the Veterans' Administration for any fiscal year or any part thereof regarding funded personnel ceilings not later than the forty-fifth day after the enactment of each such law.

1983—Subsec. (c)(2)(B). Pub. L. 98-160 substituted "quantity and quality" for "quantity or quality".

SUBCHAPTER II—PROCUREMENT AND SUPPLY

§ 5022. Authority to procure and dispose of property and to negotiate for common services

(a) [*See main edition for text of (1)*]

(2)(A) Before entering into a transaction described in subparagraph (B) of this paragraph with respect to any real property owned by the United States and administered by the Veterans' Administration which has an estimated value in excess of $50,000, the Administrator shall submit a report of the facts concerning the proposed transaction to the Committees on Veterans' Affairs of the Senate and House of Representatives, and such transaction may not then be entered into until after the expiration of 180 days from the date upon which the report is submitted.

[*See main edition for text of (B) and (C); (b) and (c)*]

(d) Real property under the jurisdiction of the Administrator may not be declared excess by the Administrator and disposed of by the General Services Administration or any other entity of the Federal Government unless the Administrator determines that the property is no longer needed by the Veterans' Administration in carrying out its functions.

(As amended Pub. L. 98-160, title IV, § 401, Nov. 21, 1983, 97 Stat. 1004.)

REFERENCES IN TEXT

Subsection (c) of section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)), referred to in subsec. (e), was struck out by section 2714(a)(1)(B) of Pub. L. 98-369 and the provisions formerly contained in subsec. (e) were restated in subsec. (c)(1) of section 302 of the 1949 Act.

AMENDMENTS

1983—Subsec. (a)(2)(A). Pub. L. 98-160, § 401(1), substituted "180 days" for "30 days".

Subsec. (d). Pub. L. 98-160, § 401(2), added subsec. (d).

SUBCHAPTER III—STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, AND HOSPITAL CARE

§ 5032. Declaration of purpose

The purpose of this subchapter is to assist the several States to construct State home facilities (or to acquire facilities to be used as State home facilities) for furnishing domiciliary or nursing home care to veterans, and to expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home, or hospital care to veterans in State homes.

(As amended Pub. L. 98-528, title I, § 105(1), Oct. 19, 1984, 98 Stat. 2689.)

AMENDMENTS

1984—Pub. L. 98-528 inserted "(or to acquire facilities to be used as State home facilities) after "State home facilities".

§ 5034. General regulations

Within six months after the date of enactment of this section or any amendment to it with respect to such amendment, the Administrator shall prescribe the following by regulation:

[*See main edition for text of (1)*]

(2) General standards of construction, repair, and equipment for facilities constructed or acquired with assistance received under this subchapter.

(3) General standards for the furnishing of care in facilities which are constructed or acquired with assistance received under this subchapter, which standards shall be no less stringent than those standards prescribed by the Administrator pursuant to section 620(b) of this title. The Administrator may inspect any State facility constructed or acquired with assistance received under this subchapter at such times as the Administrator deems necessary to insure that such facility meets such standards.

(As amended Pub. L. 98-528, title I, § 105(2), Oct. 19, 1984, 98 Stat. 2689.)

AMENDMENTS

1984—Pars. (2), (3). Pub. L. 98-528 inserted "or acquired" after "constructed" wherever appearing.

§ 5035. Applications with respect to projects; payments

(a) After regulations have been prescribed by the Administrator under section 5034 of this title, any State desiring to receive assistance for a project for construction of State home facilities (or acquisition of a facility to be used as a State home facility) must submit to the Administrator an application. Such application shall set forth—

(1) the amount of the grant requested with respect to such project which may not exceed 65 percent of the estimated cost of construction (or of the estimated cost of facility acquisition and construction) of such project,

[*See main edition for text of (2) to (5)*]

(6) reasonable assurance that adequate financial support will be available for the construction of the project (or for facility acquisition and construction of the project) by July 1 of the fiscal year for which the application is approved and for its maintenance and operation when complete,

(7) reasonable assurance that the State will make such reports in such form and containing such information as the Administrator may from time to time reasonably require, and give the Administrator, upon demand, access to the records upon which such information is based,

(8) reasonable assurance that the rates of pay for laborers and mechanics engaged in construction of the project will be not less than the prevailing local wage rates for similar work as determined in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5) (known as the Davis-Bacon Act), and

(9) in the case of a project for acquisition of a facility, reasonable assurance that the estimated total cost of acquisition of the facility and of any expansion, remodeling, and alteration of the acquired facility will not be greater than the estimated cost of construction of an equivalent new facility.

(b)(1) The Administrator shall approve any such application if the Administrator finds that—

(A) there are sufficient funds available to make the grant requested with respect to such project,

(B) such grant does not exceed 65 percent of the estimated cost of construction (or of the estimated cost of facility acquisition and construction) of such project,

(C) the application contains such reasonable assurances under subsection (a) of this section as the Administrator may determine to be necessary, and

(D) the plans and specifications for such project are in accord with regulations prescribed pursuant to section 5034(2) of this title and that the carrying out of such project, together with other projects under construction and other facilities, will not result in more than the number of beds prescribed by the Administrator pursuant to section 5034(1) of this title for the State in which such project is located being available for furnishing nursing home care to veterans in such State.

(2)(A) The Administrator shall defer approval of an application that meets the requirements of this section if the State submitting the application does not, by the July 1 deadline (as defined in subparagraph (C) of this paragraph), demonstrate to the satisfaction of the Administrator that the State has provided adequate financial support for construction of the project.

(B) In a case in which approval of an application is deferred under subparagraph (A) of this paragraph—

(i) the Administrator, in accordance with guidelines established by the Administrator, shall select for award of a grant or grants under this section an application or applications for a nursing home project or projects that the Administrator determines—

(I) to be most in need;

(II) would, but for the deferral, not have been approved during the fiscal year in which the deferral occurred; and

(III) have been provided adequate financial support by the State and are otherwise qualified for approval during the fiscal year; and

(ii) during the next fiscal year, the application with respect to which approval was deferred shall be accorded priority for approval ahead of applications that had not been approved before the first day of such fiscal year.

(C) For the purposes of this paragraph, the term "July 1 deadline" means July 1 of the fiscal year in which the State is notified by the Administrator of the availability of funding for a grant for such project.

[*See main edition for text of* (*c*)]

(d)(1) Upon approving an application under this section, the Administrator shall certify to the Secretary of the Treasury the amount of the grant so approved, but in no event an amount greater than 65 percent of the estimated cost of construction (or of the estimated cost of facility acquisition and construction) of the project, and shall designate the appropriation from which it shall be paid. Such certification shall provide for payment to the applicant or, if designated by the applicant, the State home for which such project is being carried out or any other agency or instrumentality of the applicant. Such amount shall be paid, in advance or by way of reimbursement, and in such installments consistent with the progress of the project as the Administrator may determine and certify for payment to the Secretary of the Treasury. Funds paid under this section for an approved project shall be used solely for carrying out such project as so approved.

[*See main edition for text of* (*2*); (*e*)]

(As amended Pub. L. 98-528, title I, § 105(3), Oct. 19, 1984, 98 Stat. 2689; Pub. L. 99-166, title II, § 205, Dec. 3, 1985, 99 Stat. 953.)

REFERENCES IN TEXT

The Act of March 3, 1931, referred to in subsec. (a)(8), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, known as the Davis-Bacon Act, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

AMENDMENTS

1985—Subsec. (a)(6). Pub. L. 99-166, § 205(a), inserted "by July 1 of the fiscal year for which the application is approved".

Subsec. (b). Pub. L. 99-166, § 205(b), designated existing provisions as par. (1), redesignated cls. (1) to (4) as (A) to (D), respectively, and added par. (2).

1984—Subsec. (a). Pub. L. 98-528, § 105(3)(A), inserted "(or acquisition of a facility to be used as a State home facility)" after "State home facilities" in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-528, § 105(3)(B), inserted "(or of the estimated cost of facility acquisition and construction)" after "cost of construction".

Subsec. (a)(6). Pub. L. 98-528, § 105(3)(C), inserted "(or for facility acquisition and construction of the project)" after "construction of the project".

Subsec. (a)(8). Pub. L. 98-528, § 105(3)(D), substituted "the Act of March 3, 1931 (40 U.S.C. 276a—276a-5)" for "sections 276a through 276a-5 of title 40".

Subsec. (a)(9). Pub. L. 98-528, § 105(3)(E), added par. (9).

Subsec. (b)(2). Pub. L. 98-528, § 105(3)(F), inserted "(or of the estimated cost of facility acquisition and construction)" after "cost of construction".

Subsec. (b)(4). Pub. L. 98-528, § 105(3)(G), substituted "the carrying out of such project" for "the construction of such project".

Subsec. (d)(1). Pub. L. 98-528, § 105(3)(H), inserted "(or of the estimated cost of facility acquisition and construction)" after "cost of construction" in first sentence, substituted "carried out" for "constructed" in second sentence, substituted "the project" for "construction" in third sentence, struck out "the construction of" before "an approved project" in fourth sentence.

§ 5036. Recapture provisions

If, within 20 years after completion of any project with respect to which a grant has been made under this subchapter (except that the Administrator, pursuant to regulations which the Administrator shall prescribe, may at the time of such grant provide for a shorter period than 20, but not less than seven, years, based on the magnitude of the project and the grant amount involved, in the case of the acquisition, expansion, remodeling, or alteration of existing facilities), such facilities cease to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing domiciliary, nursing home, or hospital care to veterans, the United States shall be entitled to recover from the State which was the recipient of the grant under this subchapter, or from the then owner of such facilities, 65 percent of the then value of such project (but in no event an amount greater than the amount of assistance provided under this subchapter), as determined by agreement of the parties or by action brought in the district court of the United States for the district in which such facilities are situated.

(As amended Pub. L. 98-528, title I, § 105(4), Oct. 19, 1984, 98 Stat. 2690.)

AMENDMENTS

1984—Pub. L. 98-528 struck out "for construction" after "completion of any project"; inserted "acquisition," after "in the case of the"; substituted "value of such project" for "value of such construction"; struck out "for such construction" after "assistance provided for", which amendment was executed by striking out "for such construction" after "assistance provided" as the probable intent of Congress, because "for" appeared only once after "assistance provided"; and substituted "20" for "twenty" in two places.

§ 5037. State control of operations

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any State home for which facilities are constructed or acquired with assistance received under this subchapter.

(As amended Pub. L. 98-528, title I, § 105(5), Oct. 19, 1984, 98 Stat. 2690.)

AMENDMENTS

1984—Pub. L. 98-528 inserted "or acquired" after "constructed".

SUBCHAPTER IV—SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

§ 5053. Specialized medical resources

[*See main edition for text of* (*a*) *to* (*c*)]

(d) When a Veterans' Administration health care facility provides hospital care or medical services, pursuant to a contract or agreement authorized by this section, to an individual who is not eligible for such care or services under chapter 17 of this title and who is entitled to hospital or medical insurance benefits under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), such benefits shall be paid, notwithstanding any condition, limitation, or other provision in that title which would otherwise preclude such payment, in accordance with—

[*See main edition for text of* (*1*) *and* (*2*)]

to such facility therefor or, if the contract or agreement so provides, to the community health care facility which is a party to the contract or agreement.

(As amended Pub. L. 98-160, title VII, § 702(20), Nov. 21, 1983, 97 Stat. 1010.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-160 substituted "title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)" for "subchapter XVIII of chapter 7 of title 42".

CHAPTER 82—ASSISTANCE IN ESTABLISHING NEW STATE MEDICAL SCHOOLS; GRANTS TO AFFILIATED MEDICAL SCHOOLS; ASSISTANCE TO HEALTH MANPOWER TRAINING INSTITUTIONS

§ 5070. Coordination with public health programs; administration

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (a), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title VII of the Public Health Service Act was added by act July 30, 1956, ch. 779, § 2, 70 Stat. 717, and is classified generally to subchapter V (§ 292 et seq.) of chapter 6A of Title 42, The Public Health and Welfare; Title VIII of the Public Health Service Act was added by act Sept. 4, 1964, Pub. L. 88-581, § 2, 78 Stat. 908, and is classified generally to subchapter VI (§ 296 et seq.) of chapter 6A of Title 42; Title IX of the Public Health Service Act, which was added by act Oct. 6, 1965, Pub. L. 89-239, § 2, 79 Stat. 926, was classified generally to subchapter VII (§ 299 et seq.) of chapter 6A of Title 42, and was repealed by Pub. L. 99-117, § 12(d), Oct. 7, 1985, 99 Stat. 495. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

CHAPTER 85—DISPOSITION OF DECEASED VETERANS' PERSONAL PROPERTY

SUBCHAPTER II—DEATH WHILE INMATE OF VETERANS' ADMINISTRATION FACILITY

§ 5222. Sale of assets accruing to the Fund

TRANSFER OF FUNCTIONS

The Division of Disbursements of the Treasury Department was consolidated into the Fiscal Service of the Treasury Department by section 1(a)(1) of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees. See section 306 of Title 31, Money and Finance.

§ 5223. Disbursements from the Fund

TRANSFER OF FUNCTIONS

The Division of Disbursements of the Treasury Department was consolidated into the Fiscal Service of the Treasury Department by section 1(a)(1) of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees. See section 306 of Title 31, Money and Finance.

TITLE 39—POSTAL SERVICE

This title was enacted by Pub. L. 86-682, § 1, Sept. 2, 1960, 74 Stat. 578, and was revised and reenacted by Pub. L. 91-375, § 2, Aug. 12, 1970, 84 Stat. 719

PART I—GENERAL

CHAPTER 2—ORGANIZATION

§ 202. Board of Governors

(a) The exercise of the power of the Postal Service shall be directed by a Board of Governors composed of 11 members appointed in accordance with this section. Nine of the members, to be known as Governors, shall be appointed by the President, by and with the advice and consent of the Senate, not more than 5 of whom may be adherents of the same political party. The Governors shall elect a Chairman from among the members of the Board. The Governors shall be chosen to represent the public interest generally, and shall not be representatives of specific interests using the Postal Service, and may be removed only for cause. Each Governor shall receive a salary of $10,000 a year plus $300 a day for not more than 42 days of meetings each year and shall be reimbursed for travel and reasonable expenses incurred in attending meetings of the Board. Nothing in the preceding sentence shall be construed to limit the number of days of meetings each year to 42 days.

(b) The terms of the 9 Governors shall be 9 years, except that the terms of the 9 Governors first taking office shall expire as designated by the President at the time of appointment, 1 at the end of 1 year, 1 at the end of 2 years, 1 at the end of 3 years, 1 at the end of 4 years, 1 at the end of 5 years, 1 at the end of 6 years, 1 at the end of 7 years, 1 at the end of 8 years, and 1 at the end of 9 years, following the appointment of the first of them. Any Governor appointed to fill a vacancy before the expiration of the term for which his predecessor was appointed shall serve for the remainder of such term. A Governor may continue to serve after the expiration of his term until his successor has qualified, but not to exceed one year.

[*See main edition for text of* (c) *and* (d)]

(As amended Pub. L. 98-81, § 2, Aug. 23, 1983, 97 Stat. 487; Pub. L. 99-190, § 144, Dec. 19, 1985, 99 Stat. 1324.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-190 substituted "42" for "30" in two places.

1983—Subsec. (b). Pub. L. 98-81 added provision that a Governor may continue to serve after the expiration of his term until his successor has qualified, but not to exceed one year.

CHAPTER 4—GENERAL AUTHORITY

§ 403. General duties

CONTINUATION OF MAIL DELIVERY SERVICES

Pub. L. 98-151, §§ 102, 106, Nov. 14, 1983, 97 Stat. 975, for the period Nov. 10, 1983, to Sept. 30, 1984, provided in part: "That six-day delivery and rural delivery of mail shall continue at the 1983 level."

Pub. L. 98-107, §§ 102, 108, Oct. 1, 1983, 97 Stat. 740, 741, for the period Oct. 1, 1983, to Nov. 10, 1983, provided in part: "That six-day delivery and rural delivery of mail shall continue at the 1983 level."

Pub. L. 97-35, title XVII, § 1722, Aug. 13, 1981, 95 Stat. 759, as amended by Pub. L. 98-369, div. B, title II, § 2209, July 18, 1984, 98 Stat. 1061, provided that: "During fiscal years 1982 through 1987, the Postal Service shall take no action to reduce or to plan to reduce the number of days each week for regular mail delivery."

§ 404. Specific powers

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 10601.

§ 409. Suits by and against the Postal Service

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3012 of this title.

PART II—PERSONNEL

CHAPTER 10—EMPLOYMENT WITHIN THE POSTAL SERVICE

§ 1006. Right of transfer

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5734.

CHAPTER 12—EMPLOYEE-MANAGEMENT AGREEMENTS

§ 1206. Collective-bargaining agreements

USE OF FUNDS FOR RESTRUCTURING OF EMPLOYEE COMPENSATION PRACTICES

Pub. L. 98-396, title III, § 303, Aug. 22, 1984, 98 Stat. 1422, provided that: "None of the funds made available to the United States Postal Service under this Act [see Tables for classification] or any other Act may be used to restructure employee compensation practices as in effect under the most recently effective collective bargaining agreement under section 1206 of title 39, United States Code, except in accordance with the results of procedures set forth in section 1207 of such title."

PART III—MODERNIZATION AND FISCAL ADMINISTRATION

CHAPTER 20—FINANCE

§ 2003. The Postal Service Fund

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2001, 3604 of this title; title 40 section 356; title 42 section 10601.

CHAPTER 26—DEBTS AND COLLECTION

§ 2601. Collection and adjustment of debts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 10601.

PART IV—MAIL MATTER

CHAPTER 30—NONMAILABLE MATTER

Sec.	
3012.	Civil penalties.
3013.	Semiannual reports on investigative activities of the Postal Service.

AMENDMENTS

1983—Pub. L. 98-186, § 3(c), Nov. 30, 1983, 97 Stat. 1317, added items 3012 and 3013.

§ 3001. Nonmailable matter

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-186, § 1, Nov. 30, 1983, 97 Stat. 1315, provided: "That this Act [enacting sections 3012 and 3013 of this title, amending section 3005 of this title, and enacting provisions set out as notes under sections 3005 and 3012 of this title] may be cited as the 'Mail Order Consumer Protection Amendments of 1983'."

§ 3005. False representations; lotteries

(a) Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, including the mailing of matter which is nonmailable under section 3001(d) of this title, or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order which—

(1) directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representative, to return such mail to the sender appropriately marked as in violation of this section, if the person, or his representative, is first notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns the mail to the sender;

(2) forbids the payment by a postmaster to the person or his representative of any money order or postal note drawn to the order of either and provides for the return to the remitter of the sum named in the money order or postal note; and

(3) requires the person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise.

For purposes of the preceding sentence, the mailing of matter which is nonmailable under such section 3001(d) by any person shall constitute prima facie evidence that such person is engaged in conducting a scheme or device for obtaining money or property through the mail by false representations.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Nothing in this section shall prohibit the mailing of (1) a newspaper of general circulation containing advertisements, lists of prizes, or information concerning a lottery conducted by a State acting under authority of State law, published in that State, or in an adjacent State which conducts such a lottery, (2) tickets or other materials concerning such a lottery within that State to addresses within that State, or (3) an advertisement promoting the sale of a book or other publication, or a solicitation to purchase, or a purchase order for any such publication, if (A) such advertisement, solicitation, or purchase order is not materially false or misleading in its description of the publication; (B) such advertisement, solicitation, or purchase order contains no material misrepresentation of fact: *Provided, however,* That no statement quoted or derived from the publication shall constitute a misrepresentation of fact as long as such statement complies with the requirements of subparagraphs (A) and (C); and (C) the advertisement, solicitation, or purchase order accurately discloses the source of any statements quoted or derived from the publication. Paragraph (3) shall not be applicable to any publication, advertisement, solicitation, or purchase order which is used to sell some other product in which the publisher or author has a financial interest as part of a commercial scheme. For the purposes of this subsection, "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(e)(1) In conducting an investigation to determine if a person is engaged in any of the activities covered by subsection (a) of this section, the Postmaster General (or any duly authorized agent of the Postmaster General) may tender, at any reasonable time and by any reasonable means, the price advertised or otherwise requested for any article or service that such person has offered to provide through the mails.

(2) A failure to provide the article or service offered after the Postmaster General or his agent has tendered the price advertised or otherwise requested in the manner described in paragraph (1) of this subsection, and any reasons for such failure, may be considered in a proceeding held under section 3007 of this title to determine if there is probable cause to believe that a violation of this section has occurred.

(3) The Postmaster General shall prescribe regulations under which any individual seeking to make a purchase on behalf of the Postal Service under this subsection from any person shall—

(A) identify himself as an employee or authorized agent of the Postal Service, as the case may be;

(B) state the nature of the conduct under investigation; and

(C) inform such person that the failure to complete the transaction may be considered in a proceeding under section 3007 of this title to determine probable cause, in accordance with paragraph (2) of this subsection.

(As amended Pub. L. 98-186, § 2, Nov. 30, 1983, 97 Stat. 1315.)

AMENDMENTS

1983—Subsec. (a)(3). Pub. L. 98-186, § 2(a), added par. (3).

Subsec. (d). Pub. L. 98-186, § 2(b), struck out "or" before "(2)", inserted "or" before "(3)", and added cl. (3) and provision relating to applicability of cl. (3).

Subsec. (e). Pub. L. 98-186, § 2(c), added subsec. (e).

CONSUMER EDUCATION PROGRAM ON SCHEMES INVOLVING FALSE REPRESENTATIONS

Section 4 of Pub. L. 98-181 provided that:

"(a) As soon as practicable after the date of enactment of this Act [Nov. 30, 1983], the Postmaster General or his designee, following consultation with representatives of the mail order industry, shall develop and carry out a program designed to provide consumer education to the public on schemes involving false representations through use of the mails, including the dissemination of information on recognizing practices commonly associated with such schemes, as well as appropriate measures which an individual may take upon receiving mail matter which the individual believes may be part of such a scheme.

"(b) A summary of the activities carried out under subsection (a) shall be included in each annual report rendered by the Postmaster General under section 2402 of title 39, United States Code."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3007, 3012, 3013 of this title.

§ 3007. Detention of mail for temporary periods

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3005, 3011, 3012, 3013 of this title.

§ 3012. Civil penalties

(a) Any person—

(1) who, through the use of the mail, evades or attempts to evade the effect of an order issued under section 3005(a)(1) or 3005(a)(2) of this title;

(2) who fails to comply with an order issued under section 3005(a)(3) of this title; or

(3) who (other than a publisher described by section 3007(b) of this title) has actual knowledge of any such order, is in privity with any person described by paragraph (1) or (2) of this subsection, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with any such order, as the case may be, through the use of the mail;

shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each day that such person engages in conduct described by paragraph (1), (2), or (3) of this subsection. A separate penalty may be assessed under this subsection with respect to the conduct described in each such paragraph.

(b)(1) Whenever, on the basis of any information available to it, the Postal Service finds that any person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), the Postal Service may, under the provisions of section 409(d) of this title, commence a civil action to enforce the civil penalties established by such subsection. Any such action shall be brought in the district court of the United States for the district in which the defendant resides or receives mail.

(2) If the district court determines that a person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), the court shall determine the civil penalty, if any under this section, taking into account the nature, circumstances, extent, and gravity of the violation or violations of such subsection, and, with respect to the violator, the ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such subsection, the degree of culpability, and such other matters as justice may require.

(c) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

(d) In any proceeding at any time under this section, the defendant shall be entitled as a defense or counterclaim to seek judicial review, if not already had, pursuant to chapter 7 of title 5, of the order issued under section 3005 of this title. However, nothing in this section shall be construed to preclude independent judicial review otherwise available pursuant to chapter 7 of title 5 of an order issued under section 3005 of this title.

(Added Pub. L. 98-186, § 3(a), Nov. 30, 1983, 97 Stat. 1316.)

EFFECTIVE DATE

Section 3(b) of Pub. L. 98-186 provided that: "Section 3012 of title 39, United States Code (as added by subsection (a) of this section) shall apply with respect to conduct which occurs on or after the date of the enactment of this Act [Nov. 30, 1983]."

§ 3013. Semiannual reports on investigative activities of the Postal Service

The Postmaster General shall submit semiannual reports to the Board summarizing the investigative activities of the Postal Service. One semiannual report shall be submitted for the reporting period beginning on October 1 and ending on March 31, and the other semiannual report shall be submitted for the reporting period beginning on April 1 and ending on September 30. Each such report shall be submitted within sixty days after the close of the reporting period involved and shall include with respect to such reporting period—

(1) a summary of any proceedings instituted under section 3005 of this title, and the results of those and of any other such proceedings decided, settled, or otherwise concluded during such period;

(2) the number of cases in which the authority described in section 3005(e) of this title was used;

(3) the number of applications for temporary restraining orders or preliminary injunctions submitted under section 3007 of this

title and, of those applications, the number granted;

(4) the total amount of expenditures and obligations incurred in carrying out the investigative activities of the Postal Service; and

(5) such other information relating to the investigative activities of the Postal Service as the Board may require.

Upon approval of a report submitted under the first sentence of this section, the Board shall transmit such report to the Congress.

(Added Pub. L. 98-186, § 3(a), Nov. 30, 1983, 97 Stat. 1317.)

CHAPTER 32—PENALTY AND FRANKED MAIL

Sec.
3220. Use of official mail in the location and recovery of missing children.

AMENDMENTS

1985—Pub. L. 99-87, § 1(a)(2), Aug. 9, 1985, 99 Stat. 290, added item 3220.

§ 3201. Definitions

As used in this chapter—

[*See main edition for text of (1) to (3)*]

(4) "franked mail" means mail which is transmitted in the mail under a frank;

(5) "Members of Congress" includes Senators, Representatives, Delegates, and Resident Commissioners; and

(6) "missing child" has the meaning provided by section 403(1) of the Juvenile Justice and Delinquency Prevention Act of 1974.

(As amended Pub. L. 99-87, § 1(b), Aug. 9, 1985, 99 Stat. 291.)

REFERENCES IN TEXT

Section 403(1) of the Juvenile Justice and Delinquency Prevention Act of 1974, referred to in par. (6), is classified to section 5772(1) of Title 42, The Public Health and Welfare.

AMENDMENTS

1985—Par. (6). Pub. L. 99-87 added par. (6).

TERMINATION DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-87 not effective two and one-half years after Aug. 9, 1985, see section 5 of Pub. L. 99-87, set out as a Termination Date note under section 3220 of this title.

§ 3204. Restrictions on use of penalty mail

(a) Except as otherwise provided in this section or section 3220 of this title, an officer, executive department, or independent establishment of the Government of the United States may not mail, as penalty mail, any article or document unless—

[*See main edition for text of (1) and (2); (b)*]

(As amended Pub. L. 99-87, § 1(c)(1), Aug. 9, 1985, 99 Stat. 291.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-87 inserted reference to section 3220(a) of this title.

TERMINATION DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-87 not effective two and one-half years after Aug. 9, 1985, see section 5 of Pub. L. 99-87, set out as a Termination Date note under section 3220 of this title.

§ 3220. Use of official mail in the location and recovery of missing children

(a)(1) The Office of Juvenile Justice and Delinquency Prevention, after consultation with appropriate public and private agencies, shall prescribe general guidelines under which penalty mail may be used to assist in the location and recovery of missing children. The guidelines shall provide information relating to—

(A) the form and manner in which materials and information relating to missing children (such as biographical data and pictures, sketches, or other likenesses) may be included in penalty mail;

(B) appropriate sources from which such materials and information may be obtained;

(C) the procedures by which such materials and information may be obtained; and

(D) any other matter which the Office considers appropriate.

(2) Each executive department and independent establishment of the Government of the United States shall prescribe regulations under which penalty mail sent by such department or establishment may be used in conformance with the guidelines prescribed under paragraph (1).

(b) The Senate Committee on Rules and Administration and the House Commission on Congressional Mailing Standards shall prescribe for their respective Houses rules and regulations, and shall take such other action as the Committee or Commission considers necessary and proper, in order that purposes similar to those of subsection (a) may, in the discretion of the congressional official or office concerned, be carried out by the use of franked mail sent by such official or office.

(c) As used in this section, "Office of Juvenile Justice and Delinquency Prevention" and "Office" each means the Office of Juvenile Justice and Delinquency Prevention within the Department of Justice, as established by section 201 of the Juvenile Justice and Delinquency Prevention Act of 1974.

(Added Pub. L. 99-87, § 1(a)(1), Aug. 9, 1985, 99 Stat. 290.)

REFERENCES IN TEXT

Section 201 of the Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (c), is classified to section 5611 of Title 42, The Public Health and Welfare.

TERMINATION DATE

Section 5 of Pub. L. 99-87 provided that: "The amendments made by section 1 [enacting this section and amending sections 3201 and 3204 of this title and section 733 of Title 44, Public Printing and Documents] and any guidelines, rules, or regulations prescribed to carry out such amendments shall cease to be effective two and one-half years after the date of the enactment of this Act [Aug. 9, 1985]."

Issuance of Guidelines, Rules, and Regulations

Section 2 of Pub. L. 99-87 provided that:

"(a) Guidelines.—The guidelines described in section 3220(a)(1) of title 39, United States Code, as added by this Act, shall be prescribed not later than ninety days after the date of the enactment of this Act [Aug. 9, 1985].

"(b) Rules and Regulations.—The regulations described in subsection (a)(2) of section 3220 of title 39, United States Code, as added by this Act, and the rules and regulations described in subsection (b) of such section, as so added, shall be prescribed not later than one hundred and eighty days after the date of the enactment of this Act [Aug. 9, 1985]."

Reporting Requirements

Section 3 of Pub. L. 99-87 provided that:

"(a) General Requirements.—Not later than two years after the date of the enactment of this Act [Aug. 9, 1985], a written report containing the matter described in subsection (b) shall be prepared by—

"(1) the Office of Juvenile Justice and Delinquency Prevention and submitted to the President, the President pro tempore of the Senate, and the Speaker of the House of Representatives;

"(2) the Senate Committee on Rules and Administration and submitted to the President pro tempore of the Senate; and

"(3) the House Commission on Congressional Mailing Standards and submitted to the Speaker of the House of Representatives.

"(b) Content of Reports.—Each report under this section shall include—

"(1) an assessment of the effectiveness with which any authority provided by section 3220 of title 39, United States Code, as added by this Act, has (during the period covered by the report) been used, insofar as such authority was subject to guidelines or rules and regulations prescribed by the reporting entity;

"(2) recommendations as to whether the authority under such section should, insofar as such authority was subject to such guidelines or rules and regulations, be extended beyond the termination date otherwise applicable under section 5 [set out as a note above]; and

"(3) any other information which the reporting entity considers appropriate."

Clarification Relating to Coordination of Government Programs

Section 4 of Pub. L. 99-87 provided that: "Notwithstanding any other provision of law, the authority provided by section 3220(b) of title 39, United States Code, as added by this Act, shall not be considered to be subject to the authority of any agency within the executive branch of the Government of the United States to coordinate programs relating to missing children."

Section Referred to in Other Sections

This section is referred to in section 3204 of this title; title 44 section 733.

CHAPTER 34—ARMED FORCES AND FREE POSTAGE

§ 3401. Mailing privileges of members of Armed Forces of the United States and of friendly foreign nations

[*See main edition for text of* (*a*)]

(b) There shall be transported by air, between Armed Forces post offices which are located outside the 48 contiguous States of the United States or between any such Armed Forces post office and the point of embarkation or debarkation within the United States, the territories and possessions of the United States in the Pacific area, the Commonwealth of Puerto Rico, or the Virgin Islands, on a space available basis, on scheduled United States air carriers at rates fixed and determined by the Secretary of Transportation in accordance with section 1376 of title 49, the following categories of mail matter:

[*See main edition for text of* (*1*) *to* (*3*)]

Whenever adequate service by scheduled United States air carriers is not available to provide transportation of mail matter by air in accordance with this subsection, the transportation of such mail may be authorized by other than scheduled United States air carriers.

(c) Any parcel, other than a parcel mailed at a rate of postage requiring priority of handling and delivery, not exceeding 30 pounds in weight and 60 inches in length and girth combined, which is mailed at or addressed to any Armed Forces post office established under section 406(a) of this title, shall be transported by air on a space available basis on scheduled United States air carriers at rates fixed and determined by the Secretary of Transportation in accordance with section 1376 of title 49,[1] upon payment of a fee for such air transportation in addition to the rate of postage otherwise applicable to such a parcel not transported by air. If adequate service by scheduled United States air carriers is not available, any such parcel may be transported by air carriers other than scheduled United States air carriers.

[*See main edition for text of* (*d*) *to* (*f*)]

(As amended Pub. L. 98-443, § 9(g)(1), Oct. 4, 1984, 98 Stat. 1707.)

Amendments

1984—Subsecs. (b), (c). Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

SUBCHAPTER II—PERMANENT RATES AND CLASSES OF MAIL

§ 3628. Appellate review

A decision of the Governors to approve, allow under protest, or modify the recommended decision of the Postal Rate Commission may be appealed to any court of appeals of the United States, within 15 days after its publication by the Public Printer, by an aggrieved party who appeared in the proceedings under section 3624(a) of this title. The court shall review the decision, in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, except as otherwise provided in this section, on the basis of the record before the Commission and the Governors. The court may affirm the decision or order that the entire matter be returned for further consideration, but the court may not modify the decision. The court may not suspend the effectiveness of the changes, or otherwise prevent them from taking effect until final disposition of the suit by the court. No court shall have jurisdiction to review a decision made by the Commission or Governors under this chapter except as provided in this section.

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[1] See References in Text note below.

(As amended Pub. L. 98-620, title IV, § 402(37), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Pub. L. 98-620 struck out provision which required the court to make the matter a preferred cause and to expedite judgment in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

PART V—TRANSPORTATION OF MAIL

CHAPTER 50—GENERAL

§ 5005. Mail transportation

[*See main edition for text of* (*a*)]

(b) [*See main edition for text of* (*1*) *and* (*2*)]

(3) Any contract between the Postal Service and any carrier or person for the transportation of mail shall be available for inspection in the office of the Postal Service and either the Interstate Commerce Commission or the Secretary of Transportation if for the carriage of mail in foreign air transportation (as defined in section 101 of the Federal Aviation Act of 1958), as appropriate, and in post offices on the post roads involved as determined by the Postal Service, at least 15 days prior to the effective date of the contract.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-443, § 9(g)(2), Oct. 4, 1984, 98 Stat. 1707.)

REFERENCES IN TEXT

Section 101 of the Federal Aviation Act of 1958, referred to in subsec. (b)(3), is classified to section 1301 of Title 49, Appendix, Transportation.

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98-443 substituted "Secretary of Transportation if for the carriage of mail in foreign air transportation (as defined in section 101 of the Federal Aviation Act of 1958)" for "Civil Aeronautics Board".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

§ 5007. Free transportation of postal employees

CROSS REFERENCES

Inapplicability of certain restrictions in Shipping Act to postal employees, see sections 817b, 817c of Title 46, Appendix, Shipping.

CHAPTER 54—TRANSPORTATION OF MAIL BY AIR

§ 5401. Authorization

[*See main edition for text of* (*a*)]

(b) Except as otherwise provided in section 5402 of this title, the Postal Service may make such rules, regulations, and orders consistent with sections 1301-1542 of title 49,[1] or any order, rule, or regulation made by the Secretary of Transportation thereunder, as may be necessary for such transportation.

(As amended Pub. L. 98-443, § 9(g)(3), Oct. 4, 1984, 98 Stat. 1707.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

§ 5402. Contracts for transportation of mail by air

(a) The Postal Service may contract with any certificated air carrier, without advertising for bids, in such manner and under such terms and conditions as it deems appropriate, for the transportation of mail by aircraft between any of the points in foreign air transportation between which the carrier is authorized by the Secretary of Transportation to engage in the transportation of mail. Such contracts shall be for the transportation of at least 750 pounds of mail per flight, and no more than 5 percent, based on weight, of the international mail transported under any such contract shall consist of letter mail. Any such contract shall be filed with the Secretary of Transportation not later than 90 days before its effective date. Unless the Civil Aeronautics Board shall determine otherwise (under criteria prescribed by section 1302 of title 49) [1] not later than 10 days prior to the effective date of the contract, such contract shall become effective.

(b) When the Postal Service deems that the transportation of mail by aircraft is required between points in foreign air transportation between which the Secretary of Transportation has not authorized an air carrier or combination of air carriers to engage in the transportation of mail, it may contract with any air carrier in such manner and under such terms and conditions as it may deem appropriate for the transportation of any class or classes of mail. The transportation of mail under contracts entered into under this subsection is not, except for sections 1371(k) and 1386(b) of title 49,[1] air transportation within the provisions of sections 1301-1542 of title 49.[2] The Postal Service shall cancel such contract, in whole or in respect to certain points as the certificate shall require, upon the issuance by the Secretary of Transportation of an authorization under sections 1371-1386 of title 49[2] to any air carrier to engage in the transportation of mail by aircraft between any of the points named in the contract, and the inauguration of scheduled service by such carrier.

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[1] See References in Text note below.

(c) If the Postal Service determines that service by certificated air carriers or combination of air carriers between any pair or pairs of points in foreign air transportation is not adequate for its purposes, it may contract for a period of not more than 4 years, without advertising for bids, in such manner and under such terms and conditions as it may deem appropriate, with any air taxi operator or combination thereof for such air transportation service. Contracts made under this subsection may be renewed at the existing rate by mutual agreement between the holder and the Postal Service. The Postal Service, with the consent of the air taxi operator, may adjust the compensation under such contracts for increased or decreased costs occasioned by changed conditions occurring during the contract term. The Postal Service shall cancel such a contract when the Secretary of Transportation authorizes an additional certificated carrier or carriers to provide service between any pair or pairs of points covered by the contract, and such carrier or carriers inaugurate schedules adequate for its purposes.

(d) The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate and overseas air transportation either through negotiations or competitive bidding.

(e) For purposes of this section, the terms "air carrier", "interstate air transportation", "overseas air transportation", and "foreign air transportation" have the meanings given such terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).[2]

(f) During the period beginning January 1, 1985, and ending January 1, 1989, the authority of the Secretary of Transportation and the Postal Service under subsections (a), (b), and (c) of this section shall also apply, and the authority of the Postal Service under subsection (d) shall not apply, to the transportation of mail by aircraft between any two points both of which are within the State of Alaska and between which the air carrier is authorized by the Secretary to engage in the transportation of mail.

(As amended Pub. L. 98-443, § 9(g)(4), Oct. 4, 1984, 98 Stat. 1707.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-443, § 9(g)(4)(A)-(C), substituted "Secretary of Transportation" for "Civil Aeronautics Board" wherever appearing, substituted "between any of the points in foreign air transportation" for "between any of the points", and struck out "10 percent of the domestic mail transported under any such contract or" before "5 percent".

Subsec. (b). Pub. L. 98-443, § 9(g)(4)(A), (D), substituted "Secretary of Transportation" for "Civil Aeronautics Board" wherever appearing and "required between points in foreign air transportation" for "required between points".

Subsec. (c). Pub. L. 98-443, § 9(g)(4)(A), (E), substituted "Secretary of Transportation" for "Civil Aeronautics Board" and "pairs of points in foreign air transportation is not adequate" for "pairs of points is not adequate".

Subsecs. (d) to (f). Pub. L. 98-443, § 9(g)(4)(F), added subsecs. (d) to (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF CERTAIN FUNCTIONS

Section 1553(a)(8), (b) of Title 49, Appendix, Transportation, provides that all functions, powers, and duties of the Civil Aeronautics Board under this section, to the extent it relates to foreign air transportation and to air transportation between any two points both of which are within the State of Alaska, are transferred to and vested in the Secretary of Transportation, effective Jan. 1, 1985.

Section 1553(c) of Title 49, Appendix, provides that the authority of the Secretary of Transportation under this section with respect to air transportation between any two points both of which are within the State of Alaska shall cease to be in effect on Jan. 1, 1989.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5401 of this title; title 49 App. sections 1375, 1553.

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[2] See References in Text note below.

TITLE 40—PUBLIC BUILDINGS, PROPERTY, AND WORKS

CHAPTER 1—PUBLIC BUILDINGS, GROUNDS, PARKS, AND WHARVES IN DISTRICT OF COLUMBIA

§ 13n. Policing authority

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Termination of authority; reporting requirements; duties with respect to an official guest of Supreme Court

The authority created under subsection (a)(2) of this section shall expire one year after December 26, 1985. The Marshal of the Supreme Court shall report annually to the Congress on March 1 regarding the administrative cost of carrying out his duties under such subsection. Duties under subsection (a)(2)(A) of this section with respect to an official guest of the Supreme Court in any part of the United States (other than the District of Columbia, Maryland, and Virginia) shall be authorized in writing by the Chief Justice of the United States or an Associate Justice of the Supreme Court, if such duties require the carrying of firearms under subsection (a)(5) of this section.

[*See main edition for text of* (*d*)]

(As amended Dec. 26, 1985, Pub. L. 99-218, 99 Stat. 1729.)

CODIFICATION

December 26, 1985, referred to in subsec. (c), was in the original "the date of enactment of this subsection" and was translated as "December 26, 1985", the date of enactment of Pub. L. 99-218, which amended generally subsec. (c) of this section, as the probable intent of Congress.

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-218, in amending subsec. (c) generally, substituted "one year after December 26, 1985" for "three years after December 29, 1982", and struck out "During the three-year effective period of subsection (a)(2) of this section" before "The Marshal of the Supreme Court shall report".

§ 34. Rent of buildings in District of Columbia; contracts not to be made until appropriation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 356 of this title; title 15 section 2076; title 42 sections 242b, 282, 285a-2, 285b-3, 1532, 2473.

§ 42. Rooms and accommodations for Office of Personnel Management

It shall be the duty of the Administrator of General Services to cause suitable and convenient rooms and accommodations to be assigned or provided, and to be furnished, heated, and lighted, at the city of Washington, for carrying on the work of the Office of Personnel Management and the examinations provided for in sections 3304 and 3305 of title 5, and to cause the necessary stationery and other articles to be supplied and the necessary printing to be done for the said Office.

(Jan. 16, 1883, ch. 27, § 4, 22 Stat. 405; May 29, 1920, ch. 214, § 1, 41 Stat. 642; 1950 Reorg. Plan No. 18, §§ 1, 2, eff. July 1, 1950, 15 F.R. 3177, 64 Stat. 1270; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

"Office of Personnel Management" and "said Office" were substituted in text for "Civil Service Commission" and "said commission", respectively, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

All functions with respect to acquiring space in buildings by lease, all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in Government-owned buildings), and all functions with respect to the operation, maintenance, and custody of office buildings owned by the Government and of office buildings or parts thereof acquired by lease, including those post-office buildings which, as determined by the Director of the Bureau of the Budget, are not used predominantly for post-office purposes, were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by sections 1 and 2 of Reorg. Plan No. 18 of 1950, eff. July 1, 1950, 15 F.R. 3177, 64 Stat. 1270, set out as a note under section 490 of this title. For delegation of those transferred functions to other personnel of the General Services Administration, or to the heads and personnel of other agencies, and for transfer of personnel, property, records, and funds, see sections 3 and 4 of that Plan.

§ 136. National Capital Service Area

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Creation of National Capital Service Area not to affect existing provisions covering buildings and grounds within Area; availability of services and facilities

(1) Except to the extent specifically provided by the provisions of this section, and amendments made by this section, nothing in this sec-

tion shall be applicable to the United States Capitol Buildings and Grounds as defined in sections 193a and 193m of this title, or to any other buildings and grounds under the care of the Architect of the Capitol, the United States Supreme Court Building and Grounds as defined in section 13p of this title, and the Library of Congress Buildings and Grounds as defined in section 167j of title 2, and except to the extent herein specifically provided, including amendments made by this section, nothing in this section shall be construed to repeal, amend, alter, modify, or supersede any provision of sections 193a to 193m, 212a, 212a-2, and 212b of this title, or any other of the general laws of the United States or any of the laws enacted by the Congress and applicable exclusively to the District of Columbia, or any rule or regulation promulgated pursuant thereto, in effect on January 1, 1975, pertaining to said buildings and grounds, or any existing authority, with respect to such buildings and grounds, vested by law, or otherwise, on such date, in the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, or the Librarian of Congress.

[*See main edition for text of* (2); (*i*) *and* (*j*); *credit*]

CODIFICATION

Subsec. (h)(1) is set out in this supplement to update a translation appearing in the main edition.

CHAPTER 2—CAPITOL BUILDING AND GROUNDS

Sec.

174j-9. Loans for Senate Restaurants.
  (a) Borrowing authority.
  (b) Amount and period of loan; voucher.
  (c) Deposit, credit, and future availability of proceeds from repayment.
214b. Designation of Capitol grounds as play area for children of Members and employees of Senate or House of Representatives.
  (a) Authority of Capitol Police Board.
  (b) Required approval; fences; termination of authority.
  (c) Playground equipment; required approval.
  (d) Day care center.
224. Transportation of House Pages by Capitol Grounds shuttle service.

§ 166. Architect of Capitol; repairs of Capitol

RESTORATION OF WEST CENTRAL FRONT OF UNITED STATES CAPITOL; APPROPRIATION OF FUNDS; CONSULTING ARCHITECT

Pub. L. 98-63, title I, § 101, July 30, 1983, 97 Stat. 335, which made supplemental appropriations for fiscal year ending Sept. 30, 1983, provided in part that: "Notwithstanding any other provision of law, to enable the Architect of the Capitol, under the direction of the Commission on the West Central Front of the United States Capitol, to restore the West Central Front of the United States Capitol (without change of location or change of the present architectural appearance thereof) in substantial accordance with the 'Restoration of the West Central Facade' report dated March 1978, $49,000,000, to remain available until expended: *Provided*, That the Architect of the Capitol, under the direction of such Commission and without regard to the provisions of section 3709 of the Revised Statutes, as amended [41 U.S.C. 5], is authorized and directed to enter into such contracts, incur such obligations, and make such expenditures for personal and other services and other expenses as may be necessary to carry out this paragraph: *Provided further*, That any general construction contracts entered into under authority of this paragraph shall be for a firm fixed price, supported by standard performance and payment bonds, and shall be awarded competitively among selected responsible general contractors approved by such Commission and upon the approval by such Commission of the amount of the firm fixed price contracts: *Provided further*, That, the Commission on the West Central Front of the United States Capitol shall appoint, from among private individuals who are qualified, by reason of education, training, and experience, a consulting architect who shall assist the Commission in directing the Architect of the Capitol with respect to the restoration of the West Central Front of the United States Capitol: *Provided further*, That the Architect of the Capitol shall keep the consulting architect appointed under this paragraph fully and currently informed of the progress of the restoration of the West Central Front of the United States Capitol: *Provided further*, That the consulting architect for the restoration of the West Central Front of the United States Capitol appointed under this paragraph shall be paid for his services (out of the sum appropriated by this paragraph) at such rate of pay as the Commission considers appropriate, but not exceeding a rate equal to the daily equivalent of the rate of basic pay payable for grade GS-18 under the General Schedule under section 5332 of title 5, United States Code."

§ 166a. Travel expenses

[*See main edition for text*]

(Nov. 13, 1985, Pub. L. 99-151, title I, § 100, 99 Stat. 800.)

CODIFICATION

Section is from the appropriation act cited as the credit to this section.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

July 17, 1984, Pub. L. 98-367, title I, § 100, 98 Stat. 482.

July 14, 1983, Pub. L. 98-51, title I, § 112, 97 Stat. 273.

Oct. 2, 1982, Pub. L. 97-276, § 101(c), 96 Stat. 1189.

§ 174b-1. Additional Senate office building

Upon completion of the additional office building for the United States Senate, the building and the grounds and sidewalks surrounding the same shall be subject to the provisions of sections 174(c), 174(d), 174c, 174d, 193a to 193m, 212a, 212a-2, and 212b of this title, in the same manner and to the same extent as the present Senate Office Building and the grounds and sidewalks surrounding the same.

[*See main edition for credit*]

CODIFICATION

Section is set out in this supplement to update a translation appearing in the main edition.

§ 174j-1. Senate Restaurants; management by Architect of Capitol; approval of matters of general policy; termination

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 166b-1f, 174j-3, 174j-4, 174j-7, 174j-9 of this title; title 5 section 5533.

§ 174j-3. Authorization and direction to effectuate purposes of sections 174j-1 to 174j-7 of this title

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 166b-1f, 174j-4, 174j-7, 174j-9 of this title; title 5 section 5533.

§ 174j-4. Special deposit account; establishment; appropriations; approval of payments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 166b-1f, 174j-3, 174j-7, 174j-9 of this title; title 5 section 5533.

§ 174j-5. Deposits and disbursements under special deposit account

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 166b-1f, 174j-3, 174j-4, 174j-6, 174j-7, 174j-9 of this title; title 5 section 5533.

§ 174j-6. Bond of Architect, Assistant Architect, and other employees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 166b-1f, 174j-3, 174j-4, 174j-7, 174j-9 of this title; title 5 section 5533.

§ 174j-7. Supersedure of prior provisions for maintenance and operation of Senate Restaurants

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 166b-1f, 174j-3, 174j-4, 174j-9 of this title; title 5 section 5533.

§ 174j-8. Management personnel and miscellaneous expenses; availability of appropriations; annual and sick leave

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 174j-9 of this title.

§ 174j-9. Loans for Senate Restaurants

(a) Borrowing authority

Subject to the approval of the Senate Committee on Rules and Administration, the Architect of the Capitol shall have authority to borrow (and be accountable for), from time to time, from the appropriation account, within the contingent fund of the Senate, for "Miscellaneous Items", such amount as he may determine necessary to carry out the provisions of the joint resolution entitled "Joint Resolution transferring the management of the Senate Restaurants to the Architect of the Capitol, and for other purposes", approved July 6, 1961, as amended (40 U.S.C. 174j-1 through 174j-8),[1] and resolutions of the Senate amendatory thereof or supplementary thereto.

(b) Amount and period of loan; voucher

Any such loan authorized pursuant to subsection (a) of this section shall be for such amount and for such period as the Senate Committee on Rules and Administration shall prescribe, and shall be made by the Secretary of the Senate to the Architect of the Capitol upon a voucher approved by the Chairman of the Senate Committee on Rules and Administration.

(c) Deposit, credit, and future availability of proceeds from repayment

All proceeds from the repayment of any such loan shall be deposited in the appropriation account, within the contingent fund of the Senate, for "Miscellaneous Items", shall be credited to the fiscal year during which such loan was made, and shall thereafter be available for the same purposes for which the amount loaned was initially appropriated.

(Pub. L. 98-396, title I, § 101, Aug. 22, 1984, 98 Stat. 1395.)

REFERENCES IN TEXT

"Joint Resolution transferring the management of the Senate Restaurants to the Architect of the Capitol, and for other purposes", approved July 6, 1961, referred to in subsec. (a), is Pub. L. 87-82, July 6, 1961, 75 Stat. 199, which enacted sections 174j-1 to 174j-7 of this title. Section 174j-2 of this title was omitted from the Code. For complete classification of this Act to the Code, see Tables.

§ 175. House Office Building; control, supervision, and care

ADDITIONAL HOUSE OFFICE BUILDING

Pub. L. 98-367, title I, § 100, July 17, 1984, 98 Stat. 483, provided in part: "That notwithstanding any other provision of law, the House Office Building Commission is authorized to use, to such extent as it may deem necessary, for the purposes of providing office and other accommodations for the House of Representatives, the building located at 501 First Street, S.E., on a portion of Reservation 17 in the District of Columbia when such building is acquired by the Architect of the Capitol at the direction of the House Office Building Commission under authority of the Additional House Office Building Act of 1955, and to incur any expenditures under this appropriation required for alterations, maintenance, and occupancy thereof: *Provided further*, That any space in such building used for office and other accommodations for the House of Representatives shall be deemed to be a part of the 'House Office Buildings' and, as such, shall be subject to the laws, rules, and regulations applicable to those buildings."

§ 184a. John W. McCormack Residential Page School

[*See main edition for text of* (*a*) *to* (*e*)]

(f) United States Capitol Grounds provisions applicable

Upon the acquisition on behalf of the United States of all real property under this section, such property shall be a part of the United States Capitol Grounds and shall be subject to the provisions of sections 193a to 193m, 212a, 212a-2, and 212b of this title.

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[1] See References in Text note below.

[*See main edition for text of* (*g*) *to* (*i*); *credits*]

CODIFICATION

Subsec. (f) is set out in this supplement to update a translation appearing in the main edition.

§ 193b. Public use of Capitol Grounds

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136, 174b-1, 184a, 193h, 193i, 193j, 193k, 193*l*, 193m, 212a of this title.

§ 193c. Obstruction of roads; conveyance of goods or merchandise; Capitol Grounds

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136, 174b-1, 184a, 193h, 193i, 193j, 193k, 193*l*, 193m, 212a of this title.

§ 193d. Sale of articles; signs; solicitation; Capitol Grounds

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136, 174b-1, 184a, 193h, 193i, 193j, 193k, 193*l*, 193m, 212a of this title.

§ 193e. Injuries to property; Capitol Grounds

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136, 174b-1, 184a, 193h, 193i, 193j, 193k, 193*l*, 193m, 212a of this title.

§ 193f. Capitol Grounds and Buildings security

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136, 174b-1, 184a, 193h, 193i, 193j, 193k, 193*l*, 193m, 212a of this title.

§ 193g. Parades or assemblages; display of flags; Capitol Grounds

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136, 174b-1, 184a, 193h, 193i, 193j, 193k, 193*l*, 193m, 212a of this title.

§ 193h. Prosecution and punishment of offenses

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Procedure

Violations of sections 193a to 193m, 212a, 212a-2, and 212b of this title, including attempts or conspiracies to commit such violations, shall be prosecuted by the United States attorney or his assistants in the name of the United States. None of the general laws of the United States and none of the laws of the District of Columbia shall be superseded by any provision of said sections. Where the conduct violating said sections also violates the general laws of the United States or the laws of the District of Columbia, both violations may be joined in a single prosecution. Prosecution for any violation of section 193f(a) of this title or for conduct which constitutes a felony under the general laws of the United States or the laws of the District of Columbia shall be in the United States District Court for the District of Columbia. All other prosecutions for violations of said sections may be in the Superior Court of the District of Columbia. Whenever any person is convicted of a violation of said sections and of the general laws of the United States or the laws of the District of Columbia, in a prosecution under this subsection, the penalty which may be imposed for such violation is the highest penalty authorized by any of the laws for violation of which the defendant is convicted.

[*See main edition for credits*]

CODIFICATION

Subsec. (c) is set out in this supplement to update a translation appearing in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136, 174b-1, 184a, 193i, 193k, 193*l*, 193m, 212a of this title.

§ 193i. Assistance to authorities by Capitol employees

It shall be the duty of all persons employed in the service of the Government in the Capitol or in the United States Capitol Grounds to prevent, as far as may be in their power, offenses against sections 193a to 193m, 212a, 212a-2, and 212b of this title, and to aid the police, by information or otherwise, in securing the arrest and conviction of offenders.

[*See main edition for credit*]

CODIFICATION

Section is set out in this supplement to update a translation appearing in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136, 174b-1, 184a, 193h, 193k, 193*l*, 193m, 212a of this title.

§ 193j. Suspension of prohibitions against use of grounds

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136, 174b-1, 184a, 193g, 193h, 193i, 193k, 193*l*, 193m, 212a of this title.

§ 193k. Power of Capitol Police Board to suspend prohibitions

In the absence from Washington of either of the officers, designated in section 193j of this title, the authority therein given to suspend certain prohibitions of sections 193a to 193m, 212a, 212a-2, and 212b of this title shall devolve upon the other, and in the absence from Washington of both it shall devolve upon the Capitol Police Board: *Provided*, That notwithstanding the provisions of sections 193g and 193j of this title, the Capitol Police Board is authorized to grant the Mayor of the District of Columbia authority to permit the use of Louisiana Avenue for any of the purposes prohibited by section 193g of this title.

[*See main edition for credits*]

CODIFICATION

Section is set out in this supplement to update a translation appearing in the main edition.

Section Referred to in Other Sections

This section is referred to in sections 136, 174b-1, 184a, 193g, 193h, 193i, 193*l*, 193m, 212a of this title.

§ 193*l*. Concerts on grounds

Nothing in sections 193a to 193k, 212a, and 212a-2 of this title shall be construed to prohibit the giving of concerts in the United States Capitol Grounds, at such times as will not interfere with the Congress, by any band in the service of the United States, when and as authorized by the Architect of the Capitol.

[*See main edition for credit*]

Codification

Section is set out in this supplement to update a translation appearing in the main edition.

Section Referred to in Other Sections

This section is referred to in sections 136, 174b-1, 184a, 193h, 193i, 193k, 193m, 212a of this title.

§ 193m. Definitions

As used in sections 193a to 193m, 212a, 212a-2, and 212b of this title—

[*See main edition for text of (1) to (5); credits*]

Codification

Section is set out in part in this supplement to update a translation appearing in the main edition.

§ 206. Capitol Police; appointment; Chief of the Capitol Police

Capitol Police Positions Under the House of Representatives

Capitol Police positions under the House of Representatives were authorized by the following acts:

House Resolution No. 343, Ninety-eighth Congress, Oct. 26, 1983, made permanent law July 17, 1984, Pub. L. 98-367, title I, § 103, 98 Stat. 479.

§§ 206a to 206a-8. Omitted

Codification

Sections, which related to establishment of additional positions on the Capitol Police for duty under the House of Representatives, were based on House Resolutions that were made permanent law, and have been omitted as of limited interest. These House Resolutions and the acts that made them permanent law are listed in a note set out under section 206 of this title.

§ 212a. Policing of Capitol Buildings and Grounds; powers of Capitol Police; arrests by District of Columbia police

The Capitol Police shall police the United States Capitol Buildings and Grounds under the direction of the Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, and shall have the power to enforce the provisions of sections 193a to 193m, 212a, 212a-2, and 212b of this title and regulations promulgated under section 212b of this title, and to make arrests within the United States Capitol Buildings and Grounds for any violations of any law of the United States, of the District of Columbia, or of any State, or any regulation promulgated pursuant thereto: *Provided*, That the Metropolitan Police force of the District of Columbia are authorized to make arrests within the United States Capitol Buildings and Grounds for any violations of any such laws or regulations, but such authority shall not be construed as authorizing the Metropolitan Police force, except with the consent or upon the request of the Capitol Police Board, to enter such buildings to make arrests in response to complaints or to serve warrants or to patrol the United States Capitol Buildings and Grounds. For the purpose of this section, the word "grounds" shall include the House Office Building parking area.

[*See main edition for credits*]

Codification

Section is set out in this supplement to update a translation appearing in the main edition.

§ 212a-1. Capitol grounds and Library of Congress grounds; detail of police

Similar Provisions

Provisions similar to this section were contained in the following appropriation acts:

July 14, 1983, Pub. L. 98-51, title I, § 112, 97 Stat. 271.

§ 212a-2. Protection of Members of Congress, officers of Congress, and members of their families

Section Referred to in Other Sections

This section is referred to in sections 136, 174b-1, 184a, 193h, 193i, 193k, 193*l*, 193m, 212a of this title.

§ 214b. Designation of Capitol grounds as play area for children of Members and employees of Senate or House of Representatives

(a) Authority of Capitol Police Board

Notwithstanding any other provision of law and subject to the provisions of paragraph (1) of subsection (b) of this section, the Capitol Police Board is authorized to designate certain portions of the Capitol grounds (other than a portion within the area bounded on the North by Constitution Avenue, on the South by Independence Avenue, on the East by First Street, and on the West by First Street) for use exclusively as play areas for the benefit of children attending a day care center which is established for the primary purpose of providing child care for the children of Members and employees of the Senate or the House of Representatives.

(b) Required approval; fences; termination of authority

(1) In the case of any such designation referred to in subsection (a) of this section involving a day care center established for the benefit of children of Members and employees of the Senate, the designation shall be with the approval of the Senate Committee on Rules and Administration, and in the case of such a center established for the benefit of children of Members and employees of the House of Representatives, the designation shall be with the approval of the House Committee on House Administration, with the concurrence of the House Office Building Commission.

(2) The Architect of the Capitol shall enclose with a fence any area designated pursuant to subsection (a) of this section as a play area.

(3) The authority to use an area designated pursuant to subsection (a) of this section as a play area may be terminated at any time by the Committee which approved such designation.

(c) Playground equipment; required approval

Nothing in this or any other Act shall be construed as prohibiting any day care center referred to in subsection (a) of this section from placing playground equipment within an area designated pursuant to subsection (a) of this section for use solely in connection with the operation of such center, subject to, in the case of a day care center established for the benefit of children of Members and employees of the Senate, the approval of the Senate Committee on Rules and Administration, and in the case of such a center established for the benefit of children of Members and employees of the House of Representatives, the approval of the House Committee on House Administration, with the concurrence of the House Office Building Commission.

(d) Day care center

The day care center referred to in S. Res. 269, Ninety-eighth Congress, first session, is a day care center for which space may be designated under subsection (a) of this section for use as a play area.

(Pub. L. 98-392, § 3, Aug. 21, 1984, 98 Stat. 1362.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 98-392, Aug. 21, 1984, 98 Stat. 1362, which enacted this section and amended section 2107 of Title 20, Education. For complete classification of this Act to the Code, see Tables.

S. Res. 269, Ninety-eighth Congress, first session, referred to in subsec. (d), is dated Nov. 14, 1983, and reads as follows: "*Resolved*, That payment is authorized from the contingent fund of the Senate in an amount not to exceed $20,000 for the start-up costs, including the procurement of the services of individual consultants or organizations, for a Senate day care center, which shall be ready for occupancy by January 1, 1984.

"SEC. 2. Payments under this resolution shall be paid from the appropriation account for 'Miscellaneous Items' in the contingent fund of the Senate upon vouchers approved by the chairman of the Committee on Rules and Administration.

"SEC. 3. The Committee on Rules and Administration shall supervise any contract entered into on behalf of the Senate, under authority of this resolution. Such contract shall not be subject to the provisions of section 5 of title 41 of the United States Code or any other provision of law requiring advertising."

§ 215. Supervision of Botanical Garden

RELOCATION OF POPLAR POINT GREENHOUSE AND NURSERY OF UNITED STATES BOTANIC GARDEN AND DISTRICT OF COLUMBIA LANHAM TREE NURSERY TO NEW SITE

Pub. L. 98-340, July 3, 1984, 98 Stat. 308, directed the Architect of the Capitol under the direction of the Joint Committee on the Library and the District of Columbia government to enter into an agreement under which the Architect and the District would determine a site of not less than twenty-five contiguous acres under the jurisdiction of the District upon which the facilities existing on July 3, 1984, being operated and maintained by the United States Botanic Garden at the Poplar Point Greenhouse and Nursery, would be relocated. The agreement would also provide that the District convey without consideration to the Architect on behalf of the United States all right, title, and interest of the District in the replacement site and that the District convey without consideration to the Secretary of the Interior on behalf of the United States all right, title, and interest of the District in the real property known as the Lanham Tree Nursery. Within sixty days of July 3, 1984, the Botanic Garden Greenhouse and Nursery at Poplar Point would come within the jurisdiction of the Secretary of the Interior and within sixty days after the Secretary assumed jurisdiction for such real property the Secretary would enter into an agreement with the District and the Washington Metropolitan Area Transit Authority under which the District and the Washington Metropolitan Area Transit Authority would be authorized to construct, maintain, and operate certain facilities designed to improve transportation in the Washington metropolitan area.

§ 223. Capitol Grounds shuttle service; purchase, etc., of vehicles

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 224 of this title.

§ 224. Transportation of House Pages by Capitol Grounds shuttle service

The passenger motor vehicles authorized by section 223 of this title to provide a shuttle service for Members and employees of Congress may be used for the transportation of House Pages to and from special events associated with their education when approved by the House of Representatives Page Board: *Provided further*, That the use of the said passenger motor vehicles for transportation of House Pages shall not interfere with the shuttle service for Members and employees of the Congress.

(Pub. L. 99-151, title I, § 100, Nov. 13, 1985, 99 Stat. 801.)

CHAPTER 3—PUBLIC BUILDINGS AND WORKS GENERALLY

§ 257. Condemnation of realty for sites and other uses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 sections 81e, 159a, 231b, 242, 263, 403l, 423k, 423n, 425a, 430a, 430k, 430u, 430nn, 433c, 433h, 447b, 449, 450m, 450p, 459a; title 25 sections 500a, 1724, 1754; title 42 sections 1532, 2222; title 43 section 1522; title 49 App. section 1344; title 50 section 167f.

§ 258a. Lands, easements, or rights of way for public use; taking of possession and title in advance of final judgment; authority, procedure

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 258c, 258d of this title; title 10 section 7422; title 16 sections 79c, 831c; title 25 sections 500a, 1724, 1754; title 33 section 598; title 39 section 410; title 42 sections 1502, 1532, 1592d, 1594a, 2222, 4651; title 43 section 1522; title 49 App. section 1344; title 50 section 167f.

§ 270a. Bonds of contractors of public buildings or works

Section Referred to in Other Sections

This section is referred to in sections 270b, 270d, 270e, 270f of this title; title 15 section 637; title 25 sections 47a, 450j, 1654; title 31 section 9303; title 39 section 410; title 42 section 1594.

§ 270b. Rights of persons furnishing labor or material

Section Referred to in Other Sections

This section is referred to in sections 270d, 270e, 270f of this title; title 25 sections 47a, 450j, 1654; title 31 section 9303; title 39 section 410.

§ 270c. Right of person furnishing labor or material to copy of bond

The department secretary or agency head of the contracting agency is authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made or that he is being sued on any such bond, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such fees as the department secretary or agency head of the contracting agency fixes to cover the cost of preparation thereof.

(As amended Apr. 18, 1984, Pub. L. 98-269, 98 Stat. 156.)

Amendments

1984—Pub. L. 98-269 substituted "department secretary or agency head of the contracting agency" for "Comptroller General" in two places.

Section Referred to in Other Sections

This section is referred to in sections 270b, 270d, 270e, 270f of this title; title 25 sections 47a, 450j, 1654; title 31 section 9303; title 39 section 410.

§ 270d. "Person" defined

Section Referred to in Other Sections

This section is referred to in sections 270b, 270e, 270f of this title; title 25 sections 47a, 450j, 1654; title 31 section 9303; title 39 section 410.

§ 270f. Waiver of sections 270a to 270d with respect to transportation contracts

The Secretary of Transportation may waive sections 270a to 270d of this title, with respect to contracts for the construction, alteration, or repair, of vessels of any kind or nature, entered into pursuant to sections 1535 and 1536 of title 31, the Merchant Marine Act, 1936 [46 App. U.S.C. 1101 et seq.], or the Merchant Ship Sales Act of 1946 [50 App. U.S.C. 1735 et seq.], regardless of the terms of such contracts as to payment or title.

(Apr. 29, 1941, ch. 81, § 2, as added Oct. 21, 1970, Pub. L. 91-469, § 39, 84 Stat. 1036, and amended Aug. 6, 1981, Pub. L. 97-31, § 12(12), 95 Stat. 154.)

References in Text

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended, which is classified principally to chapter 27 (§ 1101 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1245 of Title 46 and Tables.

Codification

Section is set out in this supplement to reflect the transfer of the Merchant Marine Act, 1936, referred to in text, to Title 46, Appendix, Shipping.

§ 276a. Rate of wages for laborers and mechanics

Act Referred to in Other Sections

The Davis-Bacon Act [40 U.S.C. 276a to 276a-5] is referred to in sections 276a-7, 808 of this title; title 10 section 2304; title 12 sections 1701q, 1715c, 1749a; title 15 section 3152; title 16 sections 284c, 779e; title 20 sections 684, 693b, 954, 956, 1232b; title 23 section 113; title 25 sections 450e, 458, 1633; title 29 sections 251 to 256, 258, 259, 262, 776, 1553; title 31 section 6704; title 33 section 1372; title 38 section 5035; title 39 section 410; title 40 App. section 402; title 41 sections 42, 258; title 42 sections 242m, 254b, 254c, 291e, 293a, 300j-9, 300s-1, 300t-12, 1437j, 1440, 1486, 1592i, 2992a, 3027, 3107, 3222, 3936, 4728, 5046, 5310, 5919, 6042, 6063, 6371j, 6708, 6728, 6881, 6979, 7614, 8775, 9604; title 45 section 565; title 49 App. sections 1609, 2214; title 50 App. sections 2095, 2096, 2281.

§ 276c. Regulations governing contractors and subcontractors

Section Referred to in Other Sections

This section is referred to in sections 330, 808 of this title; title 16 section 779e; title 20 sections 684, 693b, 954, 956, 1232b; title 25 section 450e; title 29 sections 776, 1553; title 31 section 6704; title 33 section 1372; title 39 section 410; title 40 App. section 402; title 42 sections 242m, 254b, 254c, 291e, 293a, 300j-9, 300s-1, 300t-12, 1440, 1486, 1592i, 2992a, 3027, 3107, 3222, 5046, 5310, 5919, 6042, 6063, 6371j, 6708, 6728, 6881, 6979, 7614, 8775, 9604; title 49 App. section 1609; title 50 App. sections 2095, 2096, 2281.

CHAPTER 4—THE PUBLIC PROPERTY

§ 318. Protection of Federal property under jurisdiction of Administrator of General Services; appointment of guards as special policemen; compensation; duties; jurisdiction

Section Referred to in Other Sections

This section is referred to in title 50 section 403o.

§ 318c. Penalties

Section Referred to in Other Sections

This section is referred to in section 318a of this title; title 50 section 403o.

CHAPTER 5—HOURS OF LABOR AND SAFETY ON PUBLIC WORKS

SUBCHAPTER II—CONTRACT WORK HOURS AND SAFETY STANDARDS

§ 328. Eight hour day and forty hour week; overtime compensation; contractual conditions; liability of employers for violation; withholding funds to satisfy liabilities of employers

(a) Notwithstanding any other provision of law, the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on any contract of the character specified in section 329 of this title shall be computed on the basis of a standard workweek of forty hours, and work in excess of such standard workweek shall be permitted subject to provisions of this section. For each workweek in which any such laborer or mechanic is so employed such wages shall include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of forty hours in the workweek.

(b) The following provisions shall be a condition of every contract of the character specified in section 329 of this title and of any obligation of the United States, any territory, or the District of Columbia in connection therewith:

(1) No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic, in any workweek in which he is employed on such work, to work in excess of forty hours in such workweek except in accordance with the provisions of this subchapter; and

(2) In the event of violation of the provisions of paragraph (1), the contractor and any subcontractor responsible therefor shall be liable to such affected employee for his unpaid wages and shall, in addition, be liable to the United States (or, in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages as provided therein. Such liquidated damages shall be computed, with respect to each individual employed as a laborer or mechanic in violation of any provision of this subchapter, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this subchapter. The governmental agency for which the contract work is done or by which financial assistance for the work is provided may withhold, or cause to be withheld, subject to the provisions of section 330 of this title, from any moneys payable on account of work performed by a contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as herein provided.

(As amended Pub. L. 99-145, title XII, § 1241(a), Nov. 8, 1985, 99 Stat. 734.)

Amendments

1985—Subsec. (a). Pub. L. 99-145, § 1241(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Notwithstanding any other provision of law, the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on any contract of the character specified in section 329 of this title shall be computed on the basis of a standard workday of eight hours and a standard workweek of forty hours, and work in excess of such standard workday or workweek shall be permitted subject to the provisions of this section. For each workweek in which any such laborer or mechanic is so employed, such wages shall include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of forty hours in the workweek, as the case may be."

Subsec. (b)(1). Pub. L. 99-145, § 1241(a)(2)(A), struck out "eight hours in any calendar day or in excess of" before "forty hours in such workweek".

Subsec. (b)(2). Pub. L. 99-145, § 1241(a)(2)(B), struck out "eight hours or in excess of" before "the standard workweek".

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-145 effective Jan. 1, 1986, see section 1241(c) of Pub. L. 99-145, set out as a note under section 35 of Title 41, Public Contracts.

CHAPTER 6—ACQUISITION OF SITES FOR AND CONSTRUCTION OF PUBLIC BUILDINGS

§ 356. Lease purchase contracts

References in Text

Subsection (c) of section 252 of title 41, referred to in subsec. (j), was struck out by section 2714(a)(1)(B) of Pub. L. 98-369 and provisions formerly contained in subsection (e) were restated in subsection (c)(1) of section 252 of Title 41, Public Contracts.

§ 356a. Exercise of lease purchase contract authority

References in Text

Subsection (c) of section 302 of the Federal Property and Administrative Services Act of 1949, referred to in subsec. (d), was struck out by section 2714(a)(1)(B) of Pub. L. 98-369 and provisions formerly contained in subsection (e) were restated in subsection (c)(1) of section 302 of the 1949 Act.

CHAPTER 10—MANAGEMENT AND DISPOSAL OF GOVERNMENT PROPERTY

SUBCHAPTER II—PROPERTY MANAGEMENT

Sec.
490b. Child care services for Federal employees in Federal buildings; allotment of space; conditions; charges for rent or services; payment of costs; definition.
490c. Guards, elevator operators, messengers, and custodians; restriction on contract for services; exception.

SUBCHAPTER I—GENERAL PROVISIONS

§ 471. Congressional declaration of policy

Act Referred to in Other Sections

The Federal Property and Administrative Services Act of 1949 is referred to in sections 304, 311b, 472 to 476, 482, 483b to 484-1, 485, 485a, 486, 488, 489, 492, 605, 752, 754 to 756, 758, 759 of this title; title 5 section 7342; title 7 sections 15b, 55, 79, 473a; title 10 sections 2667a, 2676, 2691, 7305, 9441; title 12 sections 1701z, 1701z-2, 1786; title 14 sections 92, 93, 641; title 15 sections 205f, 714b; title 16 sections 1a-2, 79c, 160b, 396f, 430a-2, 441*l*-5, 460m-9, 460x-7, 460bb-2, 460ee, 460ff-1, 460hh-1, 505a, 590q-1, 793, 2106; title 20 section 3475; title 22 sections 277d-36, 277e, 2358, 2581, 2876; title 25 sections 190, 293; title 30 section 4; title 33 section 578; title 41 sections 254, 405; title 42 sections 1592a, 1592d, 2201, 2473, 4638, 5919, 8782; title 43 sections 1702, 1736; title 44 section 311; title 45 section 1212; title 48 section 1685; title 49 App. sections 1344, 2433; title 50 sections 167a, 1651; title 50 App. sections 2281, 2393.

§ 472. Definitions

Section Referred to in Other Sections

This section is referred to in title 10 section 2667; title 20 section 3479; title 31 section 3551; title 42 section 7259; title 43 section 1702; title 44 section 2901; title 50 section 167a.

§ 474. Congress, departments, agencies, corporations, and persons exempted from provisions

The authority conferred by this Act shall be in addition and paramount to any authority conferred by any other law and shall not be subject to the provisions of any law inconsistent herewith, except as otherwise provided by the Office of Federal Procurement Policy Act, and [41 U.S.C. 401 et seq.], and except that sections 486(b) and 487(c) of this title shall not be applicable to any Government corporation or agency which is subject to chapter 91 of title 31.

[*See main edition for text of second and third pars.*]

(As amended Dec. 1, 1983, Pub. L. 98-191, §§ 8(d)(2), 9(a)(3), 97 Stat. 1331.)

REFERENCES IN TEXT

The Office of Federal Procurement Policy Act, referred to in opening par., is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§ 401 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 41 and Tables.

AMENDMENTS

1983—Pub. L. 98-191 inserted "except as otherwise provided by the Office of Procurement Policy Act, and" after "any law inconsistent herewith,".

SUBCHAPTER II—PROPERTY MANAGEMENT

§ 481. Procurement, warehousing, and related activities

(a) Policies and methods of procurement and supply; operation of warehouses

The Administrator shall, in respect of executive agencies, and to the extent that he determines that so doing is advantageous to the Government in terms of economy, efficiency, or service, and with due regard to the program activities of the agencies concerned—

(1) subject to regulations [1] prescribed by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.], prescribe policies and methods of procurement and supply of personal property and nonpersonal services, including related functions such as contracting, inspection, storage, issue, property identification and classification, transportation and traffic management, management of public utility services, and repairing and converting; and

[*See main edition for text of* (*2*) *to* (*4*)]

Provided, That the Secretary of Defense may from time to time, and unless the President shall otherwise direct, exempt the Department of Defense from action taken or which may be taken by the Administrator under clauses (1) to (4) of this subsection whenever he determines such exemption to be in the best interests of national security.

[*See main edition for text of* (*b*)]

(c) Exchange or sale of similar items

In acquiring personal property, any executive agency, under regulations to be prescribed by the Administrator, subject to regulations [1] prescribed by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.], may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired: *Provided,* That any transaction carried out under the authority of this subsection shall be evidenced in writing.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Dec. 1, 1983, Pub. L. 98-191, §§ 8(d)(1), 9(a)(2), 97 Stat. 1331.)

AMENDMENTS

1983—Subsecs. (a)(1), (c). Pub. L. 98-191 inserted "and regulations" after "subject to policy directives" and then substituted "subject to regulations" for "subject to policy directives". A literal execution of both amendments would have resulted in the phrase reading "subject to regulations and regulations".

§ 483. Property utilization

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 475, 481, 483c, 512 of this title; title 25 section 1812; title 45 section 854.

§ 483a. Transfer of vessels between Departments

Vessels under the jurisdiction of the Department of Transportation, the Department of the Army, the Department of the Air Force, or the Department of the Navy may be transferred or otherwise made available without reimbursement to any such agencies upon the request of the head of one agency and the approval of the agency having jurisdiction of the vessels concerned.

(Dec. 19, 1985, Pub. L. 99-190, § 101(b) [title VIII, § 8012], 99 Stat. 1185, 1204.)

CODIFICATION

Section enacted as a part of the appropriation act cited as the credit to this section, and not as a part of the Federal Property and Administrative Services Act of 1949, part of which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8013], 98 Stat. 1904, 1925.

Dec. 8, 1983, Pub. L. 98-212, title VII, § 716, 97 Stat. 1441.

Dec. 21, 1982, Pub. L. 97-377, title VII, § 717, 96 Stat. 1583.

§ 484. Disposal of surplus property

[*See main edition for text of* (*a*) *to* (*h*)]

(i) Vessels; laws governing sales

The Maritime Administration shall dispose of surplus vessels of one thousand five hundred gross tons or more which the Administration determines to be merchant vessels or capable of conversion to merchant use, and such vessels shall be disposed of only in accordance with the provisions of the Merchant Marine Act, 1936, as amended [46 App. U.S.C. 1101 et seq.], and other laws authorizing the sale of such vessels.

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[1] See 1983 Amendment note below.

[*See main edition for text of* (*j*) *to* (*n*)]

(o) Annual reports to Congress by Administrator

The Administrator with respect to personal property donated under subsection (j) of this section and with respect to real and related personal property transferred or conveyanced under subsection (p) of this section, and the head of each executive agency disposing of real property under subsection (k) of this section, shall submit during the calendar quarter following the close of each fiscal year a report to the Senate (or to the Secretary of the Senate if the Senate is not in session) and to the House of Representatives (or to the Clerk of the House if the House is not in session) showing the acquisition cost of all personal property so donated and of all real property so disposed of during the preceding fiscal year. Such reports shall also show donations and transfers of property according to State, and may include such other information and recommendations as the Administrator or other executive agency head concerned deems appropriate.

(p) Transfer or conveyance of property for correctional facility use; consideration-free transfers; reimbursement for interim transfers; reversion option; terms and conditions

(1) Under such regulations as he may prescribe, the Administrator is authorized in his discretion to transfer or convey to the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision or instrumentality thereof, surplus real and related personal property determined by the Attorney General to be required for correctional facility use by the authorized transferee or grantee under an appropriate program or project for the care or rehabilitation of criminal offenders as approved by the Attorney General. Transfers or conveyance under this authority shall be made by the Administrator without monetary consideration to the United States. If the Attorney General determines that any surplus property transferred or conveyed pursuant to an agreement entered into between March 1, 1982, and the enactment of this subsection was suitable for transfer or conveyance under this subsection, the Administrator shall reimburse the transferee for any monetary consideration paid to the United States for such transfer or conveyance.

(2) The deed of conveyance of any surplus real and related personal property disposed of under the provisions of this subsection—

(A) shall provide that all such property shall be used and maintained for the purpose for which it was conveyed in perpetuity, and that in the event the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the United States, revert to the United States; and

(B) may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Administrator to be necessary to safeguard the interests of the United States.

(3) With respect to surplus real and related personal property conveyed pursuant to this subsection, the Administrator is authorized and directed—

(A) to determine and enforce compliance with the terms, conditions, reservations, and restrictions contained in any instrument by which such transfer was made;

(B) to reform, correct, or amend any such instrument by the execution of a corrective reformative or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(C) to (i) grant releases from any of the terms, conditions, reservations, and restrictions contained in, and (ii) convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was so transferred: *Provided*, That any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he or she shall deem necessary to protect or advance the interests of the United States.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, §§ 701, 702, 98 Stat. 2129, 2130.)

References in Text

The Merchant Marine Act, 1936, as amended, referred to in subsec. (l), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended, which is classified principally to chapter 27 (§ 1101 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1245 of Title 46, Appendix, and Tables.

Codification

Subsec. (l) is set out in this supplement to reflect the transfer of the Merchant Marine Act, 1936, referred to in text, to Title 46, Appendix, Shipping.

Amendments

1984—Subsec. (*o*). Pub. L. 98-473, § 702, amended first sentence generally, adding provisions requiring the Administrator to make an annual report to Congress on the total acquisition value of all personal and real property transferred pursuant to subsection (p) of this section.

Subsec. (p). Pub. L. 98-473, § 701, added subsec. (p).

Cross References

Eligibility of State and local agencies and nonprofit organizations and institutions receiving funds appropriated for programs for older individuals to receive surplus property, see section 3020d of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 475, 483, 483c, 484c, 490, 512 of this title; title 10 sections 2577, 2667a; title 20 section 3441; title 22 section 2358; title 45 section 1212; title 49 App. section 2453.

§ 484b. Repealed. Pub. L. 98-181, title I, § 126(a)(1), Nov. 30, 1983, 97 Stat. 1175

Section, Pub. L. 91-152, title IV, § 414, Dec. 24, 1969, 83 Stat. 400; Pub. L. 91-609, title IX, § 919, Dec. 31, 1970, 84 Stat. 1816; Pub. L. 95-557, title III, § 317, Oct. 31, 1978, 92 Stat. 2100; Pub. L. 96-399, title V, § 504, Oct. 8, 1980, 94 Stat. 1669, related to the transfer of surplus real property to Secretary of Housing and Urban Development or the Secretary of Agriculture for sale or lease.

TRANSFERRED PROPERTIES; REQUESTS PRIOR TO NOVEMBER 30, 1983; CONTINUING APPLICATION OF SUBSEC. (b)

Section 126(a)(2) and (3) of Pub. L. 98-181 provided that:

"(2) Notwithstanding paragraph (1) [repealing this section], the Secretary of Housing and Urban Development and the Secretary of Agriculture may dispose of Federal surplus real property pursuant to the terms of section 414 of such Act [this section] if, prior to the date of the enactment of this Act [Nov. 30, 1983], either Secretary had requested the Administrator of General Services to transfer such property for such disposition.

"(3) Notwithstanding paragraph (1), section 414(b) of such Act shall continue to apply, where applicable, to all property transferred by either Secretary pursuant to section 414 of such Act, including properties transferred pursuant to paragraph (2)."

§ 486. Policies, regulations, and delegations

EXECUTIVE ORDER NO. 12348

Ex. Ord. No. 12348, Feb. 25, 1982, 47 F.R. 8547, which related to Federal real property review, was revoked by Ex. Ord. No. 12512, Apr. 29, 1985, 50 F.R. 18453, set out as a note below.

EX. ORD. NO. 112411. GOVERNMENT WORK SPACE MANAGEMENT REFORMS

Ex. Ord. No. 12411, Mar. 29, 1983, 48 F.R. 13391, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 486 of Title 40 of the United States Code, in order to institute fundamental changes in the manner in which Federal work space is managed to ensure its efficient utilization, it is hereby ordered as follows:

SECTION 1. In order to make the Federal use of work space (including office space, warehouses and special purpose space, whether federally owned, leased or controlled) and related furnishings more effective in support of agency missions, minimize the acquisition of government resources, and reduce the administrative costs of the Federal government, the heads of all Federal Executive agencies shall:

(a) Establish programs to reduce the amount of work space, used or held, to that amount which is essential for known agency missions;

(b) Produce and maintain a total inventory of work space and related furnishings and declare excess to the Administrator of General Services all such holdings that are not necessary to satisfy existing or known and verified planned programs;

(c) Ensure that the amount of office space used by each employee of the agency, or others using agency-controlled space, is held to the minimum necessary to accomplish the task that must be performed;

(d) Manage the furniture, equipment, decoration, drapes, carpeting, plants and other accoutrements so that the use of all furnishings by the agency reflects a judicious employment of public moneys;

(e) Consider, in making decisions concerning the use, acquisition, or disposal of work space and related furnishings, the effects of its actions on costs incurred by other Federal agencies;

(f) Report all vacant work space retained for future Federal uses to the Administrator of General Services so that it may be made available for the temporary use of other Federal agencies, to the extent consistent with national defense requirements;

(g) Establish a work space management plan to meet the provisions of this Order, including specification of the goals to be achieved and actions to be taken by the agency in order to improve its utilization of all work space and related furnishings; and

(h) Establish information systems, implement inventory controls and conduct surveys, in accordance with procedures established by the Administrator of General Services, so that a government-wide reporting system may be developed.

SEC. 2. The Administrator of General Services is delegated authority, to the extent not prohibited by other laws, to conduct surveys, establish agency-wide objectives for work space use for each Executive agency, and establish procedures, guidelines and regulations to be followed by the agencies in developing the work space planning, information and reporting systems required by this Order.

RONALD REAGAN.

EX. ORD. NO. 12512. FEDERAL REAL PROPERTY MANAGEMENT

Ex. Ord. No. 12512, Apr. 29, 1985, 50 F.R. 18453, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 486(a) of title 40 of the United States Code, and in order to ensure that Federal real property resources are treated in accordance with their value as national assets and in the best interests of the Nation's taxpayers, it is hereby ordered as follows:

SECTION 1. *General Requirements.* To ensure the effective and economical use of America's real property and public land assets, establish a focal point for the enunciation of clear and consistent Federal policies regarding the acquisition, management, and disposal of properties, and assure management accountability for implementing Federal real property management reforms, all Executive departments and agencies shall take immediate action to recognize the importance of such resources through increased management attention, establishment of clear goals and objectives, improved policies and levels of accountability, and other appropriate actions. Specifically:

(a) The Domestic Policy Council shall serve as the forum for approving government-wide real property management policies;

(b) All Executive departments and agencies shall establish internal policies and systems of accountability that ensure effective use of real property in support of mission-related activities, consistent with Federal policies regarding the acquisition, management, and disposal of such assets. All such agencies shall periodically review their real property holdings and conduct surveys of such property in accordance with standards and procedures determined by the Administrator of General Services. All such agencies shall also develop annual real property management improvement plans that include clear and concise goals and objectives related to all aspects of real property management, and identify sales, work space management, productivity, and excess property targets;

(c) The Director of the Office of Management and Budget shall review, through the management and budget review processes, the efforts of departments and agencies toward achieving the government-wide property management policies established pursuant to this Order. Savings achieved as a result of improved management shall be applied to reduce Federal spending and to support program delivery;

(d) The Office of Management and Budget and the General Services Administration shall, in consultation with the land managing agencies, develop legislative initiatives that seek to improve Federal real property management through the adoption of appropriate private sector management techniques; the elimination of duplication of effort among agencies; and the establishment of managerial accountability for implementing effective and efficient real property management practices; and

(e) The President's Council on Management Improvement, subject to the policy direction of the Domestic Policy Council, shall conduct such additional studies as are necessary to improve Federal real property management by appropriate agencies and groups.

SEC. 2. *Real Property.* The Administrator of General Services shall, to the extent permitted by law, provide government-wide policy oversight and guidance for Federal real property management; manage selected properties for agencies; conduct surveys; delegate operational responsibility to agencies where feasible and economical; and provide leadership in the development and maintenance of needed property management information systems.

SEC. 3. *Public Lands.* In order to ensure that Federally owned lands, other than the real property covered by Section 2 of this Order, are managed in the most effective and economic manner, the Departments of Agriculture and the Interior shall take such steps as are appropriate to improve their management of public lands and National Forest System lands and shall develop appropriate legislative proposals necessary to facilitate that result.

SEC. 4. Executive Order No. 12348 of February 25, 1982, is hereby revoked.

RONALD REAGAN.

§ 487. Surveys of Government property and management practices

(a) Authorization for surveys, inventory levels, supply catalog system and standardized forms and procedures

As he may deem necessary for the effectuation of his functions under this subchapter, and after adequate advance notice to the executive agencies affected, and with due regard to the requirements of the Department of Defense as determined by the Secretary of Defense, the Administrator is authorized (1) to make surveys of Government property and property management practices and obtain reports thereon from executive agencies; (2) to cooperate with executive agencies in the establishment of reasonable inventory levels for property stocked by them and from time to time report any excessive stocking to the Congress and to the Director of the Office of Management and Budget; (3) to establish and maintain such uniform Federal supply catalog system as may be appropriate to identify and classify personal property under the control of Federal agencies: *Provided,* That the Administrator and the Secretary of Defense shall coordinate the cataloging activities of the General Services Administration and the Department of Defense so as to avoid unnecessary duplication; and (4) subject to regulations [5] promulgated by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.], to prescribe standardized forms and procedures, except such as the Comptroller General is authorized by law to prescribe, and standard purchase specifications.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Dec. 1, 1983, Pub. L. 98-191, §§ 8(d)(1), 9(a)(2), 97 Stat. 1331.)

AMENDMENTS

1983—Subsec. (a)(4). Pub. L. 98-191 inserted "and regulations" after "subject to policy directives" and then substituted "subject to regulations" for "subject to policy directives". A literal execution of both amendments would have resulted in the phrase reading "subject to regulations and regulations".

§ 488. Disposal of property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 752, 781 of this title; title 42 sections 2201, 5919.

§ 490. Operation of buildings and related activities by Administrator

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 490a, 490c, 752 of this title; title 2 section 122c; title 7 section 87e-1; title 49 section 10344.

§ 490b. Child care services for Federal employees in Federal buildings; allotment of space; conditions; charges for rent or services; payment of costs; definition

(a) Notwithstanding section 101(i) [6] and section 102(c) of this joint resolution, and notwithstanding any provision of H.R. 3036, if any individual or entity which provides or proposes to provide child care services for Federal employees applies to the officer or agency of the United States charged with the allotment of space in the Federal buildings in the community or district in which such individual or entity provides or proposes to provide such services, such officer or agency may allot space in such a building to such individual or entity if—

(1) such space is available;

(2) such officer or agency determines that such space will be used to provide child care services to a group of individuals of whom at least 50 percent are Federal employees; and

(3) such officer or agency determines that such individual or entity will give priority for available child care services in such space to Federal employees.

(b)(1) If an officer or agency allots space to an individual or entity under subsection (a) of this section, such space may be provided to such individual or entity without charge for rent or services.

(2) If there is an agreement for the payment of costs associated with the provision of space allotted under subsection (a) of this section or services provided in connection with such space,

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[5] See 1983 Amendment note below.

[6] So in original. Probably should be "101(h)".

nothing in title 31, or any other provision of law, shall be construed to prohibit or restrict payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury.

(3) For the purpose of this section, the term "services" includes the providing of lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone service (including installation of lines and equipment and other expenses associated with telephone service), and security systems (including installation and other expenses associated with security systems).

(Pub. L. 99-190, § 139, Dec. 19, 1985, 99 Stat. 1323.)

References in Text

Sections 101(i)[h] and 102(c) of this joint resolution, referred to in subsec. (a), are sections 101(i)[h] and 102(c) of Pub. L. 99-190, Dec. 19, 1985, 99 Stat. 1291, 1315, which act provided continuing appropriations for fiscal year 1986. Section 101(i)[h] provided in part for appropriations in such amounts as may be necessary for programs, projects, or activities provided for in the Treasury, Postal Service, and General Government Appropriations Act, 1986 (H.R. 3036), to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-349) as passed by the House of Representatives and the Senate on November 7, 1985, as if enacted into law. Section 102 provided for the period of availability of appropriations and funds made available and authority granted under Pub. L. 99-190.

H.R. 3036, referred to in subsec. (a), was H.R. 3036, Ninety-ninth Congress, known as the Treasury, Postal Service and General Government Appropriations Act, 1986, which was vetoed Nov. 15, 1985. See note above.

Codification

Section was not enacted as part of the Federal Property and Administrative Services Act of 1949, part of which comprises this chapter.

§ 490c. Guards, elevator operators, messengers, and custodians; restriction on contract for services; exception

Notwithstanding any other provision of law, none of the funds made available to the General Services Administration pursuant to section 490(f) of this title shall be obligated or expended after November 14, 1983, for the procurement by contract of any service which, before such date, was performed by individuals in their capacity as employees of the General Services Administration in any position of guards, elevator operators, messengers, and custodians, except that such funds may be obligated or expended for the procurement by contract of the covered services with sheltered workshops employing the severely handicapped under sections 46 to 48c of title 41.

(Pub. L. 98-151, § 112, Nov. 14, 1983, 97 Stat. 976.)

References in Text

Sections 46 to 48c of title 41, referred to in text, was in the original "Public Law 92-28" which generally amended act June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act.

Codification

Section enacted as part of the appropriation act cited as the credit to this section, and not as part of the Federal Property and Administrative Services Act of 1949, part of which comprises this chapter.

Similar Provisions

Similar provisions were contained in the following appropriation acts:

Pub. L. 99-190, § 101(h) [H.R. 3036, title V, § 507], Dec. 19, 1985, 99 Stat. 1291.

Pub. L. 98-473, § 101(j) [H.R. 5798, title V, § 507], Oct. 12, 1984, 98 Stat. 1963.

Pub. L. 97-377, § 120, Dec. 21, 1982, 96 Stat. 1913.

SUBCHAPTER VI—SELECTION OF ARCHITECTS AND ENGINEERS

Subchapter Referred to in Other Sections

This subchapter is referred to in title 10 sections 2302, 2855; title 33 section 569b; title 41 section 259.

§ 541. Definitions

Short Title

Title IX of act June 30, 1949, which is classified to this subchapter, is popularly known as the "Brooks Architect-Engineers Act".

Section Referred to in Other Sections

This section is referred to in title 41 section 259.

CHAPTER 15—GOVERNMENT LOSSES IN SHIPMENT

§ 721. Rules and regulations for shipment of valuables

Cross References

Insurance of war risks except as provided in this section, see section 1285 of Title 46, Appendix, Shipping.

Section Referred to in Other Sections

This section is referred to in sections 722, 723, 726, 727 of this title; title 46 App. section 1285; title 49 App. section 1534.

§ 722. Fund for losses; appropriations

Section Referred to in Other Sections

This section is referred to in title 31 section 3126; title 46 App. section 1285; title 49 App. section 1534.

§ 728. Rules and regulations

Delegation of Functions

For delegation to the Secretary of the Treasury of authority vested in the President by this section, see section 2(a) of Ex. Ord. No. 10289, eff. Sept. 17, 1951, 16 F.R. 9409, set out as a note under section 301 of Title 3, The President.

CHAPTER 16—GENERAL SERVICES ADMINISTRATION

Sec.
761. Consumer Information Center Fund, General Services Administration.

§ 754. Redistribution of Administrator's functions

Section Referred to in Other Sections

This section is referred to in section 486 of this title.

§ 758. Personnel

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Office of Audits and the Office of Investigations in the General Services Administration were transferred to the Office of Inspector General in the General Services Administration by section 9(a)(1)(K) of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, Government Organization and Employees, section 2 of which established such Office of Inspector General.

§ 759. Procurement, maintenance, operation and utilization of automatic data processing equipment

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Automated data processing dispute resolution

(1) Upon request of an interested party in connection with any procurement conducted under the authority of this section (including procurements conducted under delegations of procurement authority), the board of contract appeals of the General Services Administration (hereafter in this subsection referred to as the "board"), shall review any decision by a contracting officer alleged to violate a statute or regulation. Such review shall be conducted under the standard applicable to review of contracting officer final decisions by boards of contract appeals. An interested party who has filed a protest under subchapter V of chapter 35 of title 31, with respect to a procurement or proposed procurement may not file a protest with respect to that procurement or proposed procurement under this subsection.

(2)(A) When a protest under this subsection is filed before the award of a contract in a protested procurement, the board, at the request of an interested party and within 10 days of the filing of the protest, shall hold a hearing to determine whether the board should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the protested procurement on an interim basis until the board can decide the protest.

(B) The board shall suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority unless the Federal agency concerned establishes that—

(i) absent action by the board, contract award is likely to occur within 30 days of the hearing; and

(ii) urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the board.

(3)(A) If the board receives notice of a protest under this subsection after the contract has been awarded but within 10 days after the contract award, the board shall, at the request of an interested party and within 10 days after the date of the filing of the protest, hold a hearing to determine whether the board should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the challenged procurement on an interim basis until the board can decide the protest.

(B) The board shall suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority to acquire any goods or services under the contract which are not previously delivered and accepted unless the Federal agency concerned establishes that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the board.

(4)(A) The board shall conduct such proceedings and allow such discovery as may be required for the expeditious, fair, and reasonable resolution of the protest.

(B) Subject to any deadlines imposed by section 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 608(a)), the board shall give priority to protests filed under this subsection. The board shall issue its final decision within 45 working days after the date of the filing of the protest, unless the board's chairman determines that the specific and unique circumstances of the protest require a longer period, in which case the board shall issue such decision within the longer period determined by the chairman.

(C) The board may dismiss a protest the board determines is frivolous or which, on its face, does not state a valid basis for protest.

(5)(A) In making a decision on the merits of protests brought under this section, the board shall accord due weight to the policies of this section and the goals of economic and efficient procurement set forth in this section.

(B) If the board determines that a challenged agency action violates a statute or regulation or the conditions of any delegation of procurement authority issued pursuant to this section, the board may suspend, revoke, or revise the procurement authority of the Administrator or the Administrator's delegation of procurement authority applicable to the challenged procurement.

(C) Whenever the board makes such a determination, it may, in accordance with section 1304 of title 31, further declare an appropriate interested party to be entitled to the costs of—

(i) filing and pursuing the protest, including reasonable attorney's fees, and

(ii) bid and proposal preparation.

(6)(A) The final decision of the board may be appealed by the head of the Federal agency concerned and by any interested party, including interested parties who intervene in any protest filed under this subsection, as set forth in the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(B) If the board revokes, suspends, or revises the procurement authority of the Administrator or the Administrator's delegation of procurement authority after the contract award, the affected contract shall be presumed valid as to all goods or services delivered and accepted under the contract before the suspension, revocation, or revision of such procurement authority or delegation.

(C) Nothing contained in this subsection shall affect the board's power to order any additional relief which it is authorized to provide under any statute or regulation. However, the procedures set forth in this subsection shall only apply to procurements conducted under the authority contained in this section. In addition, nothing contained in this subsection shall affect the right of any interested party to file a protest with the contracting agency or to file an action in a district court of the United States or the United States Claims Court.

(8) [1] Not later than January 15, 1985, the board shall adopt and issue such rules and procedures as may be necessary to the expeditious disposition of protests filed under the authority of this subsection.

(9) For purposes of this subsection—

(A) the term "protest" means a written objection by an interested party to a solicitation by a Federal agency for bids or proposals for a proposed contract for the procurement of property or services or a written objection to a proposed award or the award of such a contract; and

(B) the term "interested party" means, with respect to a contract or proposed contract described in subparagraph (A), an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

(i) Procurement from sole source or by specific make and model

The justifications and approvals required by section 253(f)(1) of title 41 shall apply in the case of any procurement under this section for which the minimum needs are so restrictive that only one manufacturer is capable of satisfying such needs. Such procurement includes either a sole source procurement or a procurement by specific make and model. Such justification and approval shall be required notwithstanding that more than one bid or offer is made or that the procurement obtains price competition and such procurement shall be treated as a procurement using procedures other than competitive procedures for purposes of section 417(b) of title 41.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2713(a), 98 Stat. 1182; Nov. 8, 1985, Pub. L. 99-145, title IX, § 961(c), title XIII, § 1304(c)(1), 99 Stat. 703, 742.)

References in Text

The Contract Disputes Act of 1978, referred to in subsec. (h)(6)(A), is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

Amendments

1985—Subsec. (h)(3)(A). Pub. L. 99-145, § 1304(c)(1), substituted "board" for "Board".

Subsec. (i). Pub. L. 99-145, § 961(c), added subsec. (i).

1984—Subsec. (h). Pub. L. 98-369 added subsec. (h).

Effective Date of 1985 Amendment

Amendment by section 961(c) of Pub. L. 99-145 effective as if included in enactment of Competition in Contracting Act of 1984, Pub. L. 98-369, div. B, title VII, see section 961(e) of Pub. L. 99-145, set out as a note under section 2304 of Title 10, Armed Forces.

Effective and Termination Date of 1984 Amendment

Section 2713(b) of Pub. L. 98-369 provided that: "The amendment made by this section [adding subsec. (h) of this section] shall cease to be effective on January 15, 1988."

Amendment by Pub. L. 98-369 applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

Section Referred to in Other Sections

This section is referred to in title 10 sections 2306, 2315; title 31 section 3552; title 44 sections 3504, 3505, 3506, 3518; title 50 section 403c.

§ 761. Consumer Information Center Fund, General Services Administration

Notwithstanding any other provision of law, there is hereby established in the Treasury of the United States a Consumer Information Center Fund, General Services Administration, for the purpose of disseminating Federal Government consumer information to the public and for other related purposes. There shall be deposited into the fund for fiscal year 1983 and subsequent fiscal years: (A) Appropriations from the general funds of the Treasury for Consumer Information Center activities; (B) User fees from the public; (C) Reimbursements from other Federal agencies for costs of distributing publications; and (D) Any other income incident to Consumer Information Center activities. Moneys deposited into the fund shall be available for expenditure for Consumer Information Center activities in such amounts as are specified in appropriation Acts. Any unobligated balances at the end of the fiscal year shall remain in the fund and shall be available for authorization in appropriation Acts for subsequent fiscal years. This fund shall assume all the liabilities, obligations, and commitments of the said Consumer Information Center account. The revenues and collections deposited into the fund shall be available for necessary expenses of Consumer Information Center activities in the amount of $5,415,000 during fiscal year 1983. Administrative expenses of the Consumer Information Center in fiscal year 1983 shall not exceed $1,382,000. For the purposes of the fund, administrative expenses shall be defined as those expenses previously paid from appropriations to the Consumer Information Center. Revenues and collections accruing to this fund during fiscal year 1983 in excess of $6,797,000 shall remain in the fund and shall not be available for expenditure except as authorized in appropriation Acts.

(Pub. L. 98-63, title I, § 101, July 30, 1983, 97 Stat. 321.)

Codification

Section was enacted as part of the Supplemental Appropriations Act, 1983, and not as part of the Federal Property and Administrative Services Act of 1949 a part of which comprises this chapter.

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[1] Subsec. (h) enacted without a par. (7).

CHAPTER 18—NATIONAL VISITOR CENTER FACILITIES; UNION STATION REDEVELOPMENT; CAPITOL GUIDE SERVICE

SUBCHAPTER IV—CAPITOL GUIDE SERVICE

§ 851. Capitol Guide Service

INCREASES IN COMPENSATION

Increases in compensation for the Capitol Guide Board, the Chief Guide, the Deputy Chief Guide, the Assistant Chief Guide, and the Guides of the Capitol Guide Service under authority of the Federal Pay Comparability Act of 1970 (Pub. L. 91-656), see Salary Directives of the President pro tempore of the Senate, set out as notes under section 60a-1 of Title 2, The Congress.

CHAPTER 19—CAPITOL AND WHITE HOUSE-PENNSYLVANIA AVENUE DEVELOPMENT

Sec.	
880.	Reports and estimates. (a) Annual reports to the President and to Congress. (b) Estimate of additional necessary funds through fiscal year 1990. (c) Protection and enhancement of significant historic and architectural values.

§ 872. Pennsylvania Avenue Development Corporation

[See main edition for text]

(As amended Pub. L. 98-141, § 8(c)(1), Oct. 31, 1983, 97 Stat. 910.)

AMENDMENTS

1983—Subsec. (c)(7). Pub. L. 98-141 added designation "(7)" before "The Chairman, Council of the District of Columbia".

ARCHIVIST OF THE UNITED STATES

References to Archivist of the United States deemed to refer to Archivist appointed under section 2103 of Title 44, Public Printing and Documents, with respect to functions transferred by Pub. L. 98-497 or an amendment made by Pub. L. 98-497 and exercised after Apr. 1, 1985, see sections 106 and 108 of Pub. L. 98-497, set out as notes under section 2102 of Title 44.

§ 874. Development plan

(a) Contents

The development plan for the development area shall include, but not be limited to: (1) the types of uses, both public and private, to be permitted; (2) criteria for the design and appearance of buildings, facilities, open spaces, and other improvements; (3) an estimate of the current values of all properties to be acquired; (4) an estimate of the relocation costs which would be incurred in carrying out the provisions of section 877 of this title; (5) an estimate of the cost of land preparation for all properties to be acquired; (6) an estimate of the reuse values of the properties to be acquired; (7) a program for the staging of a proposed development, including a detailed description of the portion of the program to be scheduled for completion by 1976; (8) a determination of the marketability of such development; (9) an estimate of the development costs, both public and private; (10) a thorough study of the economic impact of such development, including the impact on the local tax base, the metropolitan area as a whole, and the existing business activities within the development area; and (11) the procedures (including both interim and long-term arrangements) to be used in carrying out and insuring continuing conformance to the development plan.

(b) Cooperation in preparation

The development plan provided for in subsection (a) of this section shall be prepared with the cooperation of the Department of the Interior, the General Services Administration, and the District of Columbia government with the maximum feasible use of their staffs and other resources on a reimbursable basis by the Corporation.

[See main edition for text of (c) and (d)]

(e) Alteration, revision, or amendment

(1) Activities under the development plan shall be carried out in accordance with the approved development plan.

(2) The Corporation may alter, revise, or amend the plan, but any such alteration, revision, or amendment which is a substantial change from the approved development plan shall take effect only upon compliance with the procedures set forth in subsections (c) and (d) of this section. For the purposes of this subsection, the term "substantial change" shall mean one involving a major alteration in the character or intensity of an existing or proposed use in the development area which in the opinion of the Corporation causes an increase or decrease of 10 per centum or more of the dollar amount of the estimate prepared in accordance with subsection (a)(9) of this section, or one which, in the opinion of the Secretary of the Interior, affects his responsibilities for the administration, protection, and development of the areas within the Pennsylvania Avenue National Historic Site.

(3) Any alteration, revision, or amendment of the plan and any other action taken by the Corporation which is not a substantial change in the plan within the meaning of paragraph (2) but—

(A) which is a significant change in the plan, or which is another significant action taken by the Corporation, and

(B) which relates to housing, any major structure, historic preservation, parks, office space, or retail uses, within the development area

shall not take effect until thirty days after notice of such change or other action has been submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate, unless prior to the expiration of such thirty-day period each of such committees notifies the Corporation in writing that the committee does not object to such change or other action. Such notice to the committees shall include an explanation of the reasons why the change or other action is proposed and a summary of any recommendations received by the Corporation from the Secretary of the Interior, the Mayor of the District of Columbia, or from any other interested agency, organization, or individual.

[*See main edition for text of* (*f*)]

(As amended Pub. L. 98-141, § 8(b), (c)(2), (3), Oct. 31, 1983, 97 Stat. 910.)

AMENDMENTS

1983—Subsec. (a)(10). Pub. L. 98-141, § 8(c)(2), inserted "a" before "whole, and the existing business".

Subsec. (b). Pub. L. 98-141, § 8(c)(3), substituted "cooperation" for "Cooperation".

Subsec. (e). Pub. L. 98-141, § 8(b), designated first sentence of existing provisions as par. (1), designated second and succeeding sentences of existing provisions as par. (2), and added par. (3).

§ 875. Powers of Corporation

In carrying out its powers and duties, the Corporation—

[*See main edition for text of* (*1*) *to* (*9*)]

(10) may borrow money from the Treasury of the United States in such amounts as may be authorized in appropriation Acts, but not to exceed $120,000,000. Such borrowings from the Treasury shall have such maturities, terms, and conditions as may be agreed upon by the Corporation and the Secretary of the Treasury, but the maturities may not be in excess of forty years, and such borrowings may be redeemable at the option of the Corporation before maturity. Such borrowings shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations of the Corporation. The interest payments on such obligations may be deferred with the approval of the Secretary of the Treasury but any interest payment so deferred shall bear interest. Said obligations shall be issued in amounts and at prices approved by the Secretary of the Treasury. The authority of the Corporation to issue obligations hereunder shall remain available without fiscal year limitation. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Corporation to be issued under this paragraph and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction of the United States the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include any purchase of the Corporation's obligations under this paragraph;

[*See main edition for text of* (*11*) *to* (*24*)]

(As amended Pub. L. 98-141, § 8(a)(1), Oct. 31, 1983, 97 Stat. 910.)

AMENDMENTS

1983—Par. (10). Pub. L. 98-141 substituted "$120,000,000" for "$100,000,000".

§ 880. Reports and estimates

(a) Annual reports to the President and to Congress

The Corporation shall transmit to the President and the Congress, annually each January and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments under this chapter.

(b) Estimate of additional necessary funds through fiscal year 1990

Within six months after October 31, 1983, the Corporation shall transmit to the Congress an estimate, for each fiscal year, of the additional funds which will be necessary for the Corporation to carry out the development plan through the fiscal year 1990. Such estimate shall include a detailed statement of the projects and other expenditures for which such funds are proposed to be used, together with an estimate of the projected costs thereof.

(c) Protection and enhancement of significant historic and architectural values

The report submitted under subsection (a) of this section shall include a detailed discussion of the actions the Corporation has taken within the reporting period to protect and enhance the significant historic and architectural values of structures within the boundaries of the Corporation's jurisdiction, and indicating similar actions it plans to take and issues it anticipates dealing with during the upcoming fiscal year related to historic and architectural preservation. Such report shall indicate the degree to which public concern has been considered and incorporated into decisions made by the Corporation relative to historic and architectural preservation.

(As amended Pub. L. 98-141, § 8(d), Oct. 31, 1983, 97 Stat. 910.)

AMENDMENTS

1983—Pub. L. 98-141 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

§ 885. Authorization of appropriations; prohibition of appropriations from Land and Water Conservation Fund

(a) In addition to the sums heretofore appropriated, there are authorized to be appropriated for operating and administrative expenses of the Corporation $3,000,000 for the fiscal year ending September 30, 1979; $3,200,000 for the fiscal years ending September 30, 1980, and September 30, 1981; and $3,500,000 for the fiscal years ending September 30, 1982, and September 30, 1983. There are further authorized to be appropriated for operating and administrative expenses of the Corporation sums not to exceed $3,250,000, each, for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-141, § 8(a)(2), Oct. 31, 1983, 97 Stat. 910.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-141 added provisions authorizing appropriations for operating and administrative expenses of not to exceed $3,250,000 for each of the fiscal years 1984, 1985, 1986, 1987, and 1988.

TITLE 40—APPENDIX

The legislation in this Appendix is temporary and terminated on October 1, 1982, pursuant to the provisions of section 405 of this Appendix

APPALACHIAN REGIONAL DEVELOPMENT ACT OF 1965

Pub. L. 89-4, Mar. 9, 1965, 79 Stat. 5, as amended by Pub. L. 89-670, § 8(b), (c), Oct. 15, 1966, 80 Stat. 942, 943; Pub. L. 90-103, title I, §§ 101-114, 116-123, Oct. 11, 1967, 81 Stat. 257-266; Pub. L. 90-448, title II, § 201(f), Aug. 1, 1968, 82 Stat. 502; Pub. L. 91-123, title I, §§ 101-111, Nov. 25, 1969, 83 Stat. 214-216; Pub. L. 91-258, title I, § 52(b)(5), May 21, 1970, 84 Stat. 235; Pub. L. 92-65, title II, §§ 202-214, Aug. 5, 1971, 85 Stat. 168-173; Pub. L. 94-188, title I, §§ 102-122, 124, Dec. 31, 1975, 89 Stat. 1079-1086; Pub. L. 95-193, § 1, Nov. 18, 1977, 91 Stat. 1412; Pub. L. 95-599, title I, § 138(a), (b), Nov. 6, 1978, 92 Stat. 2710; Pub. L. 96-506, § 3, Dec. 8, 1980, 94 Stat. 2746; Pub. L. 96-545, § 2, Dec. 18, 1980, 94 Stat. 3215; Pub. L. 97-35, title XVIII, § 1822(a), Aug. 13, 1981, 95 Stat. 767; Pub. L. 98-524, § 4(e), Oct. 19, 1984, 98 Stat. 2489.

TITLE II—SPECIAL APPALACHIAN PROGRAMS

PART B—SUPPLEMENTATIONS AND MODIFICATIONS OF EXISTING PROGRAMS

§ 211. Vocational education facilities and vocational and technical education demonstration projects

(a) In order to provide basic facilities to give the people of the region the training and education they need to obtain employment, the Secretary of Education is authorized to make grants for construction of the school facilities and for the equipment and operation of such facilities and other school facilities needed for the provision of vocational education in areas of the region in which such education is not now adequately available. Such grants shall be made in accordance with the provisions of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.], without regard to any provisions therein relating to appropriation authorization ceilings or to allotments among the States. Grants under this section shall be made solely out of funds specifically appropriated for the purpose of carrying out this Act, and shall not be taken into account in the computation of the allotments among the States made pursuant to any other provision of law.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-524, § 4(e)(1), Oct. 19, 1984, 98 Stat. 2489.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (a), is Pub. L. 88-210, Dec. 13, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2437, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-524, § 4(e)(1), substituted "the Carl D. Perkins Vocational Education Act" for "the Vocational Education Act of 1963 (77 Stat. 403)". As originally enacted, section 4(e)(1) of Pub. L. 98-524 directed that section 113(a) of the Appalachian Regional Development Act of 1965 be so amended but was executed to subsec. (a) of this section as the probable intent of Congress since such Act does not have a section 113 and the language to be substituted for is contained in subsec. (a).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

§ 214. Supplements to Federal grant-in-aid programs

[*See main edition for text of* (*a*) *and* (*b*)]

(c) The term "Federal grant-in-aid programs" as used in this section means those Federal grant-in-aid programs authorized on or before December 31, 1980, by this Act and Acts other than this Act for the acquisition or development of land, the construction or equipment of facilities, or other community or economic development or economic adjustment activities, including but not limited to grant-in-aid programs authorized by the following Acts: Federal Water Pollution Control Act; Watershed Protection and Flood Prevention Act; titles VI and XVI of the Public Health Services Act; Carl D. Perkins Vocational Education Act; Library Services and Construction Act; Federal Airport Act; Airport and Airway Development Act of 1970; part IV of title III of the Communications Act of 1934; title VI (part A) and VII of the Higher Education Act of 1965; Land and Water Conservation Fund Act of 1965; National Defense Education Act of 1958; Consolidated Farm and Rural Development Act; titles I and

IX of the Public Works and Economic Development Act of 1965; the housing repair program for homeowners authorized by section 1319 of title 42 United States Code; grants under the Indian Health Service Act (42 Stat. 208); and title I of the Housing and Community Development Act of 1974. The term shall not include (A) the program for the construction of the development highway system authorized by section 201 of this Act or any other program relating to highway or road construction, or (B) any other program for which loans or other Federal financial assistance, except a grant-in-aid program, is authorized by this or any other Act. For the purpose of this section, any sewage treatment works constructed pursuant to section 8(c) of the Federal Water Pollution Control Act without Federal grant-in-aid assistance under such section shall be regarded as if constructed with such assistance.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-524, § 4(e)(2), Oct. 19, 1984, 98 Stat. 2489.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (a), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2437, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-524, § 4(e)(2), substituted "the Carl D. Perkins Vocational Education Act" for "the Vocational Education Act of 1963". As originally enacted, section 4(e)(2) of Pub. L. 98-524 directed that section 114(e) of the Appalachian Regional Development Act of 1965 be so amended but was executed to subsec. (c) of this section as the probable intent of Congress since such act does not have a section 114 and the language to be substituted for is contained in subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of Title 20, Education.

TITLE IV—APPROPRIATIONS AND MISCELLANEOUS PROVISIONS

§ 401. Authorization of appropriations; limitation on use of funds

APPROPRIATIONS

Provisions appropriating funds to carry out programs authorized by the Appalachian Regional Development Act of 1965, which is set out in this Appendix, were contained in the following appropriation acts:

Pub. L. 99-141, title IV, § 401, Nov. 1, 1985, 99 Stat. 577.

Pub. L. 98-360, title IV, § 401, July 16, 1984, 98 Stat. 418.

Pub. L. 98-50, title IV, § 401, July 14, 1983, 97 Stat. 259.

TITLE 41—PUBLIC CONTRACTS

CHAPTER 1—GENERAL PROVISIONS

§ 5. Advertisements for proposals for purchases and contracts for supplies or services for Government departments; application to Government sales and contracts to sell and to Government corporations

Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed $25,000, (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 1638 of Appendix to title 50, (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed $500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising.

In the case of wholly owned Government corporations, this section shall apply to their administrative transactions only.

(As amended Dec. 1, 1983, Pub. L. 98-191, § 9(b), 97 Stat. 1332.)

AMENDMENTS

1983—Pub. L. 98-191 substituted "$25,000" for "$10,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5a, 6a, 6a-1, 6a-2, 6b, 252, 260 of this title; title 2 sections 61g-7, 72a, 135a, 475, 604; title 5 sections 3109, 4105, 8709, 8714a, 8714b, 8714c, 8902; title 7 sections 87e-1, 4271, 1624, 3318; title 8 sections 1252, 1355; title 10 section 2314; title 12 sections 1141b, 1701z-2, 1703, 1710, 1713, 1739, 1747g, 1747k, 1749a, 1750c, 1788, 1827; title 15 sections 634, 2218, 2507, 2609, 2626; title 16 sections 17b, 17i, 343b, 450jj-1, 504, 580c, 590z-3, 594-5, 757, 916*l*, 961, 1052, 2104; title 18 section 4255; title 20 sections 1034, 1070d, 2012, 2106; title 21 section 872; title 22 sections 272a, 280b, 280i, 280k, 287e, 287r, 289c, 290b, 295b, 2103, 2179, 2509, 4024; title 23 sections 140, 307; title 24 sections 322, 324; title 28 sections 604, 624, 753; title 29 section 671; title 30 section 556; title 31 section 9105; title 33 sections 1123, 1254, 1705; title 38 sections 766, 806, 1820, 4101, 4202, 5022, 5070; title 40 sections 71a, 276a-7, 484, 609, 758; title 42 sections 242k, 242m, 263d, 285a-2, 285b-3, 289c, 289e, 290bb, 292f, 296k, 300c-22, 300e-2, 300e-3, 300u, 1395u, 1395ww, 1532, 1543, 1563, 1592d, 1592h, 1870, 2051, 2061, 2063, 2075, 2096, 2210, 2293, 2295, 2310, 2349, 2362, 3211, 3535, 4081, 4082, 4101, 4372, 6616, 7403, 7404, 9612; title 43 section 1817; title 45 sections 361, 719; title 46 App. section 1295d; title 49 sections 10364, 10385, 10721; title 49 App. sections 1159, 1903, 2426; title 50 section 198; title 50 App. section 1918.

§ 6a-1. Architect of the Capitol, exception from advertisement requirements

On and after July 27, 1965, the purchase of supplies and equipment and the procurement of services for all branches under the Architect of the Capitol may be made in the open market without compliance with section 5 of this title in the manner common among businessmen, when the aggregate amount of the purchase or the service does not exceed $25,000 in any instance.

(As amended Pub. L. 98-191, § 9(c), Dec. 1, 1983, 97 Stat. 1332.)

AMENDMENTS

1983—Pub. L. 98-191 substituted "$25,000" for "$10,000".

§ 11. No contracts or purchases unless authorized or under adequate appropriation; report to the Congress

(a) No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the Department of Defense and in the Department of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, for clothing, subsistence, forage, fuel, quarters,,[1] transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year.

(b) The Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy shall immediately advise the Congress of the exercise of the authority granted in subsection (a) of this section, and shall report quarterly on the estimated obligations incurred pursuant to the authority granted in subsection (a) of this section.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 17(e), 98 Stat. 2868.)

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[1] So in original.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-557, § 17(e)(1)(A), substituted "except in the Department of Defense and in the Department of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy" for "except in the War and Navy Departments".

Pub. L. 98-557, § 17(e)(1)(B), substituted ", transportation, or medical and hospital supplies" for "or transportation", such change having been made by Act June 12, 1906, thereby requiring no further change in text. See Repeals note below.

Subsec. (b). Pub. L. 98-557, § 17(e)(2), added provisions relating to the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

REPEALS

The first proviso under the heading "MEDICAL DEPARTMENT" in act June 12, 1906, ch. 3078, 34 Stat. 255, cited as a credit to this section, was repealed by Pub. L. 98-557, § 17(e)(3), Oct. 30, 1984, 98 Stat. 2868.

§ 22. Interest of Member of Congress

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1514; title 10 section 2343; title 15 section 714*l*; title 22 sections 1472, 2676; title 33 section 702m.

§ 35. Contracts for materials, etc., exceeding $10,000; representations and stipulations

[*See main edition for text of* (*a*) *and* (*b*)]

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of forty hours in any one week: *Provided*, That the provisions of this subsection shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs (1) or (2) of subsection (b) of section 207 of title 29;

[*See main edition for text of* (*d*) *and* (*e*)]

(June 30, 1936, ch. 881, § 1, 49 Stat. 2036; May 13, 1942, ch. 306, 56 Stat. 277; Pub. L. 90-351, title I, § 819(b), formerly § 827(b), as added Dec. 27, 1979, Pub. L. 96-157, § 2, 93 Stat. 1215, and renumbered Oct. 12, 1984, Pub. L. 98-473, title II, § 609B(f), 98 Stat. 2093; Nov. 8, 1985, Pub. L. 99-145, title XII, § 1241(b), 99 Stat. 734.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-145 struck out "eight hours in any one day or in excess of" before "forty hours".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1241(c) of Pub. L. 99-145 provided that: "The amendments made by this section [amending this section and section 328 of Title 40, Public Buildings, Property, and Works] shall take effect on January 1, 1986."

§ 46. Committee for Purchase from the Blind and Other Severely Handicapped

SHORT TITLE

Act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is classified to sections 46 to 48c of this title, is popularly known as the Wagner-O'Day Act.

ACT REFERRED TO IN OTHER SECTIONS

The Wagner-O'Day Act is referred to in section 253 of this title; title 10 section 2304; title 40 section 490c.

CHAPTER 4—PROCUREMENT PROCEDURES

SUBCHAPTER IV—PROCUREMENT PROVISIONS

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SUBCHAPTER IV—PROCUREMENT PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 403, 405, 414a, 418a of this title; title 5 section 575; title 15 sections 205f, 637; title 16 sections 670o, 793; title 40 sections 356a, 474, 602a, 604, 752, 758; title 42 section 1592d; title 43 section 1736; title 44 section 311.

§ 251. Declaration of purpose of this subchapter

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. B, title VII, § 2751, July 18, 1984, 98 Stat. 1203, provided that:

"(a) Except as provided in subsection (b), the amendments made by this title [see Short Title of 1984 Amendments note below] shall apply with respect to any solicitation for bids or proposals issued after March 31, 1985.

"(b) The amendments made by section 2713 [amending section 759 of Title 40, Public Buildings, Property, and Works, and enacting provisions set out as a note under section 759 of Title 40] and subtitle D [enacting sections 3551 to 3556 of Title 31, Money and Finance] shall apply with respect to any protest filed after January 14, 1985."

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98-577, § 1, Oct. 30, 1984, 98 Stat. 3066, provided, in part, that this Act [enacting sections 253c to 253h, 414a, 418a, and 418b of this title, repealing section 2303a of Title 10, Armed Forces, amending sections 253, 253b, 259, 403, and 416 of this title, sections 637 and 644 of Title 15, Commerce and Trade, and sections 2302, 2304, 2311, and 2320 of Title 10, Armed Forces, and enacting provisions set out as notes under sections 251 and 416 of this title and sections 637 and 644 of Title 15, Commerce and Trade] may be cited as the "Small Business and Federal Procurement Competition Enhancement Act of 1984".

Pub. L. 98-369, title VII, § 2701, July 18, 1984, 98 Stat. 1175, provided that: "This title [enacting sections 253a, 253b, 416 to 419 of this title and sections 3551 to 3556 of Title 31, Money and Finance, amending sections 252, 253, 254, 257, 258, 259, 260, 403, 405, and 414 of this title, sections 2301 to 2306, 2310, 2311, 2313, and 2356 of Title 10, Armed Forces, and section 759 of Title 40, Public Buildings, Property, and Works, and enacting provisions set out as notes under sections 251, 253, 403, and 407 of this title, section 2304 of Title 10, Armed Forces, and section 759 of Title 40, Public Buildings, Property, and Works] may be cited as the 'Competition in Contracting Act of 1984'."

CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 98-577, title I, § 101, Oct. 30, 1984, 98 Stat. 3066, provided that: "The purposes of this Act are to—

"(1) eliminate procurement procedures and practices that unnecessarily inhibit full and open competition for contracts;

"(2) promote the use of contracting opportunities as a means to expand the industrial base of the United States in order to ensure adequate responsive capability of the economy to the increased demands of the Government in times of national emergency; and

"(3) foster opportunities for the increased participation in the competitive procurement process of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals."

§ 252. Purchases and contracts for property

[*See main edition for text of* (*a*)]

(b) Small business concerns; share of business

It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for property and services for the Government shall be placed with small business concerns.

(c) Authorization of erection, repair, or furnishing of public buildings or improvements; contracts for construction or repair of buildings, roads, sidewalks, sewers, mains, etc.; Federal Highway Lands Program

(1) This subchapter does not (A) authorize the erection, repair, or furnishing of any public building or public improvement, but such authorization shall be required in the same manner as heretofore, or (B) permit any contract for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items using procedures other than sealed-bid procedures under section 253(a)(2)(A) of this title, if the conditions set forth in section 253(a)(2)(A) of this title apply or the contract is to be performed outside the United States.

(2) Section 253(a)(2)(A) of this title does not require the use of sealed-bid procedures in cases in which section 204(e) of title 23 applies.

(As amended Dec. 1, 1983, Pub. L. 98-191, § 9(a)(1), 97 Stat. 1331; July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2714(a)(1), 98 Stat. 1184.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 2714(a)(1)(A), struck out provisions that whenever it was proposed to make a contract or purchase in excess of $10,000 by negotiation and without advertising, pursuant to the authority of subsec. (c)(7) of this section, suitable advance publicity, as determined by the agency head with due regard to the type of property involved and other relevant considerations, had to be given for a period of at least fifteen days, wherever practicable, as determined by the agency head.

Subsec. (c)(1). Pub. L. 98-369, § 2714(a)(1)(B), redesignated subsec. (e) as (c)(1), in subsec. (c)(1) as so redesignated substituted reference to this subchapter for reference to this section in provisions preceding subpar. (A), in subpar. (B), substituted provisions relating to contracts using procedures other than sealed-bid procedures under section 253(a)(2)(A) of this title for provisions relating to contracts negotiated without advertising as required by section 253 of this title. Former subsec. (c), which related to conditions for negotiated purchases and contracts for property, was struck out.

Subsec. (c)(2). Pub. L. 98-369, § 2714(a)(1)(B), added par. (2).

Subsec. (d). Pub. L. 98-369, § 2714(a)(1)(B), struck out subsec. (d) which related to bids in violation of the antitrust laws.

Subsec. (e). Pub. L. 98-369, § 2714(a)(1)(B), redesignated subsec. (e) as (c)(1).

Subsec. (f). Pub. L. 98-369, § 2714(a)(1)(B), struck out subsec. (f) which related to specification of container size in contracts for the carriage of Government property in other than Government-owned cargo containers.

1983—Subsec. (c)(3). Pub. L. 98-191 substituted "$25,000" for "$10,000".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of this title.

EXECUTIVE ORDER NO. 10936

Ex. Ord. No. 10936, Apr. 24, 1961, 26 F.R. 3555, which provided for the reporting and investigation of identical bids in connection with the procurement of goods or services, was revoked by Ex. Ord. No. 12430, July 6, 1983, 48 F.R. 31371.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 260 of this title; title 22 sections 2509, 4024; title 23 section 140; title 30 section 1711; title 38 section 5022; title 40 sections 356, 356a; title 50 sections 1432, 1651.

§ 253. Competition requirements

(a) Procurement through full and open competition; competitive procedures

(1) Except as provided in subsections (b), (c), and (g) of this section and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this title and the modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984 [41 U.S.C. 403 note]; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(2) In determining the competitive procedures appropriate under the circumstance, an executive agency—

(A) shall solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; and

(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

(b) Exclusion of particular source; restriction of solicitation to small business concerns

(1) An executive agency may provide for the procurement of property or services covered by this section using competitive procedures but excluding a particular source in order to establish or maintain any alternative source or sources of supply for that property or service if the agency head determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of such property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization; or

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(2) An executive agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding other than small business concerns in furtherance of sections 638 and 644 of title 15;

(3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1) of this section.

(c) Use of noncompetitive procedures

An executive agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency;

(2) the executive agency's need for the property or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, or (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(4) the terms of an international agreement or treaty between the United States Government and a foreign government or international organization, or the written directions of a foreign government reimbursing the executive agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) a statute expressly authorizes or requires that the procurement be made through another executive agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

(6) the disclosure of the executive agency's needs would compromise the national security unless the agency is permitted to limit the

number of sources from which it solicits bids or proposals; or

(7) the head of the executive agency—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

(d) Property or services deemed available from only one source; nondelegable authority

(1) For the purposes of applying subsection (c)(1) of this section—

(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept the substance of which is not otherwise available to the United States and does not resemble the substance of a pending competitive procurement; and

(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when it is likely that award to a source other than the original source would result in (i) substantial duplication of cost to the Government which is not expected to be recovered through competition, or (ii) unacceptable delays in fulfilling the executive agency's needs, such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures.

(2) The authority of the head of an executive agency under subsection (c)(7) of this section may not be delegated.

(e) Offer requests to potential sources

An executive agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) of this section shall request offers from as many potential sources as is practicable under the circumstances.

(f) Justification for use of noncompetitive procedures

(1) Except as provided in paragraph (2), an executive agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved—

(i) in the case of a contract for an amount exceeding $100,000 (but equal to or less than $1,000,000), by the competition advocate for the procuring activity (without further delegation);

(ii) in the case of a contract for an amount exceeding $1,000,000 (but equal to or less than $10,000,000), by the head of the procuring activity or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian;[1] is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) in the case of a contract for an amount exceeding $10,000,000, by the senior procurement executive of the agency designated pursuant to section 414(3) of this title (without further delegation); and

(C) any required notice has been published with respect to such contract pursuant to section 416 of this title and all bids or proposals received in response to such notice have been considered by such executive agency.

(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required—

(A) when a statute expressly requires that the procurement be made from a specified source;

(B) when the agency's need is for a brand-name commercial item for authorized resale;

(C) in the case of a procurement permitted by subsection (c)(7) of this section; or

(D) in the case of a procurement conducted under (i) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act, or (ii) section 637(a) of title 15.

(3) The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

(F) a statement of the actions, if any, the agency may take to remove or overcome a barrier to competition before a subsequent procurement for such needs.

(4) The justification required by paragraph (1)(A) and any related information shall be made available for inspection by the public consistent with the provisions of section 552 of title 5.

(5) In no case may an executive agency—

(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

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[1] So in original. The semicolon probably should be a comma.

(B) procure property or services from another executive agency unless such other executive agency complies fully with the requirements of this subchapter in its procurement of such property or services.

The restriction set out in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

(g) Simplified procedures for small purchases

(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the regulations modified, in accordance with section 2752 of the Competition in Contracting Act of 1984 [41 U.S.C. 403 note], shall provide for special simplified procedures for small purchases of property and services.

(2) For the purposes of this subchapter, a small purchase is a purchase or contract for an amount which does not exceed $25,000.

(3) A proposed purchase or contract for an amount above $25,000 may not be divided into several purchases or contracts for lesser amounts in order to use the small purchase procedures required by paragraph (1).

(4) In using small purchase procedures, an executive agency shall promote competition to the maximum extent practicable.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2711(a)(1), 98 Stat. 1175; Oct. 30, 1984, Pub. L. 98-577, title V, § 504(a)(1), (2), 98 Stat. 3086; Nov. 8, 1985, Pub. L. 99-145, title IX, § 961(a)(2), title XIII, § 1304(c)(2), (3), 99 Stat. 703, 742.)

References in Text

Section 2752 of the Competition in Contracting Act of 1984, referred to in subsecs. (a)(1)(A), (g)(1), is section 2752 of Pub. L. 98-369, which is set out as a note under section 403 of this title.

The General Schedule, referred to in subsec. (f)(1)(B)(i), is set out under section 5332 of Title 5, Government Organization and Employees.

The Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act, referred to in subsec. (f)(2)(D), is Act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is classified to sections 46 to 48c of this title. For complete classification of this Act to the Code, see Tables.

Amendments

1985—Subsec. (f)(1)(C). Pub. L. 99-145, § 1304(c)(2), substituted "any" for "Any".

Subsec. (f)(2). Pub. L. 99-145, § 961(a)(2), added subpars. (A) and (B), designated existing provision as subpar. (C), and redesignated as subpar. (D), cls. (i) and (ii) provisions previously designated subpars. (A) and (B), substituting in cl. (ii) "section 637(a) of title 15" for "the authority of section 637(a) of title 15".

Subsec.(g)(1). Pub. L. 99-145, § 1304(c)(3), inserted a comma after "1984".

1984—Subsec. (a). Pub. L. 98-369 substituted provisions requiring procurement through full and open competition for provisions requiring advertisement for bids to be made a sufficient time prior to the purchase or contract and to permit full and free competition, and struck out provision that no advertisement or bid invitation for carriage of Government property in other than Government-owned cargo containers could specify carriage in cargo containers of any stated length, height, or width.

Subsec. (b). Pub. L. 98-369 substituted provisions regarding the exclusion of a particular source of property or services from competitive procedures for provisions regarding the opening of bids and procedures for awards, and added provision that in fulfilling the statutory requirements relating to small business concerns and socially and economically disadvantaged small business concerns, an executive agency shall use competitive procedures but may restrict a solicitation to allow only such business concerns to compete.

Subsec. (b)(2). Pub. L. 98-577, § 504(a)(1), substituted provisions to the effect that executive agencies may provide for procurement of property or services covered by this section using competitive procedures but excluding other than small business concerns for former provisions which provided that executive agencies shall use competitive procedures but may restrict a solicitation to allow only such small business concerns to compete.

Subsec. (b)(3). Pub. L. 98-577, § 504(a)(1), added par. (3).

Subsecs. (c) to (g). Pub. L. 98-369 added subsecs. (c) to (g).

Subsec. (f)(2). Pub. L. 98-577, § 504(a)(2), designated the final sentence as subpar. (A) and added subpar. (B).

Effective Date of 1985 Amendment

Amendment by section 961(a)(2) of Pub. L. 99-145 effective as if included in enactment of Competition in Contracting Act of 1984, Pub. L. 98-369, div. B, title VII, see section 961(e) of Pub. L. 99-145, set out as a note under section 2304 of Title 10, Armed Forces.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of this title.

Small Business Act

Section 2711(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 253 and 259 of this title and enacting sections 253a and 253b of this title] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a))."

Section Referred to in Other Sections

This section is referred to in sections 252, 257, 416, 417 of this title; title 15 section 637; title 22 section 2669; title 40 section 759.

§ 253a. Planning and solicitation requirements

(a)(1) In preparing for the procurement of property or services, an executive agency shall—

(A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(B) use advance procurement planning and market research; and

(C) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(2) Each solicitation under this subchapter shall include specifications which—

(A) consistent with the provisions of this subchapter, permit full and open competition;

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law.

(3) For the purposes of paragraphs (1) and (2), the type of specification included in a solici-

tation shall depend on the nature of the needs of the executive agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(C) design requirements.

(b) In addition to the specifications described in subsection (a) of this section, each solicitation for sealed bids or competitive proposals (other than for small purchases) shall at a minimum include—

(1) a statement of—

(A) all significant factors (including price) which the executive agency reasonably expects to consider in evaluating sealed bids or competitive proposals; and

(B) the relative importance assigned to each of those factors; and

(2)(A) in the case of sealed bids—

(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

(ii) the time and place for the opening of the sealed bids; or

(B) in the case of competitive proposals—

(i) a statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and

(ii) the time and place for submission of proposals.

(June 30, 1949, ch. 288, title III, § 303A, as added July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2711(a)(2), 98 Stat. 1178.)

EFFECTIVE DATE

Section applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 251 of this title.

SMALL BUSINESS ACT

This section not to affect or supersede the provisions of section 637(a) of Title 15, Commerce and Trade, see section 2711(c) of Pub. L. 98-369, set out as a note under section 253 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 257 of this title.

§ 253b. Evaluation and award

(a) Basis

An executive agency shall evaluate sealed bids and competitive proposals based solely on the factors specified in the solicitation.

(b) Rejection of bids or proposals

All sealed bids or competitive proposals received in response to a solicitation may be rejected if the agency head determines that such action is in the public interest.

(c) Opening of bids; promptness of award; written notice

Sealed bids shall be opened publicly at the time and place stated in the solicitation. The executive agency shall evaluate the bids without discussions with the bidders and, except as provided in subsection (b) of this section, shall award a contract with reasonable promptness to the responsible source whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation. The award of a contract shall be made by transmitting written notice of the award to the successful bidder.

(d) Discussions with offerors; written notification

(1) The executive agency shall evaluate competitive proposals and may award a contract—

(A) after discussions conducted with the offerors at any time after receipt of the proposals and before the award of the contract; or

(B) without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the Government.

(2) In the case of award of a contract under paragraph (1)(A), the executive agency shall conduct, before such award, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only price and the other factors included in the solicitation.

(3) In the case of award of a contract under paragraph (1)(B), the executive agency shall award the contract based on the proposals as received (and as clarified, if necessary, in discussions conducted for the purpose of minor clarification).

(4) Except as otherwise provided in subsection (b) of this section, the executive agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only price and the other factors included in the solicitation. The executive agency shall award the contract by transmitting written notice of the award to such source and shall promptly notify all other offerors of the rejection of their proposals.

(e) Antitrust violations

If the agency head considers that a bid or proposal evidences a violation of the antitrust laws, such agency head shall refer the bid or proposal to the Attorney General for appropriate action.

(f) Planning for future competition

(1)(A) In preparing a solicitation for the award of a development contract for a major system, the head of an agency shall consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) The proposals that the head of an agency is to consider requiring in a solicitation for the award of a development contract are the following:

(i) Proposals to incorporate in the design of the major system items which are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

(ii) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items which the United States will be able to acquire competitively in the future.

(2)(A) In preparing a solicitation for the award of a production contract for a major system, the head of an agency shall consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) The proposals that the head of an agency is to consider requiring in a solicitation for the award of a production contract are proposals identifying opportunities to ensure that the United States will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to such requirement may include the following:

(i) Proposals to provide to the United States the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the United States, if any, of acquiring such technical data and the right to use such data.

(ii) Proposals for the qualification or development of multiple sources of supply for the item.

(3) If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in paragraphs (1) and (2) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded.

(June 30, 1949, ch. 288, title III, § 303B, as added July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2711(a)(2), 98 Stat. 1179; Oct. 30, 1984, Pub. L. 98-577, title II, § 201(a), 98 Stat. 3068.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-577 added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 201(b) of Pub. L. 98-577 provided that: "The amendment made by subsection (a) [enacting subsec. (f) of this section] shall apply with respect to any solicitation issued more than 180 days after the date of enactment of this Act [Oct. 30, 1984]."

EFFECTIVE DATE

Section applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 251 of this title.

SMALL BUSINESS ACT

This section not to affect or supersede the provisions of section 637(a) of Title 15, Commerce and Trade, see section 2711(c) of Pub. L. 98-369, set out as a note under section 253 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 257 of this title.

§ 253c. Encouragement of new competition

(a) "Qualification requirement" defined

In this section, "qualification requirement" means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) Agency head; functions; prior to enforcement of qualification requirement

Except as provided in subsection (c) of this section, the head of the agency shall, before enforcing any qualification requirement—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

(4) ensure that a potential offeror is provided, upon request, a prompt opportunity to demonstrate at its own expense (except as provided in subsection (d) of this section) its ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned or of another agency obtained through interagency agreement, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of clause (4), provide to the extent possible that such services be provided by a contractor who is not expected to benefit from an absence of additional qualified sources and who shall be required in such contract to adhere to any restriction on tech-

nical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

(c) Applicability; waiver authority; referral of offers

(1) Subsection (b) of this section does not apply with respect to a qualification requirement established by statute prior to October 30, 1984.

(2) Except as provided in paragraph (3), if it is unreasonable to specify the standards for qualification which a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement. After considering any comments of the advocate for competition reviewing such determination, the head of the procuring activity may waive the requirements of paragraphs (2) through (5) of subsection (b) of this section for up to two years with respect to the item subject to the qualification requirement.

(3) The waiver authority contained in paragraph (2) shall not apply with respect to any qualified products list.

(4) A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror has not been identified as meeting a qualification requirement, if the potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror or its product meets the standards established for qualification or can meet such standards before the date specified for award of the contract.

(5) Nothing contained in this subsection requires the referral of an offer to the Small Business Administration pursuant to section 637(b)(7) of title 15 if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

(6) The head of an agency need not delay a proposed procurement in order to comply with subsection (b) of this section or in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification.

(d) Number; qualified sources or products; fewer than two actual manufacturers; functions of agency head

(1) If the number of qualified sources or qualified products available to compete actively for an anticipated future requirement is fewer than two actual manufacturers or the products of two actual manufacturers, respectively, the head of the agency concerned shall—

(A) periodically publish notice in the Commerce Business Daily soliciting additional sources or products to seek qualification, unless the contracting officer determines that such publication would compromise national security; and

(B) bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement, but such costs may be borne only if the head of the agency determines that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to offset (within a reasonable period of time considering the duration and dollar value of anticipated future requirements) the costs incurred by the agency.

(2) The head of an agency shall require a prospective contractor requesting the United States to bear testing and evaluation costs under paragraph (1)(B) to certify as to its status as a small business concern under section 632 of title 15.

(e) Examination; need for qualification requirement

Within seven years after the establishment of a qualification requirement, the need for such qualification requirement shall be examined and the standards of such requirement revalidated in accordance with the requirements of subsection (b) of this section. The preceding sentence does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2) of this section.

(f) Enforcement determination by agency head

Except in an emergency as determined by the head of the agency, whenever the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not thereafter enforce that qualification requirement unless the agency complies with the requirements of subsection (b) of this section.

(June 30, 1949, ch. 288, title III, § 303C, formerly § 303D, as added Oct. 30, 1984, Pub. L. 98-577, title II, § 202(a), 98 Stat. 3069, and renumbered § 303C, Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1304(c)(4)(A), 99 Stat. 742.)

EFFECTIVE DATE

Section 202(b) of Pub. L. 98-577 provided that: "The amendment made by subsection (a) [enacting this section] shall apply with respect to solicitations issued more than 180 days after the date of enactment of this Act [Oct. 30, 1984]."

§ 253d. Validation of proprietary data restrictions

(a) Contracts; delivery of technical services; contents

A contract for property or services entered into by an executive agency which provides for the delivery of technical data, shall provide that—

(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data; and

(2) the contracting officer may review the validity of any restriction asserted by the contractor or by a subcontractor under the contract on the right of the United States to use technical data furnished to the United States under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time.

(b) Review; challange; notice

If after such review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. Such notice shall state—

(1) the grounds for challenging the asserted restriction; and

(2) the requirement for a response within 60 days justifying the current validity of the asserted restriction.

(c) Written request; additional time; schedule of responses

If a contractor or subcontractor asserting a restriction subject to this section submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to adequately permit the submission of such justification shall be provided by the contracting officer as appropriate. If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

(d) Decision; validity of asserted restriction; failure to submit response

(1) Upon a failure by the contractor or subcontractor to submit any response under subsection (b) of this section, the contracting officer shall issue a decision pertaining to the validity of the asserted restriction.

(2) If a justification is submitted in response to the notice provided pursuant to subsection (b) of this section, a contracting officer shall within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(e) Claim; considered claim within Contract Disputes Act of 1978

If a claim pertaining to the validity of the asserted restriction is submitted in writing to a contracting officer by a contractor or subcontractor at any tier, such claim shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(f) Challange; use of technical data; sustained; liability of United States for costs and fees

(1) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the United States to use such technical data is sustained—

(A) the restriction on the right of the United States to use the technical data shall be cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor, as appropriate, shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(2) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the United States to use such technical data is not sustained—

(A) the United States shall continue to be bound by the restriction; and

(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.

(June 30, 1949, ch. 288, title III, § 303D, formerly § 303E, as added Oct. 30, 1984, Pub. L. 98-577, title II, § 203(a), 98 Stat. 3071, and renumbered § 303D, Nov. 8, 1985, Pub. L. 95-145, title XIII, § 1304(c)(4)(A), 99 Stat. 742.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (e), is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 601 of this title and Tables.

EFFECTIVE DATE

Section 203(b) of Pub. L. 98-577 provided that: "The amendment made by subsection (a) [enacting this section] shall apply with respect to solicitations issued more than 60 days after the date of the enactment of this Act [Oct. 30, 1984]."

§ 253e. Commercial pricing for supplies

(a) Price to United States

Except in the case of an offer submitted with a written statement under subsection (b)(2) of this section and except as provided in subsection (c) of this section, a contract entered into using other than competitive procedures by an executive agency for the purchase of items that are offered for sale to the public may not result in a price to the United States that exceeds the lowest price at which such items are sold by the contractor to the public.

(b) Certification

A person who submits an offer to an executive agency for the supply of items that it offers for sale to the public (1) shall certify in the offer that the price offered is not more than its lowest commercial price for the items, or (2) shall submit with the offer a written statement specifying the amount of the difference between its lowest commercial price for the items and the price offered, and providing a justification for that difference.

(c) Applicability

Subsections (a) and (b) of this section do not apply to a contract if the contracting officer determines that the use of the price otherwise required by subsection (a) of this section for such contract is not appropriate because of—

(1) national security considerations; or

(2) differences in quantities, quality, delivery, or other terms and conditions of the contract from commercial contract terms.

(June 30, 1949, ch. 288, title III, § 303E, formerly § 303F, as added Oct. 30, 1984, Pub. L. 98-577, title II, § 204(a), 98 Stat. 3072, and renumbered § 303E, Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1304(c)(4)(A), 99 Stat. 742.)

EFFECTIVE DATE

Section 204(b) of Pub. L. 98-577 provided that: "The amendment made by subsection (a) [enacting this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 30, 1984]."

§ 253f. Economic order qualities

(a) Procurement of supplies; costs advantageous to United States

Each executive agency shall procure supplies in such quantity as (A) will result in the total cost and unit cost most advantageous to the United States, where practicable, and (B) does not exceed the quantity reasonably expected to be required by the agency.

(b) Opinions; economic advantage to United States

Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which would be more economically advantageous to the United States. Each such recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

(June 30, 1949, ch. 288, title III, § 303F, formerly § 303G, as added Oct. 30, 1984, Pub. L. 98-577, title II, § 205(a), 98 Stat. 3073, and renumbered § 303F, Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1304(c)(4)(A), 99 Stat. 742.)

EFFECTIVE DATE

Section 205(b) of Pub. L. 98-577 provided that: "The amendment made by subsection (a) [enacting this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 30, 1984]."

§ 253g. Prohibition of contractors limiting subcontractor sales directly to United States

(a) Contract restrictions

Each contract for the purchase of property or services made by an executive agency shall provide that the contractor will not—

(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

(b) Rights under law

This section does not prohibit a contractor from asserting rights it otherwise has under law.

(June 30, 1949, ch. 288, title III, § 303G, formerly § 303H, as added Oct. 30, 1984, Pub. L. 98-577, title II, § 206(a), 98 Stat. 3073, and renumbered § 303G, Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1304(c)(4)(A), 99 Stat. 742.)

EFFECTIVE DATE

Section 206(b) of Pub. L. 98-577 provided that: "The amendment made by subsection (a) [enacting this section] shall apply with respect to solicitations made more than 180 days after the date of enactment of this Act [Oct. 30, 1984]."

§ 254. Contract requirements

(a) Contracts awarded using procedures other than sealed-bid procedures

Except as provided in subsection (b) of this section, contracts awarded after using procedures other than sealed-bid procedures may be of any type which in the opinion of the agency head will promote the best interests of the Government. Every contract awarded after using procedures other than sealed-bid procedures shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business, for the breach or violation of which warranty the Government shall have the right to annul such contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

[*See main edition for text of* (b)]

(c) Examination of books, records, etc., of contractors; time limitation; exemptions; exceptional conditions; reports to Congress

All contracts awarded after using procedures other than sealed-bid procedures shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall until the expiration of three years after final payment have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts. Under regulations to be prescribed by the Administrator, however, such clause may be omitted from contracts with foreign contractors or foreign subcontractors if the agency head determines, with the concurrence of the Comptroller General of the United States or his designee, that the omission will serve the best interests of the United States. However, the concurrence of the Comptroller General of the United States or his designee is not required for the omission of such clause—

[*See main edition for text of* (*1*) *and* (*2*)]

If the clause is omitted based on a determination under clause (2) a written report shall be furnished to the Congress. The power of the agency head to make the determination specified in the preceding sentences shall not be delegable.

(d) Submission of cost or pricing data by contractors and subcontractors; certificate; adjustment of price; inspection of books, records, etc.; necessity of data; exceptions

(1) A prime contractor or any subcontractor shall be required to submit cost or pricing data under the circumstances listed below, and shall be required to certify that, to the best of such contractor's or subcontractor's knowledge and belief, the cost or pricing data submitted were accurate, complete, and current—

(A) before the award of any prime contract under this subchapter using procedures other than sealed-bid procedures, if the contract price is expected to exceed $100,000;

(B) before the pricing of any contract change or modification, if the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the agency head;

(C) before the award of a subcontract at any tier, when the prime contractor and each higher tier subcontractor have been required to furnish such a certificate, if the price of such subcontract is expected to exceed $100,000; or

(D) before the pricing of any contract change or modification to a subcontract covered by clause (C), if the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the agency head.

(2) Any prime contract or change or modification thereto under which a certificate is required under paragraph (1) shall contain a provision that the price to the Government, including profit or fee, shall be adjusted to exclude any significant sums by which it may be determined by the agency head that such price was increased because the contractor or any subcontractor required to furnish such a certificate, furnished cost or pricing data which, as of a date agreed upon between the parties (which date shall be as close to the date of agreement on the price as is practicable), were inaccurate, incomplete, or noncurrent.

(3) For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this subsection, any authorized representative of the agency who is an employee of the United States Government shall have the right, until the expiration of three years after final payment under the contract or subcontract, to examine all books, records, documents, and other data of the contractor or subcontractor related to the proposal for the contract, the discussions conducted on the proposal, pricing, or performance of the contract or subcontract.

(4) When cost or pricing data are not required to be submitted by this subsection, such data may nevertheless be required by the agency if the agency head determines that such data are necessary for the evaluation by the executive agency of the reasonableness of the price of the contract or subcontract.

(5) The requirements of this subsection need not be applied to contracts or subcontracts—

(A) where the price is based on—

(i) adequate price competition,

(ii) established catalog or market prices of commercial items sold in substantial quantities to the general public, or

(iii) prices set by law or regulation, or

(B) in exceptional cases, where the agency head determines that the requirements of this subsection may be waived and states in writing the reasons for such determination.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, §§ 2712, 2714(a)(3), 98 Stat. 1181, 1184.)

AMENDMENTS

1984—Pub. L. 98-369, § 2714(a)(2), substituted "Contract requirements" for "Negotiated contracts" in section catchline.

Subsec. (a). Pub. L. 98-369, § 2714(a)(3), substituted "awarded after using procedures other than sealed-bid procedures" for "negotiated pursuant to section 252(c) of this title" in first and second sentences.

Subsec. (c). Pub. L. 98-369, § 2714(a)(3)(C), substituted "awarded after using procedures other than sealed-bid procedures" for "negotiated without advertising pursuant to authority contained in this Act" in first sentence.

Subsec. (d). Pub. L. 98-369, § 2712, added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 257 of this title; title 16 section 670*o*; title 38 section 5022.

§ 255. Advance or other payments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 257 of this title; title 15 section 4224.

§ 257. Administrative determinations

(a) Conclusiveness; delegation of powers

Determinations and decisions provided in this Act to be made by the Administrator or other agency head shall be final. Such determinations or decisions may be made with respect to individual purchases or contracts or, except for determinations or decisions under sections 253, 253a, and 253b of this title, with respect to classes of purchases or contracts. Except as provided in section 253(d)(2) of this title, and except as provided in section 486(d) of title 40 with respect to the Administrator, the agency head is authorized to delegate his powers provided by this Act, including the making of such determinations and decisions, in his discretion and subject to his direction, to any other officer or officers or officials of the agency.

(b) Basis of determinations; finding conclusive; preservation of findings; copy

Each determination or decision required by section 254 or by section 255(c) of this title shall be based upon written findings made by the official making such determination, which findings shall be final and shall be available within the agency for a period of at least six years following the date of the determination. A copy of the findings shall be submitted to the General Accounting Office with the contract.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2714(a)(4), 98 Stat. 1184.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended, known as the Federal Property and Administrative Services Act of 1949. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2714(a)(4), substituted provision that determinations and decisions provided in this Act to be made by the Administrator or other agency head shall be final for provision that such determinations and decisions provided in this subchapter to be made by such official would be final, and added exception for determinations or decisions under sections 253, 253a, and 253b of this title, substituted "Except as provided in section 253(d)(2) of this title" for "Except as provided in subsection (b) of this section", and directed the substitution of "this Act" for "this chapter" after "powers provided by", which substitution was not capable of literal execution because the original text read "this title". Consequently, the amendment was executed by substituting "this Act" for "this title" as the probable intent of Congress.

Subsecs. (b), (c). Pub. L. 98-369, § 2714(a)(4)(D)-(F), redesignated subsec. (c) as (b), struck out "paragraphs (11), (12), (13), or of section 253(c)", and struck out former subsec. (b) which related to nondelegable powers and powers delegable to certain persons.

Subsec. (d). Pub. L. 98-369, § 2714(a)(4)(G), struck out subsec. (d) which related to preservation of data relating to contracts negotiated pursuant to the former provisions of section 252(c) of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of this title.

§ 258. Laws applicable to contracts

No purchase or contract shall be exempt from the Act of June 30, 1936 (49 Stat. 2036, as amended; 41 U.S.C. 35 to 45), or from the Act of March 3, 1931 (46 Stat. 1494, as amended; 40 U.S.C. 276a to 276a-6), solely by reason of having been made or awarded after using procedures other than sealed-bid procedures and the provisions of said Acts and of the Act of June 19, 1912 (37 Stat. 137, as amended; 40 U.S.C. 324 and 325a), if otherwise applicable, shall apply to such purchases and contracts.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2714(a)(5), 98 Stat. 1185.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "made or awarded after using procedures other than sealed-bid procedures" for "entered into pursuant to section 252(c) of this title without advertising,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of this title.

§ 259. Definitions

As used in this subchapter—

[*See main edition for text of* (*a*)]

(b) The term "competitive procedures" means procedures under which an executive agency enters into a contract pursuant to full and open competition. Such term also includes—

(1) procurement of architectural or engineering services conducted in accordance with title IX of this Act (40 U.S.C. 541 et seq.);

(2) the competitive selection of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals; and [2]

(3) the procedures established by the Administrator for the multiple awards schedule program of the General Services Administration if—

(A) participation in the program has been open to all responsible sources; and

(B) orders and contracts under such procedures result in the lowest overall cost alternative to meet the needs of the Government;

(4) procurements conducted in furtherance of section 644 of title 15 as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

(5) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 638 of title 15.

(c) The terms "full and open competition", "responsible source", "technical data", "major system", "item", "item of supply", and "supplies" have the same meanings provided such terms in section 403 of this title.

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[2] So in original. The word "and" probably should not appear.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2711(a)(3), 98 Stat. 1180; Oct. 30, 1984, Pub. L. 98-577, title V, § 504(a)(3), (4), 98 Stat. 3086.)

References in Text

This Act, referred to in subsec. (b)(1), is the Federal Property and Administrative Services Act of 1949, approved June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title IX of this Act is classified generally to subchapter VI (§ 541 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

Amendments

1984—Subsec. (b). Pub. L. 98-369 added subsec. (b).

Subsec. (b)(4), (5). Pub. L. 98-577, § 504(a)(3), added pars. (4) and (5).

Subsec. (c). Pub. L. 98-577, § 504(a)(4), substituted ", 'responsible source', 'technical data', 'major system', 'item', 'item of supply', and 'supplies' have" for "and 'responsible source' have" before "the meaning".

Pub. L. 98-369 added subsec. (c).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of this title.

Small Business Act

Amendment to this section by section 2711(a)(3) of Pub. L. 98-369 not to affect or supersede the provisions of section 637(a) of Title 15, Commerce and Trade, see section 2711(c) of Pub. L. 98-369, set out as a note under section 253 of this title.

§ 260. Laws not applicable to contracts

Sections 5, 8, and 13 of this title shall not apply to the procurement of property or services made by an executive agency pursuant to this subchapter. Any provision of law which authorizes an executive agency (other than an executive agency which is exempted from the provisions of this subchapter by section 252(a) of this title), to procure any property or services without advertising or without regard to said section 5 of this title shall be construed to authorize the procurement of such property or services pursuant to the provisions of this subchapter relating to procedures other than sealed-bid procedures.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2714(a)(6), 98 Stat. 1185.)

Amendments

1984—Pub. L. 98-369 substituted "the provisions of this subchapter relating to procedures other than sealed-bid procedures" for "section 252(c)(15) of this title without regard to the advertising requirements of sections 252(c) and 253 of this title".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of this title.

CHAPTER 7—OFFICE OF FEDERAL PROCUREMENT POLICY

Sec.
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Chapter Referred to in Other Sections

This chapter is referred to in sections 601, 607 of this title; title 40 sections 474, 481, 487.

§ 401. Congressional declaration of policy

It is the policy of the Congress to promote economy, efficiency and effectiveness in the procurement of property and services by the executive branch of the Federal Government by—

(1) promoting full and open competition;

(2) establishing policies, procedures, and practices which will provide the Government with property and services of the requisite quality, within the time needed, at the lowest reasonable cost;

(3) promoting the development of simplified uniform procurement processes;

(4) promoting the participation of small business concerns;

(5) supporting the continuing development of a competent, professional work force;

(6) eliminating fraud and waste in the procurement process;

(7) eliminating redundant administrative requirements placed on contractor and Federal procurement officials;

(8) promoting fair dealings and equitable relationships with the private sector;

(9) ensuring that payment is made in a timely manner and only for value received;

(10) requiring, to the extent practicable, the use of commercial products to meet the Government's needs;

(11) requiring that personal services are obtained in accordance with applicable personnel procedures and not by contract;

(12) ensuring the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements; and

(13) promoting, whenever feasible, the use of specifications which describe needs in terms of functions to be performed or the performance required.

(As amended Pub. L. 98-191, § 3, Dec. 1, 1983, 97 Stat. 1325.)

AMENDMENTS

1983—Pub. L. 98-191 amended section generally, retaining language from former provisions stating congressional policy to promote economy, efficiency, and effectiveness in the procurement of property and services, while emphasizing the use of effective competition, the development of simplified procurement processes and small business participation.

SHORT TITLE OF 1983 AMENDMENT

Section 1 of Pub. L. 98-191 provided: "That this Act [enacting sections 413 to 415 of this title, amending sections 5, 6a-1, 252, 401, 403, 405, 407, 409, 410, and 411 of this title, section 831h of Title 16, Conservation, and sections 474, 481, and 487 of Title 40, Public Buildings, Property, and Works] may be cited as the 'Office of Federal Procurement Policy Act Amendments of 1983'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 413 of this title.

§ 403. Definitions

As used in this chapter—

(1) the term "executive agency" means—

(A) an executive department specified in section 101 of title 5;

(B) a military department specified in section 102 of such title;

(C) an independent establishment as defined in section 104(1) of such title; and

(D) a wholly owned Government corporation fully subject to the provisions of chapter 91 of title 31;

(2) the term "procurement" includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout;

(3) the term "procurement system" means the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement function;

(4) the term "single system of Government-wide procurement regulations" means (A) a single Government-wide procurement regulation issued and maintained jointly by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), chapter 137 of title 10, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), and (B) agency acquisition regulations implementing and supplementing the Government-wide procurement regulation issued as provided in clause (A), which shall be limited to (i) regulations essential to implement Government-wide policies and procedures within the agency and (ii) additional policies and procedures required to satisfy the specific and unique needs of the agency;

(5) the term "standards" means the criteria for determining the effectiveness of the procurement system by measuring the performance of the various elements of such system; and [1]

(6) the term "competitive procedures" means procedures under which an agency enters into a contract pursuant to full and open competition;

(7) the term "full and open competition", when used with respect to a procurement, means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement;

(8) the term "responsible source" means a prospective contractor who—

(A) has adequate financial resources to perform the contract or the ability to obtain such resources;

(B) is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;

(C) has a satisfactory performance record;

(D) has a satisfactory record of integrity and business ethics;

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[1] So in original. The word "and" probably should not appear.

(E) has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain such organization, experience, controls, and skills;

(F) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain such equipment and facilities; and

(G) is otherwise qualified and eligible to receive an award under applicable laws and regulations;

(9) the term "technical data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration;

(10)(A) the term "major system" means a combination of elements that will function together to produce the capabilities required to fulfill a mission need, which elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property; and

(B) a system shall be considered a major system if (i) the Department of Defense is responsible for the system and the total expenditures for research, development, test and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dollars); (ii) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a "major system" established by the agency pursuant to Office of Management and Budget (OMB) Circular A-109, entitled "Major Systems Acquisitions", whichever is greater; or (iii) the system is designated a "major system" by the head of the agency responsible for the system; and

(11) the term "item", "item of supply", or "supplies" means any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of an "item".

(As amended Pub. L. 98-191, § 4, Dec. 1, 1983, 97 Stat. 1326; Pub. L. 98-369, div. B, title VII, § 2731, July 18, 1984, 98 Stat. 1195; Pub. L. 98-577, title I, § 102, Oct. 30, 1984, 98 Stat. 3067.)

References in Text

The Federal Property and Administrative Services Act of 1949, referred to in par. (4), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

The National Aeronautics and Space Act of 1958, referred to in par. (4), is Pub. L. 85-568, July 29, 1958, 72 Stat. 426, as amended, which is classified generally to chapter 26 [§ 2451 et seq.] of Title 42, The Public Heath and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of Title 42 and Tables.

Codification

Section 2731 of Pub. L. 98-369 directed in part that this section be redesignated as section 4 of Pub. L. 93-400 to correct an inconsistency in the language of the amendment by Pub. L. 98-191, which amended this section generally but referred to it as "Sec. 3". Since this section was enacted as section 4 of Pub. L. 93-400 no change was required.

Amendments

1984—Pars. (6) to (8). Pub. L. 98-369 added pars. (6) to (8).

Pars. (9) to (11). Pub. L. 98-577 added pars. (9) to (11).

1983—Pub. L. 98-191 amended section generally, restating definitions of "executive agency" and "procurement" and adding definitions of "procurement system", "single system of Government-wide procurement regulations", and "standards".

Modification of Federal Acquisition Regulations

Section 2752 of Pub. L. 98-369 provided that: "Not later than March 31, 1985, the single Government-wide procurement regulation referred to in section 4(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A)) shall be modified to conform to the requirements of this title [title VII of Pub. L. 98-369, §§ 2701-2753, July 18, 1984, 98 Stat. 1175-1203] and the amendments made by this title [see Short Title of 1984 Amendment note set out under section 251 of this title]."

Section Referred to in Other Sections

This section is referred to in sections 259, 418a, 420 of this title; title 10 sections 2302, 2320; title 15 section 637.

§ 405. Authority and functions of the Administrator

(a) Development of procurement policy; leadership

The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies. To the extent that the Administrator considers appropriate, in carrying out the policies and functions set forth in this chapter, and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide procurement policies which shall be implemented in the single system of Government-wide procurement regulations and shall be followed by executive agencies in the procurement of—

(1) property other than real property in being;

(2) services, including research and development; and

(3) construction, alteration, repair, or maintenance of real property.

(b) Government-wide procurement regulations

In any instance in which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue Government-wide regulations, procedures and forms in a timely manner, the Administrator may, with due regard for applicable laws and the program activities of the executive agencies and consistent with the policies and functions set forth in this chapter, prescribe Government-wide regulations, procedures and forms which shall be followed by executive agencies in the procurement of—

(1) property other than real property in being;

(2) services, including research and development; and

(3) construction, alteration, repair, or maintenance of real property.

(c) Noninterference with executive agencies

The authority of the Administrator under this chapter shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications therefor; or

(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

(d) Enumeration of included functions

The functions of the Administrator shall include—

(1) providing leadership and ensuring action by the executive agencies in the establishment, development and maintenance of the single system of simplified Government-wide procurement regulations and resolving differences among the executive agencies in the development of simplified Government-wide procurement regulations, procedures and forms;

(2) coordinating the development of Government-wide procurement system standards that shall be implemented by the executive agencies in their procurement systems;

(3) providing leadership and coordination in the formulation of the executive branch position on legislation relating to procurement;

(4) providing for a computer-based Federal Procurement Data System which shall be located in the General Services Administration (acting as executive agent for the Administrator) and shall collect, develop, and disseminate procurement data;

(5) providing for a Federal Acquisition Institute which shall be located in the General Services Administration (acting as executive agent for the Administrator) and shall—

(A) foster and promote Government-wide career management programs for a professional procurement work force; and

(B) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to procurement by the executive agencies;

(6) establishing criteria and procedures to ensure the effective and timely solicitation of the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(7) developing standard contract forms and contract language in order to reduce the Government's cost of procuring property and services and the private sector's cost of doing business with the Government; and

(8) completing action, as appropriate, on the recommendations of the Commission on Government Procurement.

(e) Consultation; assistance of existing executive agencies; advisory committees and interagency groups

In carrying out the functions set forth in subsection (d) of this section, the Administrator—

(1) shall consult with the affected executive agencies, including the Small Business Administration;

(2) may, with the concurrence of the heads of affected executive agencies, designate an executive agency or executive agencies to assist in the performance of such functions; and

(3) may establish advisory committees or other interagency groups to assist in providing for the establishment, development, and maintenance of a single system of simplified Government-wide procurement regulations and to assist in the performance of any of the other functions which the Administrator considers appropriate.

(f) Oversight of regulations promulgated by other agencies relating to procurement

The Director of the Office of Management and Budget may deny the promulgation of or rescind any Government-wide regulation or final rule or regulation of any executive agency relating to procurement if the Administrator determines that such rule or regulation is inconsistent with the policies set forth in section 401 of this title or any policies, regulations, or procedures issued pursuant to subsection (a) of this section.

(g) Assignment, delegation, or transfer of functions prohibited

Except as otherwise provided by law, no duties, functions, or responsibilities, other than those expressly assigned by this chapter, shall be assigned, delegated, or transferred to the Administrator.

(h) Automatic data processing and telecommunications equipment; real property procurement; Office of Management and Budget

Nothing in this chapter shall be construed to—

(1) impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.] with respect to the procurement of automatic data processing and telecommunications equipment and services or of real property; or

(2) limit the current authorities and responsibilities of the Director of the Office of Management and Budget.

(i) Recipients of Federal grants or assistance

(1) With due regard to applicable laws and the program activities of the executive agencies administering Federal programs of grants or assistance, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms which the Administrator considers appropriate and which shall be followed by such executive agencies in providing for the procurement, to the extent required under such programs, of property or services referred to in clauses (1), (2), and (3) of subsection (a) of this section by recipients of Federal grants or assistance under such programs.

(2) Nothing in paragraph (1) shall be construed to—

(A) permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

(B) authorize any action by such recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.

(j) Omitted

(As amended Pub. L. 98-191, § 5, Dec. 1, 1983, 97 Stat. 1326; Pub. L. 98-369, div. B, title VII, § 2732(b)(1), July 18, 1984, 98 Stat. 1199.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (h)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of the Act relating to contracts are classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-369 substituted "subsection (d)" for "subsection (c)".

1983—Pub. L. 98-191 amended section generally, revising and restating as subsecs. (a), (c), (d), (e), (g), (h), and (i) provisions of former subsecs. (a), (f), (d), (e), (g), (j), and (b), respectively, and by adding provisions set out in new subsecs. (b) and (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 407, 408, 417 of this title.

§ 407. Responsiveness to Congress

(a) Annual report on activities

The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the House of Representatives and the Senate annually and at such other times as may be necessary for this purpose.

(b) Submission of policy matter or regulation to Congressional committees

At least 30 days prior to the effective date of any policy or regulation prescribed under section 405(a) of this title, the Administrator shall transmit to the Congress a report on the proposed policy or regulation. Such report shall include—

(1) a full description of the policy or regulation;

(2) a summary of the reasons for the issuance of such policy or regulation; and

(3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy or regulation.

(c) Waiver of notice requirement by President

In the case of an emergency, the President may waive the notice requirement of subsection (b) of this section by submitting in writing to the Congress his reasons therefor at the earliest practicable date on or before the effective date of any policy or regulation.

(As amended Pub. L. 98-191, § 8(a), Dec. 1, 1983, 97 Stat. 1331.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-191, § 8(a)(1), struck out paragraph designation "(1)" before "The Administrator shall keep" and struck out pars. (2), (3), and (4) which related, respectively, to a proposal to congress by the Administrator of a uniform procurement system, a recommendation to congress of changes in legislation relating to procurement by executive agencies, and a proposal to congress for a management system to implement and enforce a uniform procurement system.

Subsec. (b). Pub. L. 98-191, § 8(a)(2)(A), substituted "At least 30 days prior to the effective date of any policy or regulation prescribed under section 405(a) of this title, the Administrator shall transmit to the Congress a report on the proposed policy or regulation" for "At least 30 days prior to the effective date of any policy prescribed under section 405(h) of this title, the Administrator shall transmit to the Committees on Government Operations of the House of Representatives and of the Senate a detailed report on the proposed policy".

Pub. L. 98-191, § 8(a)(2)(B), inserted "or regulation" after "policy" wherever appearing in second sentence.

Subsec. (c). Pub. L. 98-191, § 8(3), substituted "any policy or regulation" for "any policy".

PLAN FOR ALTERNATIVES TO INCREASE OPPORTUNITIES TO ACHIEVE FULL AND OPEN COMPETITION; STUDY TO CONGRESS, CRITERIA, ETC.

Pub. L. 98-369, div. B, title VII, § 2753, July 18, 1984, 98 Stat. 1203, provided that:

"(a) Not later than January 31, 1985, the Administrator of the Office of Federal Procurement Policy, in consultation with the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration, shall complete a study of alternatives and recommend to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives a plan to increase the opportunities to achieve full and open competition on the basis of technical qualifications, quality, and other factors in the procurement of professional, technical, and managerial services.

"(b) Such plan shall provide for testing the recommended alternative and be developed in accordance with section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413), and be consistent with the policies set forth in section 2 of such Act (41 U.S.C. 401)."

§ 409. Effect on existing regulations

Procurement policies, regulations, procedures, or forms in effect on December 1, 1983, shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administrator.

(As amended Pub. L. 98-191, § 8(b), Dec. 1, 1983, 97 Stat. 1331.)

AMENDMENTS

1983—Pub. L. 98-191 substituted "Procurement policies, regulations, procedures, or forms in effect on December 1, 1983, shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administrator" for "Procurement policies, regulations, procedures, or forms in effect as of October 10, 1979, shall continue in effect, as modified from time to time by the issuing offices on their own initiative or in response to policy directives issued under section 405(h) of this title until repealed, amended, or superseded pursuant to the adoption of the uniform procurement system described in section 405 of this title."

§ 410. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this chapter, and for no other purpose, $4,500,000 for the fiscal year ending September 30, 1984, and for each of the three succeeding fiscal years.

(As amended Pub. L. 98-191, § 6, Dec. 1, 1983, 97 Stat. 1329.)

AMENDMENTS

1983—Pub. L. 98-191 amended section generally, substituting provisions authorizing appropriations of $4,500,000 for the fiscal year ending Sept. 30, 1984, and for each of the three succeeding fiscal years for provisions authorizing appropriations of $4,000,000 for the fiscal year ending Sept. 30, 1980, and for each of the three succeeding fiscal years and requiring that future authorization of appropriations to carry out the purposes of this chapter be referred to the Senate Committee on Governmental Affairs.

§ 411. Delegation of authority by Administrator

(a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power of the Administrator under this chapter (other than the authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out such policy), to any other executive agency with the consent of the head of such executive agency or at the direction of the President.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-191, § 8(c), Dec. 1, 1983, 97 Stat. 1331.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-191 substituted "The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power of the Administrator under this chapter (other than the authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out such policy), to any other executive agency with the consent of the head of such executive agency or at the direction of the President" for "The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power under this chapter, other than his basic authority to provide overall leadership in the development of Federal procurement policy, to any other executive agency with the consent of such agency or at the direction of the President."

§ 413. Tests of innovative procurement methods and procedures

(a) The Administrator may develop innovative procurement methods and procedures to be tested by selected executive agencies. The innovative procurement methods and procedures tested under this subsection shall be consistent with the policies set forth in section 401 of this title. In developing any program to test innovative procurement methods and procedures under this subsection, the Administrator shall consult with the heads of executive agencies to—

(1) ascertain the need for and specify the objectives of such program;

(2) develop the guidelines and procedures for carrying out such program and the criteria to be used in measuring the success of such program;

(3) evaluate the potential costs and benefits which may be derived from the innovative procurement methods and procedures tested under such program;

(4) select the appropriate executive agencies or components of executive agencies to carry out such program;

(5) specify the categories and types of products or services to be procured under such program; and

(6) develop the methods to be used to analyze the results of such program.

A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out such program.

(b) If the Administrator determines that it is necessary to waive the application of any provision of law in order to carry out a proposed program to test innovative procurement methods and procedures under subsection (a) of this section, the Administrator shall transmit notice of the proposed program to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and request that such committees take such action as may be necessary to provide that such provision of law does not apply with respect to the proposed program. The notification to Congress shall include a description of the proposed program (including the scope and purpose of the proposed program), the procedures to be followed in carrying out the proposed program, the provisions of law affected and any provision of law the application of which must be waived in order to carry out the proposed program, and the executive agencies involved in carrying out the proposed program.

(Pub. L. 93-400, § 15, as added Pub. L. 98-191, § 7, Dec. 1, 1983, 97 Stat. 1329.)

PRIOR PROVISIONS

A prior section 15 of Pub. L. 93-400 amended sections 474, 481, and 487 of Title 40, Public Buildings, Property, and Works.

§ 414. Executive agency responsibilities

To further achieve effective, efficient, and economic administration of the Federal procurement system, the head of each executive agency shall, in accordance with applicable laws, Government-wide policies and regulations, and good business practices—

(1) increase the use of full and open competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured;

(2) establish clear lines of authority, accountability, and responsibility for procurement decisionmaking within the executive agency, including placing the procurement function at a sufficiently high level in the executive agency to provide—

(A) direct access to the head of the major organizational element of the executive agency served; and

(B) comparative equality with organizational counterparts;

(3) designate a senior procurement executive who shall be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency; and

(4) develop and maintain a procurement career management program in the executive agency to assure an adequate professional work force.

(Pub. L. 93-400, § 16, as added Pub. L. 98-191, § 7, Dec. 1, 1983, 97 Stat. 1330, and amended Pub. L. 98-369, div. B, title VII, § 2732(b)(2), July 18, 1984, 98 Stat. 1199.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-369 substituted "increase the use of full and open competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured;" for "increase the use of effective competition in procurement by the executive agency;".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 253, 418 of this title; title 10 section 2304; title 15 section 637.

§ 414a. Personnel evaluation

The head of each executive agency that is subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.] shall ensure, with respect to the employees of that agency whose primary duties and responsibilities pertain to the award of contracts subject to the provisions of this Act, that the performance appraisal system applicable to such employees affords appropriate recognition to, among other factors, efforts—

(1) to increase competition and achieve cost savings through the elimination of procedures that unnecessarily inhibit full and open competition;

(2) to further the purposes of the Small Business and Federal Procurement Competition Enhancement Act of 1984 and the Defense Procurement Reform Act of 1984; and

(3) to further such other objectives and purposes of the Federal acquisition system as may be authorized by law.

(Pub. L. 98-577, title V, § 502, Oct. 30, 1984, 98 Stat. 3085.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in provision preceding par. (1), is act June 30, 1949, ch. 288, 63 Stat. 393, as amended. Title III of the Federal Property and Administrative Services Act of 1949 is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

This Act and the Small Business and Federal Procurement Competition Enhancement Act of 1984, referred to in provision preceding par. (1) and par. (2), is Pub. L. 98-577, Oct. 30, 1984, 98 Stat. 3066. For complete classification of this Act to the Code, see Short Title note set out under section 251 of this title and Tables.

The Defense Procurement Reform Act of 1984, referred to in par. (2), is Pub. L. 98-525, title XII, Oct. 19, 1984, 98 Stat. 2588. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 10, Armed Forces, and Tables.

CODIFICATION

Section was enacted as part of the Small Business and Federal Procurement Competition Enhancement Act of 1984, and not as part of the Office of Federal Procurement Policy Act which comprises this chapter.

§ 415. Studies and reports

(a) The Administrator shall conduct studies and issue a report on the extent of competition in the award of subcontracts by Federal prime contractors including an evaluation of the data available on subcontracts awarded in fiscal year 1982 with respect to (1) the source selection method used in awarding such subcontracts, (2) the type of subcontracts awarded, (3) the dollar value of such subcontracts, (4) the size of the subcontractors which were awarded the subcontract (by number of employees), and (5) the geographical location of such subcontractors. The report shall also include recommendations for improvements, if appropriate, in the extent of competition in the awarding of subcontracts and in the collection of data on such subcontract awards.

(b) The report required under subsection (a) of this section shall be completed by April 1, 1984, and shall be submitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives not later than April 15, 1984.

(Pub. L. 93-400, § 17, as added Pub. L. 98-191, § 7, Dec. 1, 1983, 97 Stat. 1330.)

§ 416. Procurement notice

(a) Covered executive agency activities; publication of notice; time limitations

(1) Except as provided in subsection (c) of this section—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000; or

(ii) place an order, expected to exceed $10,000, under a basic agreement, basic ordering agreement, or similar arrangement,

shall furnish for publication by the Secretary of Commerce a notice described in subsection (b) of this section; and

(B) an executive agency awarding a contract for property or services for a price exceeding $25,000, or placing an order referred to in clause (A)(ii) exceeding $25,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

(2) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).

(3) Whenever an executive agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published by the Secretary of Commerce; or

(B) establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(b) Contents of notice

Each notice of solicitation required by subsection (a)(1)(A) shall include—

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which the qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency; and

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source.

(c) Exempted, etc., activities of executive agency

(1) A notice is not required under subsection (a)(1) of this section if—

(A) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(B) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 638 of title 15;

(C) the procurement is made against an order placed under a requirements contract;

(D) the procurement is made for perishable subsistence supplies; or

(E) the procurement is for utility services, other than telecommunication services, and only one source is available.

(2) The requirements of subsection (a)(1)(A) of this section do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 253(c) of this title or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10.

(3) The requirements of subsection (a)(1)(A) of this section shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Adminis-

trator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(d) Availability of complete solicitation package; payment of fee

An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e)[1] of this section. An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

(Pub. L. 93-400, § 18, as added Pub. L. 98-369, div. B, title VII, § 2732(a), July 18, 1984, 98 Stat. 1196, and amended Pub. L. 98-577, title III, § 303(a), Oct. 30, 1984, 98 Stat. 3077.)

AMENDMENTS

1984—Subsec. (a)(1)(A). Pub. L. 98-577 designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(1)(B). Pub. L. 98-577 added ", or placing an order referred to in clause (A)(ii) exceeding $25,000," before "shall furnish".

Subsec. (a)(3)(B). Pub. L. 98-577 designated existing provisions as cl. (i), in cl. (i) as so designated substituted provisions relating to an order under a basic agreement for former provisions which related to all bids, and added cls. (ii) and (iii).

Subsec. (b)(1). Pub. L. 98-577 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(2). Pub. L. 98-577 added par. (2). Former par. (2), which related to information about the officer or employee of the executive agency who may be contacted for purposes of obtaining a copy of the solicitation, was struck out.

Subsec. (c)(1)(B). Pub. L. 98-577 designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (c)(1)(E). Pub. L. 98-577 added subpar. (E).

Subsec. (d). Pub. L. 98-577 added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 303(b) of Pub. L. 98-577 provided that: "The amendment made by subsection (a) [amending this section] shall take effect with respect to any solicitation issued after March 31, 1985."

EFFECTIVE DATE

Section applicable to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 251 of this title.

APPLICABILITY TO TENNESSEE VALLEY AUTHORITY

Section 303(c) of Pub. L. 98-577 provided that: "The provisions of the amendments made by subsection (a) of this section [amending this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 253 of this title; title 10 section 2304.

§ 417. Record requirements

(a) Establishment and maintenance of computer file by executive agency; time period coverage

Each executive agency shall establish and maintain for a period of five years a computer file, by fiscal year, containing unclassified records of all procurements, other than small purchases, in such fiscal year.

(b) Contents

The record established under subsection (a) of this section shall include—

(1) with respect to each procurement carried out using competitive procedures—

(A) the date of contract award;

(B) information identifying the source to whom the contract was awarded;

(C) the property or services obtained by the Government under the procurement; and

(D) the total cost of the procurement;

(2) with respect to each procurement carried out using procedures other than competitive procedures—

(A) the information described in clauses (1)(A), (1)(B), (1)(C), and (1)(D);

(B) the reason under section 253(c) of this title or section 2304(c) of title 10, as the case may be, for the use of such procedures; and

(C) the identity of the organization or activity which conducted the procurement.

(c) Record categories

The information that is included in such record pursuant to subsection (b)(1) of this section and relates to procurements resulting in the submission of a bid or proposal by only one responsible source shall be separately categorized from the information relating to other procurements included in such record. The record of such information shall be designated "noncompetitive procurements using competitive procedures".

(d) Transmission and data system entry of information

The information included in the record established and maintained under subsection (a) of this section shall be transmitted to the General Services Administration and shall be entered in the Federal Procurement Data System referred to in section 405(d)(4) of this section.

(Pub. L. 93-400, § 19, as added Pub. L. 98-369, div. B, title VII, § 2732(a), July 18, 1984, 98 Stat. 1197.)

EFFECTIVE DATE

Section applicable to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 section 759.

§ 418. Advocates for competition

(a) Establishment, designation, etc., in executive agency

(1) There is established in each executive agency an advocate for competition.

(2) The head of each executive agency shall—

(A) designate for the executive agency and for each procuring activity of the executive agency one officer or employee serving in a position authorized for such executive agency on July 18, 1984 (other than the senior procurement executive designated pursuant to section 414(3) of this title) to serve as the advocate for competition;

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[1] So in original. There is no subsec. (e) of this section.

(B) not assign such officers or employees any duties or responsibilities that are inconsistent with the duties and responsibilities of the advocates for competition; and

(C) provide such officers or employees with such staff or assistance as may be necessary to carry out the duties and responsibilities of the advocate for competition, such as persons who are specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns.

(b) Duties and functions

The advocate for competition of an executive agency shall—

(1) be responsible for challenging barriers to and promoting full and open competition in the procurement of property and services by the executive agency;

(2) review the procurement activities of the executive agency;

(3) identify and report to the senior procurement executive of the executive agency designated pursuant to section 414(3) of this title—

(A) opportunities and actions taken to achieve full and open competition in the procurement activities of the executive agency; and

(B) any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency; and

(4) prepare and transmit to such senior procurement executive an annual report describing—

(A) such advocate's activities under this section;

(B) new initiatives required to increase competition; and

(C) barriers to full and open competition that remain;

(5) recommend to the senior procurement executive of the executive agency goals and the plans for increasing competition on a fiscal year basis;

(6) recommend to the senior procurement executive of the executive agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

(7) describe other ways in which the executive agency has emphasized competition in programs for procurement training and research.

(c) Responsibilities

The advocate for competition for each procuring activity shall be responsible for challenging barriers to and promoting full and open competition in the procuring activity, including unnecessarily detailed specifications and unnecessarily restrictive statements of need.

(Pub. L. 93-400, § 20, as added Pub. L. 98-369, div. B, title VII, § 2732(a), July 18, 1984, 98 Stat. 1197.)

EFFECTIVE DATE

Section applicable to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2318.

§ 418a. Rights in technical data

(a) Regulations; legitimate proprietary interest of United States

The legitimate proprietary interest of the United States and of a contractor in technical or other data shall be defined in regulations prescribed as part of the single system of Government-wide procurement regulations as defined in section 403(4) of this title. Such regulations may not impair any right of the United States or of any contractor with respect to patents or copyrights or any other right in technical data otherwise established by law. Such regulations shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.], that the United States may not require persons who have developed products or processes offered or to be offered for sale to the public as a condition for the procurement of such products or processes by the United States, to provide to the United States technical data relating to the design, development, or manufacture of such products or processes (except for such data as may be necessary for the United States to operate and maintain the product or use the process if obtained by the United States as an element of performance under the contract).

(b) Unlimited rights; technical data; developed with Federal funds; unrestricted, royalty-free right to use; rights under law

(1) Except as otherwise expressly provided by Federal statute, the regulations prescribed pursuant to subsection (a) of this section shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.], that the United States shall have unlimited rights in technical data developed exclusively with Federal funds if delivery of such data—

(A) was required as an element of performance under a contract; and

(B) is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future.

(2) Except as otherwise expressly provided by Federal statute, the regulations prescribed pursuant to subsection (a) of this section shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.], that the United

States (and each agency thereof) shall have an unrestricted, royalty-free right to use, or to have its contractors use, for governmental purposes (excluding publication outside the Government) technical data developed exclusively with Federal funds.

(3) The requirements of paragraphs (1) and (2) shall be in addition to and not in lieu of any other rights that the United States may have pursuant to law.

(c) Factors; regulations

The following factors shall be considered in prescribing regulations pursuant to subsection (a) of this section:

(1) Whether the item or process to which the technical data pertains was developed—

(A) exclusively with Federal funds;

(B) exclusively at private expense; or

(C) in part with Federal funds and in part at private expense.

(2) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219; 15 U.S.C. 638 note), and the declaration of policy in section 631 of title 15.

(3) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(d) Provisions; contracts; regulations

Regulations prescribed under subsection (a) of this section shall require that a contract for property or services entered into by an executive agency contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract;

(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver such revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance at the time the technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(Pub. L. 93-400, § 21, as added Pub. L. 98-577, title III, § 301(a), Oct. 30, 1984, 98 Stat. 3074, and amended Pub. L. 99-145, title IX, § 961(d)(2), Nov. 8, 1985, 99 Stat. 704.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsecs. (a) and (b)(1), (2), is act June 30, 1949, ch. 288, 63 Stat. 393, as amended. Title III of the Federal Property and Administrative Services Act of 1949 is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

PRIOR PROVISIONS

A prior section 21 of Pub. L. 93-400, as added Pub. L. 98-369, div. B, title VII, § 2732(a), July 18, 1984, 98 Stat. 1198, was renumbered as section 23 of Pub. L. 93-400 by Pub. L. 98-577, title III, § 301(a), Oct. 30, 1984, 98 Stat. 3074. See section 419 of this title.

AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99-145 substituted "the item or process to which the technical data pertains" for "the technical data".

EFFECTIVE DATE

Section 301(c) of Pub. L. 98-577, as amended Pub. L. 99-145, title IX, § 961(d)(3), Nov. 8, 1985, 99 Stat. 704, provided that: "The amendment made by subsection (a) [enacting this section] shall take effect on the date of enactment of this Act [Oct. 30, 1984]. The regulations required by such amendment shall be issued not later than October 19, 1985."

§ 418b. Publication of proposed regulations

(a) Effective date; procurement policy, regulations, procedure or form; publication in Federal Register

Except as provided in subsection (d) of this section, no procurement policy, regulation, procedure, or form (including amendments or modifications thereto) relating to the expenditure of appropriated funds that has (1) a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure or form, or (2) a significant cost or administrative impact on contractors or offerors, may take effect until 30 days after the procurement policy, regulation, procedure, or form is published for public comment in the Federal Register pursuant to subsection (b) of this section.

(b) Publication in Federal Register

Subject to subsection (c) of this section, the head of the agency shall cause to be published in the Federal Register a notice of the proposed procurement policy, regulation, procedure, or form and provide for a public comment period for receiving and considering the views of all interested parties on such proposal. The length of such comment period may not be less than 30 days.

(c) Notice; proposed policy; contents

Any notice of a proposed procurement policy, regulation, procedure, or form prepared for publication in the Federal Register shall include—

(1) the text of the proposal or, if it is impracticable to publish the full text of the proposal, a summary of the proposal and a statement specifying the name, address, and telephone number of the officer or employee of the executive agency from whom the full text may be obtained; and

(2) a request for interested parties to submit comments on the proposal and shall include the name and address of the officer or employee of the Government designated to receive such comments.

(d) Waiver

(1) The requirements of subsections (a) and (b) of this section may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with such requirements impracticable.

(2) A procurement policy, regulation, procedure, or form with respect to which the requirements of subsections (a) and (b) of this section are waived under paragraph (1) shall be effective on a temporary basis if—

(A) a notice of such procurement policy, regulation, procedure, or form is published in the Federal Register and includes a statement that the procurement policy, regulation, procedure, or form is temporary; and

(B) provision is made for a public comment period of 30 days beginning on the date on which the notice is published.

After considering the comments received, the head of the agency waiving the requirements of subsections (a) and (b) of this section under paragraph (1) may issue the final procurement policy, regulation, procedure, or form.

(Pub. L. 93-400, § 22, as added Pub. L. 98-577, title III, § 302(a), Oct. 30, 1984, 98 Stat. 3076.)

EFFECTIVE DATE

Section 302(b) of Pub. L. 98-577 provided that: "The procedures required by the amendment made by subsection (a) [enacting this section] shall apply with respect to procurement policies, regulations, procedures, or forms that an agency issues in final form on or after the date which is 30 days after the date of enactment of this Act [Oct. 30, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2324; title 42 section 7256a.

§ 419. Annual report on competition

(a) Transmission to Congress by executive agency heads

Not later than January 31 of each of 1986, 1987, 1988, 1989, and 1990, the head of each executive agency shall transmit to each House of Congress a report including the information specified in subsection (b) of this section.

(b) Contents

Each report under subsection (a) of this section shall include—

(1) a specific description of all actions that the head of the executive agency intends to take during the current fiscal year to—

(A) increase competition for contracts with the executive agency on the basis of cost and other significant factors, and

(B) reduce the number and dollar value of noncompetitive contracts entered into by the executive agency; and

(2) a summary of the activities and accomplishments of the advocate for competition of the executive agency during the preceding fiscal year.

(Pub. L. 93-400, § 23, formerly § 21, as added Pub. L. 98-369, div. B, title VII, § 2732(a), July 18, 1984, 98 Stat. 1198, and renumbered Pub. L. 98-577, title III, § 301(a), Oct. 30, 1984, 98 Stat. 3074.)

EFFECTIVE DATE

Section applicable to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2318.

§ 420. Travel expenses of Government contractors

Under any contract with any executive agency, costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of chapter 57 of title 5 or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter. This section shall be implemented in regulations prescribed as a part of the single system of Government-wide procurement regulations as defined in section 403 of this title.

(Pub. L. 93-400, § 24, as added Pub. L. 99-234, title II, § 201, Jan. 2, 1986, 99 Stat. 1759.)

EFFECTIVE DATE

Section effective 30 days after (1) the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(b) of Pub. L. 99-234, set out as an Effective Date of 1986 Amendment note under section 5701 of Title 5, Government Organization and Employees.

CHAPTER 9—CONTRACT DISPUTES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 253d of this title; title 5 section 5108; title 10 section 2321; title 28 sections 2401, 2412, 2414, 2517; title 31 section 3906; title 35 section 203; title 40 section 759; title 49 App. section 1376b.

§ 603. Maritime contracts

Appeals under paragraph (g) of section 607 of this title and suits under section 609 of this title, arising out of maritime contracts, shall be governed by chapter 20 or 22 of title 46, Appendix, as applicable, to the extent that those chapters are not inconsistent with this chapter.

(Pub. L. 95-563, § 4, Nov. 1, 1978, 92 Stat. 2384.)

REFERENCES IN TEXT

Chapter 20 of title 46, Appendix, referred to in text, was in the original a reference to the Act of Mar. 9, 1920 (41 Stat. 525, as amended), known as the Suits in Admiralty Act, which is classified generally to chapter 20 (§ 741 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 741 of Title 46, Appendix, and Tables.

Chapter 22 of title 46, Appendix, referred to in text, was in the original a reference to the Act of Mar. 3, 1925 (43 Stat. 1112, as amended), known as the Public Vessels Act, which is classified generally to chapter 22 (§ 781 et seq.) of Title 46, Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 46, Appendix, and Tables.

CODIFICATION

Section is set out in this supplement to reflect the transfer of chapters 20 and 22 of title 46, referred to in text, to title 46, Appendix, Shipping.

§ 605. Decision by contracting officer

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 606, 609, 611 of this title; title 5 section 504; title 10 sections 2324, 2405; title 31 section 3906.

§ 606. Contractor's right of appeal to board of contract appeals

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2324.

§ 607. Agency boards of contracts appeals

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 601, 603, 606, 609 of this title; title 5 section 504; title 28 sections 1295, 1346.

§ 608. Small claims

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 section 759.

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  (b) Purposes.
  (c) Functions; assessment of health care technology.
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SUBCHAPTER III—NATIONAL RESEARCH INSTITUTES

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- (h) Advisory councils in existence; application of section to National Cancer Advisory Board and advisory council to National Heart, Lung, and Blood Institute.

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285c-2. Division Directors for Diabetes, Endocrinology, and Metabolic Diseases, Digestive Diseases and Nutrition, and Kidney, Urologic, and Hematologic Diseases; functions.

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- 85c-3. Interagency coordinating committees.
  - (a) Establishment and purpose.
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- 85c-4. Advisory boards.
  - (a) Establishment.
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- 285c-5. Research and training centers; development or expansion.
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- 285c-6. Advisory council subcommittees.
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- 285d. Purpose of Institute.
- 285d-1. National arthritis and musculoskeletal diseases program.
  - (a) Plan to expand, intensify, and coordinate activities; submission; periodic review and revision.
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  - (a) Establishment and purpose.
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  - (c) Annual report.
- 285d-5. Arthritis and musculoskeletal diseases demonstration projects.
  - (a) Grants for establishment and support.
  - (b) Programs included.
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- 285d-6. Multipurpose arthritis and musculoskeletal diseases centers.
  - (a) Development, modernization, and operation.
  - (b) Duties and functions.
  - (c) Optional programs.
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- 285d-7. Advisory Board.
  - (a) Establishment.
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- 285e. Purpose of Institute.
- 285e-1. Special functions.
  - (a) Education and training of adequate numbers of personnel.
  - (b) Scientific studies.
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  - (d) Grants for research relating to Alzheimer's Disease.
- 285e-2. Alzheimer's Disease centers.
  - (a) Cooperative agreements and grants for establishing and supporting.
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SUBPART 6—NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

- 285f. Purpose of Institute.

SUBPART 7—NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

- 285g. Purpose of Institute.
- 285g-1. Sudden infant death syndrome research.
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- 285g-3. Associate Director for Prevention; appointment; function.

SUBPART 8—NATIONAL INSTITUTE OF DENTAL RESEARCH

- 285h. Purpose of Institute.

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- 285j. Purpose of Institute.
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- 285k. Purpose of Institute.

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- 289. Institutional review boards; ethics guidance program.
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- 289h. Construction of subchapter.
- 290. National Institutes of Health Management Fund; establishment; advancements; availability; final adjustments of advances.
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  - (a) Research on burns, burn injuries, and rehabilitation.
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SUBCHAPTER III-A—ADMINISTRATION AND COORDINATION OF THE NATIONAL INSTITUTE OF MENTAL HEALTH, THE NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM, AND THE NATIONAL INSTITUTE ON DRUG ABUSE

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- 290aa. Alcohol, Drug Abuse, and Mental Health Administration.
  - (a) Establishment; appointment of Administrator and Deputy Administrator; employment and functions of officers and employees.
  - (b) Statement of purpose for supervision of functions of National Institutes of Mental Health, Alcohol, Abuse and Alcoholism, and Drug Abuse.
  - (c) Alcohol, Drug Abuse, and Mental Health Advisory Board; establishment; functions; membership; term of office; compensation and expenses; staff personnel; chairman; meetings; annual report to Congressional committees.
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  - (g) Training grants for identification and treatment of alcohol and drug abuse.
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- 290aa-1. National Institute on Alcohol Abuse and Alcoholism.
  - (a) Establishment; functions of Institute; functions of Secretary regarding alcohol abuse and alcoholism prevention, treatment, and rehabilitation programs.
  - (b) Appointment of Director and employment and functions of officers and employees of Institute.
  - (c) Administration of programs to encourage widest participation of professionals and paraprofessionals in certain related disciplines.
  - (d) Underserved areas, program development; report to President and Congress.
  - (e) Preparation of television announcements concerning dangers of consumption of alcoholic beverages.
- 290aa-2. National Institute on Drug Abuse.
  - (a) Establishment; functions; drug abuse prevention, treatment, and rehabilitation programs.
  - (b) Appointment of Director and employment and functions of officers and employees of Institute.
  - (c) Participation of certain related disciplines in programs of Institute.
  - (d) Information center; uniform methodology and technology; statistics; preparation of television announcements concerning dangers of consumption of drugs.
- 290aa-3. National Institute of Mental Health.
  - (a) Establishment; functions of Institute; functions of Secretary regarding mental illness prevention, treatment, and rehabilitation program.

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- (b) Appointment of Director and employment and functions of officers and employees of Institute.
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- (d) Administrative unit; designation, functions, etc.
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- (f) Mental health services demonstration projects; grants; limitations; waiver; authorization of appropriations.
- (g) State comprehensive mental health plans.

290aa-4. Reports: health consequences, current research, recommendations.
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290aa-5. Peer review.
- (a) Requirement for biomedical and behavioral research and development by the Institutes.
- (b) Consistency with existing peer review regulations.
- (c) Qualifications of review group members.
- (d) Procedures for review of research at the Institutes.
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SUBPART 1—ALCOHOL ABUSE AND ALCOHOLISM

290bb. Encouragement of research.

290bb-1. National Alcohol Research Centers; mandatory grant for research of effects of alcohol on elderly.
- (a) Designation; procedures applicable for approval of applications.
- (b) Annual grants; amount; limitation on uses.

290bb-1a. Alcohol abuse and alcoholism demonstration projects.
- (a) Grant authority of Secretary through Director; projects assisted.
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290bb-2. Authorization of appropriations.

SUBPART 2—DRUG ABUSE RESEARCH

290cc. Encouragement of research.
- (a) Duty of Director; clinical research facilities.
- (b) Dissemination of information; grant and contract authority.

290cc-1. Drug abuse demonstration projects.
- (a) Authority of Secretary through National Institute on Drug Abuse; projects assisted.
- (b) Projects dealing with drug and alcohol abuse.
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290cc-2. Authorization of appropriations.

PART C—MISCELLANEOUS PROVISIONS RELATING TO ALCOHOL ABUSE AND ALCOHOLISM AND DRUG ABUSE

SUBPART 1—PROVISIONS RELATING TO ALCOHOL ABUSE AND ALCOHOLISM

290dd. Technical assistance.

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- (a) Development and maintenance by Office of Personnel Management.
- (b) Programs in State and local governments and private industry; model programs; cooperative agreements.
- (c) Prior alcohol abuse no bar to Federal employment; exceptions.
- (d) Dismissal for incapacity unaffected.

290dd-2. Admission of alcohol abusers and alcoholics to general hospitals and outpatient facilities.
- (a) Discrimination prohibition against private or public hospitals and outpatient facilities receiving any Federal support.
- (b) Regulations of Secretary: enforcement procedures, suspension or revocation of Federal support.

290dd-3. Confidentiality of patient records.
- (a) Disclosure authorization.
- (b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent.
- (c) Prohibition against use of record in making criminal charges or investigation of patient.
- (d) Continuing prohibition against disclosure irrespective of status as patient.
- (e) Armed Forces and Veterans' Administration; interchange of records.
- (f) Penalty for first and subsequent offenses.
- (g) Regulations of Secretary; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders.

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290ee. Technical assistance to State and local agencies.
- (a) Coordination of prevention functions; central clearinghouse for information and assistance.
- (b) Technical assistance to State and local agencies; local programs for analysis and resolutions; conferences, expenses; model legislation; uniform procedures, criteria and forms.
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290ee-1. Drug abuse among government and other employees.
  (a) Responsibility of Office of Personnel Management for policies and services; use of existing governmental facilities.
  (b) Similar programs and services in non-Federal government and private industry.
  (c) Disqualification solely on ground of prior drug abuse prohibited; certain agencies, national security employment, and sensitive positions excepted from restriction.
  (d) Dismissal for functional disability.

290ee-2. Admission of drug abusers to private and public hospitals.
  (a) Discrimination prohibited.
  (b) Regulations; suspension or revocation of Federal support.

290ee-3. Confidentiality of patient records.
  (a) Disclosure authorization.
  (b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent.
  (c) Prohibition against use of record in making criminal charges or investigation of patient.
  (d) Continuing prohibition against disclosure irrespective of status as patient.
  (e) Armed Forces and Veterans' Administration; interchange of records.
  (f) Penalty for first and subsequent offenses.
  (g) Regulations; interagency consultations; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders.

SUBCHAPTER V—HEALTH RESEARCH AND TEACHING FACILITIES AND TRAINING OF PROFESSIONAL HEALTH PERSONNEL

PART A—GENERAL PROVISIONS

292c. Repealed.

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294q-1. Student loan information by institutions.
  (a) Designated information provided to student.
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294q-2. Procedures for appeal of terminations.

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295 to 295e-5. Repealed.

PART E—GRANTS TO IMPROVE THE QUALITY OF SCHOOLS OF PUBLIC HEALTH

295f. Capitation grants for schools of public health.
  (a) Method of computation.
  (b) Ratio of grant funds.
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  (d) New public health schools.
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295g-2. Repealed.

295g-5. Repealed.

295g-8a. Repealed.

295g-9. Repealed.

SUBCHAPTER VI—NURSE EDUCATION

PART A—SPECIAL PROJECTS

296 to 296j. Repealed or Transferred.

PART B—ASSISTANCE TO NURSING STUDENTS

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297h. Repealed.

297i. Procedures for appeal of terminations.

SUBPART III—SCHOLARSHIP GRANTS TO SCHOOLS OF NURSING

297j, 297k. Repealed.

PART C—GENERAL

298b-5. Recovery for construction assistance.
  (a) Conditions for recovery by United States of base amount and interest.
  (b) Notice by owner of cessation or change of use of facility.
  (c) Computation of base amount and interest.
  (d) Waiver of recovery rights of United States.
  (e) Nature of prejudgment right of recovery.

SUBCHAPTER VII—EDUCATION, RESEARCH, TRAINING, AND DEMONSTRATIONS IN HEART DISEASE, CANCER, STROKE, AND RELATED DISEASES

299 to 299j. Repealed.

SUBCHAPTER X—EMERGENCY MEDICAL SERVICES SYSTEMS

PART A—ASSISTANCE FOR EMERGENCY MEDICAL SERVICES SYSTEMS

300d to 300d-9. Repealed.

SUBCHAPTER XV—HEALTH INFORMATION AND HEALTH PROMOTION

300u-5. Centers for research and demonstration of health promotion and disease prevention.
  (a) Establishment; grants; contracts; research and demonstration projects.
  (b) Location; types of research and projects.
  (c) Centers; fiscal years 1985 to 1987; equitable geographic distribution; procedures.
  (d) "Academic health center" defined.
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SUBCHAPTER XVII—BLOCK GRANTS

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300aa. Gifts for benefit of Service.
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300aa-1. Use of immigration station hospitals.
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  (c) Base amount; interest.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 217a-1, 300a-7, 300a-29, 1320a-1, 3013, 3509 of this title; title 18 section 42; title 35 section 156.

SUBCHAPTER I—ADMINISTRATION

§ 201. Definitions

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment of subsec. (f) by Pub. L. 97-35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as a note under section 300aa-14 of this title.

SHORT TITLE OF 1985 AMENDMENTS

Pub. L. 99-158, § 1(a), Nov. 20, 1985, 99 Stat. 820, provided that: "This Act [enacting sections 275, 281 to 283, 284 to 284c, 285 to 285a-5, 285b to 285b-6, 285c to 285c-7, 285d to 285d-7, 285ed to 285e-2, 285f, 285g to 285g-3, 285h, 285i, 285j to 285j-2, 285k, 285*l*, 286 to 286a-1, 286b to 286b-8, 287 to 287a-1, 287b, 287c to 287c-3, 288 to 288b, and 289 to 289h of this title, amending sections 217a, 218, 241, 290aa-5, and 300c-12 of this title, repealing sections 275 to 280a-1, 280b to 280b-2, 280b-4, 280b-5, and 280b-7 to 280b-11 of this title, omitting sections 286c to 286e, 287d to 287i, 288c, 289, 289c-1 to 289c-3, 289c-4 to 289c-7, 289i to 289k, 289k-2 to 289k-5, and 289*l* to 289*l*-8 of this title, enacting provisions set out as notes under sections 218, 281, 285c, 285e, 285e-2, 285j-1 and 289d of this title, and repealing provisions set out as a note under section 287i of this title] may be cited as the 'Health Research Extension Act of 1985'."

Pub. L. 99-129, § 1, Oct. 22, 1985, 99 Stat. 523, provided: "That this Act [enacting sections 294q-1 to 294q-3 of this title, amending sections 254*l*, 292a, 292b, 292h, 292j, 293c, 294a, 294b, 294d, 294e, 294g, 294j, 294m to 294p, 294z, 295f to 295f-2, 295g, 295g-1, 295g-3, 295g-4, 295g-6 to 295g-8, 295g-8b, 295h, 295h-1a to 295h-1c, 296k, 296*l*, 296m, 297a, 298b-5, and 300aa-14 of this title, repealing sections 292c, 295 to 295e-5, 295g-2, 295g-5, 295g-8a, and 295g-9 of this title, enacting provisions set out as notes under sections 254*l*, 292h, 293c, 294d, 294n, and 300aa-14 of this title and section 462 of the Appendix to Title 50, War and National Defense, and amending provisions set out as a note under section 298b-5 of this title] may be cited as the 'Health Professions Training Assistance Act of 1985'."

Pub. L. 99-117, § 1(a), Oct. 7, 1985, 99 Stat. 491, provided that: "this Act [amending sections 207, 210, 213a, 242c, 242n, 243, 246, 247b, 247e, 253, 290aa-3, 300x-4, 300x-5, and 300x-9 of this title and section 1333 of Title 15, Commerce and Trade, repealing sections 247, 254a-1, 299 to 299j, 300d-4, 300d-6, and 300aa-4 of this title, and enacting provisions set out as notes under sections 210, 241, and 242n of this title] may be cited as the 'Health Services Amendments of 1985'."

Pub. L. 99-92, § 1, Aug. 16, 1985, 99 Stat. 393, provided: "That this Act [enacting section 297i of this title, transferring section 296c to section 298b-5 of this title, amending sections 296k to 296m, 297, 297-1, 297a, 297b, 297d, 297e, 298, 298b, and 298b-5 of this title, sections 1332, 1333, 1336, and 1341 of Title 15, Commerce and Trade, and section 6103 of Title 26, Internal Revenue Code, repealing sections 296 to 296b, 296d to 296f, 296j, 297h, and 297j of this title, and enacting provisions set out as notes under sections 296k and 298b-5 of this title and section 1333 of Title 15] may be cited as the 'Nurse Education Amendments of 1985'."

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98-555, § 1(a), Oct. 30, 1984, 98 Stat. 2854, provided that: "this Act [enacting sections 300w-9 and 300w-10 of this title and amending sections 247b, 247c, 255, 300, 300w, 300w-4, and 300w-5 of this title] may be cited as the 'Preventive Health Amendments of 1984'."

Pub. L. 98-551, § 1, Oct. 30, 1984, 98 Stat. 2815, provided: "That this Act [enacting section 300u-5 of this title, amending sections 242b, 242c, 242m, 242n, 254r, 300u, and 300u-3 of this title and sections 360bb and 360ee of Title 21, Food and Drugs, and repealing sections 300u-5 to 300u-9 of this title] may be cited as the 'Health Promotion and Disease Prevention Amendments of 1984'."

Pub. L. 98-509, § 1(a), Oct. 19, 1984, 98 Stat. 2353, provided that: "this Act [enacting sections 290bb-1a, 290cc-1, 290cc-2, and 300x-1a of this title, amending sections 218, 290aa, 290aa-1 to 290aa-3, 290bb, 290bb-2, 290cc, 290dd, 290dd-1, 300x, 300x-1, and 300x-2 to 300x-9 of this title and section 802 of Title 21, Food and Drugs, repealing sections 1161 to 1165 of Title 21, and enacting provisions set out as notes under sections 300x and 300x-1a of this title and section 802 of Title 21] may be cited as the 'Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984'."

Pub. L. 98-507, § 1, Oct. 19, 1984, 98 Stat. 2339, provided: "That this Act [enacting sections 273 to 274e of this title and provisions set out as notes under section 273 of this title] may be cited as the 'National Organ Transplant Act'."

SHORT TITLE OF 1983 AMENDMENTS

Pub. L. 98-194, § 1, Dec. 1, 1983, 97 Stat. 1345, provided: "That this Act [amending section 254g of this title and enacting provisions set out as notes under section 254g of this title] may be cited as the 'Rural Health Clinics Act of 1983'."

Pub. L. 98-24, § 1(a), Apr. 26, 1983, 97 Stat. 175, provided that: "This Act [enacting sections 290aa-4 and 290aa-5 of this title, transferring sections 219 to 224, 225a to 227, 228 to 229d, 289k-1, 3511, 4551, 4585, 4587, 4588, 4571, 4561, 4581, and 4582 of this title to sections 300aa to 300aa-5, 300aa-6 to 300aa-8, 300aa-9 to 300aa-14, 290aa-3, 290aa, 290aa-1, 290bb, 290bb-1, 290bb-2, 290dd, 290dd-1, 290dd-2, and 290dd-3 of this title, respectively, and sections 1173(a), 1174, 1175, 1180, 1191, 1192, and 1193 of Title 21, Food and Drugs, to sections 290aa-2(e), 290ee-2, 290ee-3, 290ee-1, 290aa-2, 290ee, and 290cc of this title, respectively, amending sections 218, 278, 289*l*-4, 290aa to 290aa-2, 290bb to 290bb-2, 290cc, 290dd to 290dd-2, 290ee to 290ee-3, and 4577 of this title and sections 1165, 1173, and 1177 of Title 21, repealing sections 4552, 4553, and 4586 of this title and sections 1117, 1172, and 1194 of Title 21, enacting provisions set out as a note under section 290aa of this title, amending provisions set out as a note under section 4541 of this title, and repealing provisions set out as a note under section 242 of this title] may be cited as the 'Alcohol and Drug Abuse Amendments of 1983'."

§ 203. Organization of Service

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300aa-7 of this title.

§ 207. Grades, ranks, and titles of commissioned corps

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Exception to grade limitations for officers assigned to Department of Defense

In computing the maximum number of commissioned officers of the Public Health Service authorized by law to hold a grade which corresponds to the grade of brigadier general or major general, there may be excluded from such computation not more than three officers who hold such a grade so long as such officers are assigned to duty and are serving in a policy-making position in the office of the Assistant Secretary of Defense for Health Affairs.

(As amended Oct. 7, 1985, Pub. L. 99-117, § 9, 99 Stat. 494.)

AMENDMENTS

1985—Subsec. (e). Pub. L. 99-117 added subsec. (e).

§ 210. Pay and allowances

(a) Commissioned officers of Regular and Reserve Corps; special pay for active duty

[*See main edition for text of* (*1*)]

(2)(A) Except as provided in subparagraph (B), commissioned medical and dental officers in the Regular and Reserve Corps shall while on active duty be paid special pay in the same amounts as, and under the same terms and conditions which apply to, the special pay now or hereafter paid to commissioned medical and dental officers of the Armed Forces under chapter 5 of title 37.

(B) A commissioned medical officer in the Regular or Reserve Corps may not receive additional special pay under section 302(a)(4) of title 37 for any period during which the officer is providing obligated service under (i) section 254m of this title, (ii) section 234(e) of this title (as such section was in effect prior to October 1, 1977), or (iii) section 294u of this title (as such section was in effect between October 1, 1977, and August 13, 1981).

[*See main edition for text of* (*b*) *to* (*g*)]

(As amended Oct. 7, 1985, Pub. L. 99-117, § 3(a), 99 Stat. 491.)

REFERENCES IN TEXT

Section 234 of this title, referred to in subsec. (a)(2)(B), was repealed by Pub. L. 94-484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281, effective Oct. 1, 1977.

Section 294u of this title, referred to in subsec. (a)(2)(B), was in the original a reference to section 752 of act July 1, 1944, which was renumbered section 338B by Pub. L. 97-35, title XXVII, § 2709(a), Aug. 13, 1981, 95 Stat. 908, and transferred to section 254m of this title.

AMENDMENTS

1985—Subsec. (a)(2). Pub. L. 99-117 substituted "(A) Except as provided in subparagraph (B), commissioned" for "Commissioned", and added subpar. (B).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 3(b) of Pub. L. 99-117 provided that: "The amendment made by subsection (a) [amending this section] shall not diminish any benefits under an agreement entered into before the date of enactment of this Act [Oct. 7, 1985] by a commissioned medical officer in the Regular Corps or the Reserve Corps of the Public Health Service."

MAXIMUM PAY AND ALLOWANCES FOR SPECIFIC FISCAL YEARS

Pub. L. 99-178, title II, § 208, Dec. 12, 1985, 99 Stat. 1119, provided that: "No funds appropriated for the fiscal year ending September 30, 1986, by this or any other Act, may be used to pay basic pay, special pays, basic allowance for subsistence and basic allowances for quarters of the commissioned corps of the Public Health Service described in section 204 of title 42, United States Code, at a level that exceeds 110 percent of the Executive Level I [5 U.S.C. 5312] annual rate of basic pay."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 98-619, title II, § 208, Nov. 8, 1984, 98 Stat. 3321.

Pub. L. 98-139, title II, § 208, Oct. 31, 1983, 97 Stat. 888.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 217a, 242k, 263f, 256b-2, 289 of this title.

§ 212. Retirement of commissioned officers

(a) Age; voluntariness; length of service; computation of retired pay

[*See main edition for text of* (*1*) *to* (*6*)]

(7) Retired pay computed under section 211(g)(3) of this title or under paragraph (4) or

(5) of this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

[*See main edition for text of* (*b*) *to* (*d*)]

(e) Crediting of part of year

For the purpose of determining the number of years by which a percentage of the basic pay of an officer is to be multiplied in computing the amount of his retired pay pursuant to section 211(g)(3) of this title or paragraph (4) of subsection (a) of this section, each full month of service that is in addition to the number of full years of service credited to an officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

[*See main edition for text of* (*f*)]

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, §§ 922(d), 923(f), 97 Stat. 642, 643.)

AMENDMENTS

1983—Subsec. (a)(7). Pub. L. 98-94, § 922(d), added par. (7).

Subsec. (e). Pub. L. 98-94, § 923(f), substituted "each full month of service that is in addition to the number of full years of service credited to an officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded" for "a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of Title 10, Armed Forces.

Amendment by section 923(f) of Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of Title 10.

§ 213. Military benefits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 213a, 215 of this title; title 26 section 134.

§ 213a. Rights, benefits, privileges, and immunities for commissioned officers or beneficiaries; exercise of authority by Secretary or designee

(a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all the rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of title 10:

[*See main edition for text of* (*1*) *to* (*14*)]

(15) Section 1124, Cash awards for suggestions, inventions, or scientific achievements.

[*See main edition for text of* (*b*)]

(As amended Oct. 7, 1985, Pub. L. 99-117, § 4, 99 Stat. 492.)

AMENDMENTS

1985—Subsec. (a)(15). Pub. L. 99-117 added cl. (15).

§ 217a. Advisory councils or committees

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Delegation of functions

Upon appointment of any such council or committee, the Secretary may delegate to such council or committee such advisory functions relating to grants-in-aid for research or training projects or programs, in the areas or fields with which such council or committee is concerned, as the Secretary determines to be appropriate.

(As amended Nov. 20, 1985, Pub. L. 99-158, § 3(a)(4), 99 Stat. 879.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-158 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Upon appointment of any such council or committee, the Surgeon General, with the approval of the Secretary, may transfer such of the functions of the National Advisory Health Council relating to grants-in-aid for research or training projects or programs in the areas or fields with which such council or committee is concerned as he determines to be appropriate."

§ 218. National Advisory Councils

(a) National Advisory Mental Health Council and National Advisory Council on Alcohol Abuse and Alcoholism; composition; qualifications; appointment and tenure

The National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism shall each consist of the Surgeon General, who shall be chairman, the chief medical officer of the Veterans' Administration or his representative and a medical officer designated by the Secretary of Defense, who shall be ex officio members; and twelve members appointed without regard to the civil-service laws by the Secretary. The twelve appointed members of each such council shall be leaders in the fields of fundamental sciences, medical sciences, or public affairs, and six of such twelve shall be selected from among leading medical or scientific authorities who, in the case of the National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism, are outstanding in the study, diagnosis, or treatment of psychiatric disorders and alcohol abuse and alcoholism, respectively. In the case of the National Advisory Council on Alcohol Abuse and Alcoholism, the Secretary shall assure that its membership is broadly representative of experts in the fields of prevention, research, and treatment of alcohol abuse, alcoholism, and rehabilitation of alcohol abusers. Each appointed member of each such council shall hold office for a term of four years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, (2) the terms of the members (other than the members of the National Advisory Council on Alcohol Abuse and Alcoholism) first taking office after September 30, 1950, shall expire as follows: Three shall expire four years after such date, three shall expire three years after such date, three shall expire two years after such date, and three shall expire one year after such date, as designated by the Surgeon General at the time of appointment; and (3) the terms of the members of the National Council on Alcohol Abuse and Alcoholism first taking office after December 31, 1970, shall expire as follows: Three shall expire four years after such date, three shall expire three years after such date, three shall expire two years after such date, and three shall expire one year after such date, as designated by the Secretary at the time of appointment. Appointed members may serve after the expiration of their terms until their successors have taken office. None of the appointed members shall be eligible for reappointment within one year after the end of his preceding term, but terms expiring prior to October 1, 1950, shall not be deemed "preceding terms" for the purposes of this sentence.

(b) Duties of National Advisory Mental Health Council

The National Advisory Mental Health Council shall advise, consult with, and make recommendations to, the Surgeon General on matters relating to the activities and functions of the Service in the field of mental health. The Council is authorized (1) to review research projects or programs submitted to or initiated by it in the field of mental health and recommend to the Surgeon General, for prosecution under this chapter, any such projects which it believes show promise of making valuable contributions to human knowledge with respect to the cause, prevention, or methods of diagnosis and treatment of psychiatric disorders; and (2) to collect information as to studies being carried on in the field of mental health and, with the approval of the Surgeon General, make available such information through the appropriate publications for the benefit of health and welfare agencies or organizations (public or private), physicians, or any other scientists, and for the information of the general public. The Council is also authorized to recommend to the Surgeon General, for acceptance pursuant to section 300aa of this title, conditional gifts for work in the field of mental health; and the Surgeon General shall recommend acceptance of any such gifts only after consultation with the Council.

(c) Duties of National Advisory Council on Alcohol Abuse and Alcoholism

The National Advisory Council on Alcohol Abuse and Alcoholism shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Secretary in the field of alcohol abuse and alcoholism, including policies and priorities with respect to grants and contracts. The Council is authorized (1) to review research projects or programs submitted to or initiated by it in the field of alcohol abuse and alcoholism and recommend to the Secretary any such projects which it believes show promise of making valuable contributions to human knowledge with respect to the cause, prevention, or methods of diagnosis and treatment of alcohol abuse and alcoholism, and (2) to collect information as to studies being carried on in the field of alcohol abuse and alcoholism and, with the approval of the Secretary, make available such information through appropriate publications for the benefit of health and welfare agencies or organizations (public or private) or physicians or any other scientists, and for the information of the general public. The Council is also authorized to recommend to the Secretary, for acceptance pursuant to section 300aa of this title, conditional gifts for work in the field of alcohol abuse and alcoholism; and the Secretary shall recommend acceptance of any such gifts only after consultation with the Council.

(d) National Advisory Council on Drug Abuse; composition; qualifications; duties

(1) The National Advisory Council on Drug Abuse shall consist of the Secretary, who shall be Chairman, the chief medical officer of the Veterans' Administration or his representative, and a medical officer designated by the Secretary of Defense, who shall be ex officio members. In addition, the Council shall be composed of twelve members appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive service. The appointed members of the Council shall represent a broad range of interests, disciplines, and expertise in the drug area and shall be selected from outstanding professionals and paraprofessionals in the fields of medicine, education, science, the social sciences, and other related disciplines, who have been active in the areas of drug abuse prevention, treatment, rehabilitation, training, or research, including officers or employees of State and local drug abuse agencies. Appointed members may serve after the expiration of their terms until their successors have taken office.

(2) The Council shall advise, consult with, and make recommendations to, the Secretary

(A) concerning matters relating to the activities and functions of the Secretary in the field of drug abuse, including, but not limited to, the development of new programs and priorities, the efficient administration of programs, and the supplying of needed scientific and statistical data and program information to professionals, paraprofessionals, and the general public; and

(B) concerning policies and priorities respecting grants and contracts in the field of drug abuse.

(e) National Advisory Council on Migrant Health; duties; composition; tenure; applicability of section 14(a) of the Federal Advisory Committee Act

(1) Within 120 days of July 29, 1975, the Secretary shall appoint and organize a National Advisory Council on Migrant Health (hereinafter in this subsection referred to as the "Council") which shall advise, consult with, and make recommendations to, the Secretary on matters concerning the organization, operation, selection, and funding of migrant health centers and other entities under grants and contracts under section 254b of this title.

(2) The Council shall consist of fifteen members, at least twelve of whom shall be members of the governing boards of migrant health cen-

ters or other entities assisted under section 254b of this title. Of such twelve members who are members of such governing boards, at least nine shall be chosen from among those members of such governing boards who are being served by such centers or grantees and who are familiar with the delivery of health care to migratory agricultural workers and seasonal agricultural workers. The remaining three Council members shall be individuals qualified by training and experience in the medical sciences or in the administration of health programs.

(3) Each member of the Council shall hold office for a term of four years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (B) the terms of the members first taking office after July 29, 1975, shall expire as follows: four shall expire four years after such date, four shall expire three years after such date, four shall expire two years after such date, and three shall expire one year after such date, as designated by the Secretary at the time of appointment.

(4) Section 14(a) of the Federal Advisory Committee Act shall not apply to the Council.

[*See main edition for text of (f)*]

(g) Redesignated (e)

(As amended Apr. 26, 1983, Pub. L. 98-24, § 2(a)(2), 97 Stat. 176; Oct. 19, 1984, Pub. L. 98-509, title III, § 302, 98 Stat. 2364; Nov. 20, 1985, Pub. L. 99-158, § 3(a)(2), (3), 99 Stat. 878, 879.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (d)(1), are classified to section 3301 et seq. of Title 5.

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (e)(4), is section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5.

CODIFICATION

Section 502(a) of Pub. L. 92-255, which added subsec. (d), formerly (e), of this section, was amended in its entirety by Pub. L. 94-237, § 12(b)(1), Mar. 19, 1976, 90 Stat. 247. As so amended, section 502 of Pub. L. 92-255 was classified to section 1192 of Title 21, Food and Drugs. Subsequently, section 502 was transferred to title V of the Public Health Service Act, redesignated as section 524, and is classified to section 290ee of this title.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-158, § 3(a)(2)(A), in first sentence substituted "National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism" for "National Advisory Health Council, the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council", and substituted "by the Secretary" for "by the Surgeon General with the approval of the Secretary of Health, Education, and Welfare".

Pub. L. 99-158, § 3(a)(2)(B)(i), in second sentence struck out "in the case of the National Advisory Health Council, are skilled in the sciences related to health, and" after "scientific authorities who,".

Pub. L. 99-158, § 3(a)(2)(B)(ii), which directed the substitution in second sentence of "the National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism" for "the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, the National Advisory Heart Council, and the National Advisory Dental Research Council" was executed by making the substitution for "the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council" as the probable intent of Congress in view of the prior deletion of "the National Advisory Heart Council," by Pub. L. 92-423. See 1972 Amendment note below.

Pub. L. 99-158, § 3(a)(2)(B)(iii), in second sentence substituted "and alcohol abuse and alcoholism" for ", alcohol abuse and alcoholism, and dental diseases and conditions".

Pub. L. 99-158, § 3(a)(2)(C), struck out third sentence which provided that in the case of the National Advisory Dental Research Council, four of the six members selected from among the leading medical or scientific authorities be dentists.

Subsec. (b). Pub. L. 99-158, § 3(a)(3), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to the duties of the National Advisory Health Council.

Subsecs. (c) to (e), (g). Pub. L. 99-158, § 3(a)(3), redesignated subsecs. (d), (e), and (g) as (c), (d), and (e), respectively.

1984—Subsec. (a). Pub. L. 98-509 added provision requiring the Secretary to assure that the membership of the National Advisory Council on Alcohol Abuse and Alcoholism is broadly representative of experts in the fields of prevention, research, and treatment of alcohol abuse, alcoholism, and rehabilitation of alcohol abusers.

1983—Subsecs. (c), (d). Pub. L. 98-24 substituted "section 300aa of this title" for "section 219 of this title".

TERMINATION OF NATIONAL ADVISORY HEALTH COUNCIL

Section 3(a)(1) of Pub. L. 99-158 provided that: "The National Advisory Health Council established under section 217 [this section] is terminated."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 289, 292b of this title.

§§ 219 to 224. Transferred

CODIFICATION

Section 219, acts July 1, 1944, ch. 373, title V, § 501, 58 Stat. 709; July 3, 1946, ch. 538, § 10, 60 Stat. 425; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 15, 1968, Pub. L. 90-574, title V, § 503(b), 82 Stat. 1012; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695; which related to gifts for the benefit of the Service, was renumbered section 2101 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa of this title.

Section 220, act July 1, 1944, ch. 373, title V, § 502, 58 Stat. 710, which related to the use of immigration station hospitals, was renumbered section 2102 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-1 of this title.

Section 221, act July 1, 1944, ch. 373, title V, § 503, 58 Stat. 710, which related to the disposition of money collected for care of patients, was renumbered section 2103 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-2 of this title.

Section 222, acts July 1, 1944, ch. 373, title V, § 504, 58 Stat. 710, June 25, 1948, ch. 654, § 6, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to the care of Service patients at Saint Elizabeths Hospital, was renumbered section 2104 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-3 of this title.

Section 223, act July 1, 1944, ch. 373, title V, § 505, 58 Stat. 710; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to the settlement of claims, was renumbered section 2105 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-4 of this title.

Section 224, acts July 1, 1944, ch. 373, title V, § 506, 58 Stat. 710; July 15, 1954, ch. 507, § 14(b), 68 Stat. 481, which related to the transportation of the remains of officers, was renumbered section 2106 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-5 of this title.

A new title V (§ 501 et seq.) of the Public Health Service Act was added by Pub. L. 98-24, § 2(b), Apr. 26, 1983, 97 Stat. 177, and is classified to subchapter III-A (§ 290aa et seq. of this title).

§§ 225a to 227. Transferred

CODIFICATION

Section 225a, acts July 1, 1944, ch. 373, title V, § 507, as added June 24, 1967, Pub. L. 90-31, § 5, 81 Stat. 79, and amended Oct. 27, 1970, Pub. L. 91-513, title I, § 3(c), 84 Stat. 1241; Apr. 22, 1976, Pub. L. 94-278, title XI, § 1102(b), 90 Stat. 415; Oct. 7, 1980, Pub. L. 96-398, title VIII, § 804(b), 94 Stat. 1603; Aug. 13, 1981, Pub. L. 97-35, title IX, § 902(g)(2), 95 Stat. 560, which related to the availability of appropriations for grants to Federal institutions, was renumbered section 2107 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-6 of this title.

A prior section 507 of act July 1, 1944, ch. 373, title V, providing for the settlement of accounts of deceased officers, was classified to section 225 of this title and was subsequently repealed.

Section 226, act July 1, 1944, ch. 373, title V, § 508, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, which related to transfer of funds between appropriations, was renumbered section 2108 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-7 of this title.

Section 227, acts July 1, 1944, ch. 373, title V, § 509 58 Stat. 711; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; June 25, 1948, ch. 654, § 7, 62 Stat. 1018; Reorg. Plan No. 1 of 1953 §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to the availability of appropriations for carrying out the purposes of this chapter, was renumbered section 2109 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-8 of this title.

§§ 228 to 229d. Transferred

CODIFICATION

Section 228, acts July 1, 1944, ch. 373, title V, § 510, 58 Stat. 711; June 25, 1948, ch. 645, § 5, 62 Stat. 859, which related to the wearing of uniforms, was renumbered section 2110 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-9 of this title.

Section 229, act July 1, 1944, ch. 373, title V, § 511, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to an annual report by the Surgeon General, was renumbered section 2111 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-10 of this title.

Section 229a, act July 1, 1944, ch. 373, title V, § 512, as added Oct. 15, 1968, Pub. L. 90-574, title V, § 503(a), 82 Stat. 1012, which related to memorials and other acknowledgments for contributions to the health of the Nation, was renumbered section 2112 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-11 of this title.

Section 229b, acts July 1, 1944, ch. 373, title V, § 513, as added June 30, 1970, Pub. L. 91-296, title IV, § 401(a), 84 Stat. 351, and amended Oct. 7, 1980, Pub. L. 96-398, title VIII, § 804(c), 94 Stat. 1608; Aug. 13, 1981, Pub. L. 97-35, title IX, § 902(g)(3), 95 Stat. 560, which related to the evaluation of programs, was renumbered section 2113 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-12 of this title.

Section 229c, act July 1, 1944, ch. 373, title V, § 514, as added Nov. 9, 1978, Pub. L. 95-623, § 11(e), 92 Stat. 3456, which related to the contract authority of the Secretary, was renumbered section 2114 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-13 of this title.

Section 229d, acts July 1, 1944, ch. 373, title V, § 515, formerly Pub. L. 88-164, title II, § 225, as added Pub. L. 94-63, title III, § 303, July 29, 1975, 89 Stat. 326, and amended Pub. L. 95-622, title I, § 110(c), Nov. 9, 1978, 92 Stat. 3420, renumbered and amended Pub. L. 97-35, title IX, § 902(e)(2)(A), Aug. 13, 1981, 95 Stat. 560, which related to recovery of payments, was renumbered section 2115 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-14 of this title.

§ 235. Administration of grants in multigrant projects; promulgation of regulations

REFERENCES IN TEXT

Subchapters V and VI of this chapter, referred to in text, are classified to sections 292 et seq. and 296 et seq., respectively, of this title.

Subchapter VII of this chapter, referred to in text, which was classified to section 299 et seq. of this title, was repealed by Pub. L. 99-117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

§ 236. Orphan Products Board

REFERENCES IN TEXT

Section 44H of title 26, referred to in subsec. (e), was renumbered section 28 of title 26, by Pub. L. 98-369, div. A, title IV, § 471(c)(1), July 18, 1984, 98 Stat. 826.

NATIONAL COMMISSION ON ORPHAN DISEASES

Pub. L. 99-91, § 4, Aug. 15, 1985, 99 Stat. 388, provided that:

"(a) ESTABLISHMENT.—There is established the National Commission on Orphan Diseases (hereinafter referred to as the 'Commission').

"(b) DUTY.—The Commission shall assess the activities of the National Institutes of Health, the Alcohol, Drug Abuse, and Mental Health Administration, the Food and Drug Administration, other public agencies, and private entities in connection with—

"(1) basic research conducted on rare diseases;

"(2) the use in research on rare diseases of knowledge developed in other research;

"(3) applied and clinical research on the prevention, diagnosis, and treatment of rare diseases; and

"(4) the dissemination to the public, health care professionals, researchers, and drug and medical device manufacturers of knowledge developed in research on rare diseases and other diseases which can be used in the prevention, diagnosis, and treatment of rare diseases.

"(c) REVIEW REQUIREMENTS.—In assessing the activities of the National Institutes of Health, the Alcohol, Drug Abuse, and Mental Health Administration, and the Food and Drug Administration in connection with research on rare diseases, the Commission shall review—

"(1) the appropriateness of the priorities currently placed on research on rare diseases;

"(2) the relative effectiveness of grants and contracts when used to fund research on rare diseases;

"(3) the appropriateness of specific requirements applicable to applications for funds for research on rare diseases taking into consideration the reasonable capacity of applicants to meet such requirements;

"(4) the adequacy of the scientific basis for such research, including the adequacy of the research facilities and research resources used in such research and the appropriateness of the scientific training of the personnel engaged in such research;

"(5) the effectiveness of activities undertaken to encourage such research;

"(6) the organization of the peer review process applicable to applications for funds for such research to determine if the organization of the peer review process could be revised to improve the effectiveness of the review provided to proposals for research on rare diseases;

"(7) the effectiveness of the coordination between the national research institutes of the National Institutes of Health, the institutes of the Alcohol, Drug Abuse, and Mental Health Administration, the Food and Drug Administration, and private entities in supporting such research; and

"(8) the effectiveness of activities undertaken to assure that knowledge developed in research on nonrare diseases is, when appropriate, used in research on rare diseases.

"(d) Composition.—The Commission shall be composed of twenty members appointed by the Secretary of Health and Human Services as follows:

"(1) Ten members shall be appointed from individuals who are not officers or employees of the Government and who by virtue of their training or experience in research on rare diseases or in the treatment of rare diseases are qualified to serve on the Commission.

"(2) Five members shall be appointed from individuals who are not officers or employees of the Government and who have a rare disease or are employed to represent or are members of an organization concerned about rare disease.

"(3) Four nonvoting members shall be appointed from—

"(A) the directors of the national research institutes of the National Institutes of Health; or

"(B) the directors of the institutes of the Alcohol, Drug Abuse, and Mental Health Administration,

which the Secretary determines are involved with rare diseases.

"(4) One nonvoting member shall be appointed from officers or employees of the Food and Drug Administration who the Secretary determines are involved with rare diseases.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made. If any member of the Commission who was appointed to the Commission as a director of a national research institute or an institute of the Alcohol, Drug Abuse, and Mental Health Administration or as an officer or employee of the Food and Drug Administration leaves that office or position, or if any member of the Commission who was appointed from persons who are not officers or employees of the Government becomes an officer or employee of the Government, such member may continue as a member of the Commission for not longer than the ninety-day period beginning on the date such member leaves that office or position or becomes such an officer or employee, as the case may be.

"(e) Term.—Members shall be appointed for the life of the Commission.

"(f) Compensation.—

"(1) Except as provided in paragraph (2), members of the Commission shall each be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties as members of the Commission.

"(2) Members of the Commission who are full-time officers or employees of the Government shall receive no additional pay by reason of their service on the Commission.

"(g) Chairman.—The Chairman of the Commission shall be designated by the members of the Commission.

"(h) Staff.—Subject to such rules as may be prescribed by the Commission, the Commission may appoint and fix the pay of such personnel as it determines are necessary to enable the Commission to carry out its functions. Personnel shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(i) Experts and Consultants.—Subject to such rules as may be prescribed by the Commission, the Commission may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the basic pay payable for grade GS-15 of the General Schedule.

"(j) Detail of Personnel.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its functions.

"(k) Administrative Support Services.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

"(*l*) General Authority.—The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

"(m) Information.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

"(n) Report.—The Commission shall transmit to the Secretary and to each House of the Congress a report not later than September 30, 1987, on the activities of the Commission. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for—

"(1) a long range plan for the use of public and private resources to improve research into rare diseases and to assist in the prevention, diagnosis, and treatment of rare diseases; and

"(2) such legislation or administrative actions as it considers appropriate.

"(*o*) Termination.—The Commission shall terminate 90 days after the date of the submittal of its report under subsection (n).

"(p) Funds.—The Director of the National Institutes of Health shall make available $1,000,000 to the Commission from appropriations for fiscal year 1986 for the National Institutes of Health."

SUBCHAPTER II—GENERAL POWERS AND DUTIES

Part A—Research and Investigations

§ 241. Research and investigations generally

(a) The Secretary shall conduct in the Service, and encourage, cooperate with, and render assistance to other appropriate public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, including water purification, sewage treatment, and pollution of lakes and streams.

In carrying out the foregoing the Secretary is authorized to—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) make grants-in-aid to universities, hospitals, laboratories, and other public or private institutions, and to individuals for such research projects as are recommended by the advisory council to the entity of the Department supporting such projects or, in the case of mental health projects, by the National Advisory Mental Health Council; and make, upon recommendation of the advisory council to the appropriate entity of the Department or the National Advisory Mental Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research;

[*See main edition for text of* (*4*) *to* (*7*)]

(8) adopt, upon recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers necessary or appropriate to carry out the purposes of this section.

The Secretary may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

[*See main edition for text of* (*b*)]

(As amended Nov. 20, 1985, Pub. L. 99-158, § 3(a)(5), 99 Stat. 879.)

Amendments

1985—Subsec. (a)(3). Pub. L. 99-158, § 3(a)(5)(A), substituted "as are recommended by the advisory council to the entity of the Department supporting such projects or, in the case of mental health projects, by the National Advisory Mental Health Council; and make, upon recommendation of the advisory council to the appropriate entity of the Department or the National Advisory Mental Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research" for "as are recommended by the National Advisory Health Council, or, with respect to cancer, recommended by the National Cancer Advisory Board, or, with respect to mental health, recommended by the National Advisory Mental Health Council, or with respect to heart, blood vessel, lung, and blood diseases and blood resources, recommended by the National Heart, Lung, and Blood Advisory Council, or, with respect to dental diseases and conditions, recommended by the National Advisory Dental Research Council; and include in the grants for any such project grants of penicillin and other antibiotic compounds for use in such project; and make, upon recommendation of the National Advisory Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research: *Provided*, That such uniform percentage, not to exceed 15 per centum, as the Secretary may determine, of the amounts provided for grants for research projects for any fiscal year through the appropriations for the National Institutes of Health may be transferred from such appropriations to a separate account to be available for such research grants-in-aid for such fiscal year".

Subsec. (a)(8). Pub. L. 99-158, § 3(a)(5)(B), substituted "recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers" for "recommendation of the National Advisory Health Council, or, with respect to cancer, upon recommendation of the National Cancer Advisory Board, or, with respect to mental health, upon recommendation of the National Advisory Mental Health Council, or, with respect to heart, blood vessel, lung, and blood diseases and blood resources, upon recommendation of the National Heart, Lung and Blood Advisory Council, or, with respect to dental diseases and conditions, upon recommendations of the National Advisory Dental Research Council, such additional means as he deems".

Continuing Care for Psychiatric Patients in Former Clinical Research Center at National Institute on Drug Abuse

Pub. L. 99-117, § 10, Oct. 7, 1985, 99 Stat. 494, provided that: "In any fiscal year beginning after September 30, 1981, from funds appropriated for carrying out section 301 of the Public Health Service Act [42 U.S.C. 241] with respect to mental health, the Secretary of Health and Human Services may provide, by contract or otherwise, for the continuing care of psychiatric patients who were under active and continuous treatment at the National Institute on Drug Abuse Clinical Research Center on the date such Clinical Research Center ceased operations."

Section Referred to in Other Sections

This section is referred to in sections 242, 242a, 263, 282, 284, 289h, 290aa-1, 290aa-2, 290aa-3, 300x-1a, 300x-4, 7610 of this title.

§ 242. Studies and investigations on use and misuse of narcotic drugs and other drugs; annual report to the Attorney General; cooperation with States

Marihuana and Health Reporting

Pub. L. 91-296, title V, §§ 501-503, June 30, 1970, 84 Stat. 352, as amended by Pub. L. 95-461, § 3(a), Oct. 14, 1978, 92 Stat. 1268; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, known as the Marihuana and Health Reporting Act, which required the Secretary of Health and Human Services, after consultation with the Surgeon General and other appropriate individuals, to transmit a report to the Congress on or before January 31, 1971, and biennially thereafter (1) containing current information on the health consequences of using marihuana, and (2) containing such recommendations for legislative and administrative action as he may deem appropriate, was repealed by Pub. L. 98-24, § 2(d), Apr. 26, 1983, 97 Stat. 182.

Section Referred to in Other Sections

This section is referred to in section 290aa-2 of this title.

§ 242a. Mental health

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Obligatory service for traineeships

[*See main edition for text of* (*1*) *to* (*3*)]

(4)(A) In the case of any individual any part of whose obligation to perform service under this subsection exists at the same time as any part of the individual's obligation to perform service under section 254m or 254n [1] of this title (because of receipt of a scholarship under sections 254*l* to 254r [1] of this title) or the individual's obligation to perform service under section 288 [1] of this title (because of receipt of a National Research Service Award), or both, the same service may not be used to any extent to meet more than one of those obligations.

(B) In any case to which subparagraph (A) is applicable and in which one of the obligations is to perform service under section 254m or 254n [1] of this title, the obligation to perform service under that section must be met (by performance of the required service or payment of damages) before the obligation to perform service under this subsection or under section 288 [1] of this title.

(C) In any case to which subparagraph (A) is applicable, if any part of the obligation to perform service under section 288 [1] of this title exists at the same time as any part of the obligation to perform service under this subsection, the manner and time of meeting each obligation shall be prescribed by the Secretary.

[*See main edition for text of* (5); *credits*]

Codification

Section 288 of this title, referred to in subsec. (d)(4)(A), (B), and (C), in the original referred to section 472, meaning section 472 of the Public Health Service Act, which was classified to section 289*l*-1 of this title. Title IV of the Public Health Service Act was amended generally by section 2 of Pub. L. 99-158, Nov. 20, 1985, 99 Stat. 822, and provisions formerly contained in section 472 were restated in section 487 of the Public Health Service Act, which is classified to section 288 of this title.

Section Referred to in Other Sections

This section is referred to in sections 290aa, 290aa-1, 290aa-2, 290aa-3, 300e-8 of this title; title 21 section 850.

§ 242b. General authority respecting research, evaluations, and demonstrations in health statistics, health services, and health care technology

(a) Scope of activities

(1) The Secretary, acting through the National Center for Health Services Research and Health Care Technology Assessment and the National Center for Health Statistics, shall conduct and support research, demonstrations, evaluations, and statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

[*See main edition for text of* (2)]

(3) The Secretary may, through the National Center for Health Services Research and Health Care Technology Assessment or the National Center for Health Statistics, or using National Research Service Awards or other appropriate authorities, undertake and support training programs to provide for an expanded and continuing supply of individuals qualified to perform the research, evaluation, and demonstration projects set forth in sections 242c, 242k, and 242n of this title.

[*See main edition for text of* (*b*)]

(c) Coordination of activities through units of Department

(1) The Secretary shall coordinate all health services research, evaluations, and demonstrations, all health statistical and epidemiological activities, and all research, evaluations, and demonstrations respecting the assessment of health care technology undertaken and supported through units of the Department of Health and Human Services. To the maximum extent feasible such coordination shall be carried out through the National Center for Health Services Research and Health Care Technology Assessment and the National Center for Health Statistics.

(2) The Secretary shall coordinate the health services research, evaluations, and demonstrations, the health statistical and (where appropriate) epidemiological activities, and the research, evaluations, and demonstrations respecting the assessment of health care technology authorized by this chapter through the National Center for Health Services Research and Health Care Technology Assessment and the National Center for Health Statistics.

[*See main edition for text of* (*d*)]

(As amended Oct. 30, 1984, Pub. L. 98-551, § 5(c)(1)–(3), 98 Stat. 2819.)

Amendments

1984—Subsec. (a)(1). Pub. L. 98-551, § 5(c)(1), (2), substituted "the National Center for Health Services Research and Health Care Technology Assessment and the National Center for Health Statistics" for "the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology".

Subsec. (a)(3). Pub. L. 98-551, § 5(c)(1), (3), substituted "the National Center for Health Services Research and Health Care Technology Assessment or the National Center for Health Statistics" for "the National Center for Health Services Research, the National Center for Health Statistics, or the National Center for Health Care Technology".

Subsec. (c)(1), (2). Pub. L. 98-551, § 5(c)(1), (2), substituted "the National Center for Health Services Research and Health Care Technology Assessment and the National Center for Health Statistics" for "the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology".

Section Referred to in Other Sections

This section is referred to in sections 235, 242c, 242k, 242*l*, 242m, 288, 300e-8 of this title.

§ 242c. National Center for Health Services Research and Health Care Technology Assessment

(a) Establishment; appointment and supervision of Director

There is established in the Department of Health and Human Services the National Center for Health Services Research and Health Care Technology Assessment (hereinafter in this section referred to as the "Center") which shall be under the direction of a Director who shall be appointed by the Secretary and supervised by the Assistant Secretary for Health (or such other officer of the Department as may be designated by the Secretary as the principal adviser to him for health programs).

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[1] See Codification note below.

(b) Duties; limitations on powers of Secretary

In carrying out section 242b(a) of this title, the Secretary, acting through the Center, shall undertake and support research, evaluation, and demonstration projects (which may include and shall be appropriately coordinated with experiments and demonstration activities authorized by the Social Security Act [42 U.S.C. 301 et seq.] and the Social Security Amendments of 1967) respecting—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) the design, utilization, organization, and cost of facilities and equipment,

(4) the role of market forces in the health care system and the appropriate role they may play in restraining cost increases and improving the availability and quality of care; and

(5) the safety, efficacy, effectiveness, cost effectiveness, economic, and social impacts of health care technologies.

No grant or contract shall be made under this subsection for the purpose of funding clinical research that is directly related to determining the cause of any disease or disorder or clinical research that is directly and principally designed to evaluate the efficacy of any therapeutic, diagnostic, or preventive health measure.

(c) Research, evaluation, and demonstration projects respecting certain specific matters; user liaison and technical assistance programs

(1) The Secretary shall afford appropriate consideration to requests of—

(A) State, regional, and local health planning and health agencies,

(B) public and private entities and individuals engaged in the delivery of health care, and

(C) other persons concerned with health services,

to have the Center or other units of the Department of Health and Human Services undertake research, evaluations, and demonstrations respecting specific aspects of the matters referred to in subsection (b) of this section.

(2) In carrying out this section, the Secretary shall assist State and local health agencies through a user liaison program and a technical assistance program.

[*See main edition for text of* (*d*)]

(e) Recommendations; health care technology; considerations; cooperation with other Federal agencies

(1) The Center shall advise the Secretary respecting health care technology issues and make recommendations with respect to whether specific health care technologies should be reimbursable under federally financed health programs.

(2) In making recommendations respecting health care technologies, the Center shall consider the safety, efficacy, and effectiveness, and, as appropriate, the cost-effectiveness and appropriate uses of the technology.

(3) In carrying out its responsibilities under this section respecting health care technologies, the Center shall cooperate and consult with the National Institutes of Health, the Food and Drug Administration, and any other interested Federal departments or agencies.

(f) Research; cost exceeding $50,000

(1) The Secretary, acting through the Center, shall undertake and support (by grant or contract) research regarding technology diffusion, methods to assess health care technology, and specific health care technologies.

(2) Any grant or contract under paragraph (1), the direct cost of which will exceed $50,000, may be made or entered into only after consultation with the National Advisory Council on Health Care Technology Assessment.

(g) National Advisory Council on Health Care Technology Assessment: duties; composition; appointments; term of members; compensation; Chairman; meetings; Director

(1) There is established the National Advisory Council on Health Care Technology Assessment (hereinafter in this section referred to as the "Council"). The Council shall advise the Secretary and the Director of the Center with respect to the performance of the health care technology assessment functions prescribed by this section. The Council shall assist the Director in developing criteria and methods to be used by the Center in making health care technology coverage recommendations.

(2) The Council shall consist of—

(A) the Director of the National Institutes of Health, the Chief Medical Director of the Veterans' Administration, the Assistant Secretary for Health and Environment of the Department of Defense, the head of the Centers for Disease Control, the head of the Health Care Financing Administration, and such other Federal officials as the Secretary may specify, who shall be ex officio members, and

(B) twelve voting members appointed by the Secretary.

(3) The Secretary shall make appointments to the Council as follows:

(A) The Secretary shall appoint six members of the Council from individuals who are distinguished in the fields of medicine, engineering, and science (including social science) and shall appoint four members from individuals who are distinguished in the fields of law, ethics, economics, and management. Of the members appointed under this subparagraph—

(i) at least two shall be physicians,

(ii) two shall be selected from individuals who represent business entities engaged in development or production of medical technology,

(iii) one shall be selected from individuals who represent hospital administrators, and

(iv) one shall be selected from individuals who represent health insurance companies or self-insured employers.

(B) The Secretary shall appoint two members from members of the general public who represent the interest of consumers of health care.

(4)(A) Each appointed member of the Council shall be appointed for a term of three years, except that—

(i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(ii) of the members first appointed after October 30, 1984, four shall be appointed for a term of three years, four shall be appointed for a term of two years, and four shall be appointed for a term of one year, as designated by the Secretary at the time of appointment.

Appointed members may be appointed for additional terms and may serve after the expiration of their terms until their successors have taken office.

(B) Members of the Council who are not officers or employees of the United States shall receive for each day they are engaged in the performance of the functions of the Council compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(5) The Council shall annually elect one of its appointed members to serve as Chairman until the next election.

(6) The Council shall meet at the call of the Chairman, but not less often than three times a year.

(7) The Director of the Center shall (A) designate a member of the staff of the Center to act as Executive Secretary of the Council, and (B) make available to the Council such staff, information, and other assistance as it may require to carry out its functions.

(h) Allotment of appropriations

In each fiscal year, seven and one-half percent of the amount made available under section 300aa-12 of this title for such fiscal year for evaluations shall be made available to the Assistant Secretary for Health to conduct or support (by both grants and contracts) through the Center, evaluations of health services and health care technology which evaluations are not being conducted or supported under this section or section 242b of this title. In administering this subsection, the Secretary shall assure that the amount to be made available in any fiscal year is seven and one-half percent of the maximum amount authorized to be made available under section 300aa-12 of this title in such fiscal year.

(i) Additional authority of Secretary concerning research, evaluation, and demonstration projects respecting certain specific matters

The authority of the Secretary under section 242b(b) of this title shall be available to him with respect to the undertaking and support of projects under this section.

(As amended Oct. 30, 1984, Pub. L. 98-551, §§ 5(a), (b), 6, 98 Stat. 2817, 2819, 2820; Oct. 7, 1985, Pub. L. 99-117, § 6, 99 Stat. 492.)

References in Text

The General Schedule, referred to in subsec. (g)(4)(B), is set out under section 5332 of Title 5, Government Organization and Employees.

Amendments

1985—Subsec. (h). Pub. L. 99-117 added "In administering this subsection, the Secretary shall assure that the amount to be made available in any fiscal year is seven and one-half percent of the maximum amount authorized to be made available under section 300aa-12 of this title in such fiscal year."

1984—Subsec. (a). Pub. L. 98-551, § 5(a)(1), substituted "National Center for Health Services Research and Health Care Technology Assessment" for "National Center for Health Services Research".

Subsec. (b)(5). Pub. L. 98-551, § 5(a)(2), added par. (5).

Subsec. (c). Pub. L. 98-551, § 6, designated existing provisions as par. (1), in par. (1) as so designated, redesignated pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2).

Subsecs. (e) to (h). Pub. L. 98-551, § 5(a)(3), added subsecs. (e) to (h). Former subsec. (e) redesignated (i).

Subsec. (i). Pub. L. 98-551, § 5(a)(3), (b), redesignated subsec. (e) as (i), and in subsec. (i) as so redesignated, struck out "subsections (b), (c), and (d) of" before "this section".

Termination of Advisory Councils

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 242m. General provisions respecting sections 242b, 242c, 242k, 242*l*, and 242n of this title concerning general authority of Secretary, National Center and other centers for Health Services Research, National Center for Health Statistics, international cooperation, and National Center for Health Care Technology

[*See main edition for text of* (*a*) *to* (*h*)]

(i) Authorization of appropriations; limitations on use of appropriated funds

(1) For health service research, evaluation, and demonstration activities undertaken or supported under section 242b or 242c of this title, there are authorized to be appropriated $65,200,000 for the fiscal year ending June 30, 1975, $80,000,000 for the fiscal year ending June 30, 1976, $28,600,000 for the fiscal year ending September 30, 1978, $35,000,000 for the fiscal year ending September 30, 1979, $40,000,000 for the fiscal year ending Septem-

ber 30, 1980, $45,000,000 for the fiscal year ending September 30, 1981, $20,000,000 for the fiscal year ending September 30, 1982, $22,000,000 for the fiscal year ending September 30, 1983, $24,000,000 for the fiscal year ending September 30, 1984, $20,500,000 for the fiscal year ending September 30, 1985, $22,750,000 for the fiscal year ending September 30, 1986, and $24,750,000 for the fiscal year ending September 30, 1987. At least 20 per centum of the amount appropriated under the preceding sentence for any fiscal year or $6,000,000, whichever is less, shall be available only for health services research, evaluation and demonstration activities directly undertaken through the National Center for Health Services Research and Health Care Technology Assessment, and at least 10 per centum of such amount or $1,500,000, whichever is less, shall be available only for the user liaison program and the technical assistance program referred to in section 242c(c)(2) of this title and for dissemination activities directly undertaken through such Center. For health care technology assessment activities undertaken under subsections (b)(5), (e), (f), and (g) of section 242c of this title the Secretary shall obligate from funds appropriated under this paragraph not less than $3,000,000 for the fiscal year ending September 30, 1985, $3,500,000 for the fiscal year ending September 30, 1986, and $4,000,000 for the fiscal year ending September 30, 1987. For grants under section 242n of this title the Secretary shall obligate from funds appropriated under this paragraph not less than $500,000 for the fiscal year ending September 30, 1985, $750,000 for the fiscal year ending September 30, 1986, and $750,000 for the fiscal year ending September 30, 1987. Of the amounts appropriated under this paragraph for any fiscal year not more than $1,500,000 may be used for grants and contracts for all the costs of planning, establishing, and operating centers under section 242c(d) of this title.

(2) For health statistical and epidemiological activities undertaken or supported under section 242b or 242k of this title, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1975, $30,000,000 for the fiscal year ending June 30, 1976, $33,600,000 for the fiscal year ending September 30, 1978, $50,000,000 for the fiscal year ending September 30, 1979, $65,000,000 for the fiscal year ending September 30, 1980, $70,000,000 for the fiscal year ending September 30, 1981, $39,000,000 for the fiscal year ending September 30, 1982, $39,000,000 for the fiscal year ending September 30, 1983, $39,000,000 for the fiscal year ending September 30, 1984, $47,000,000 for the fiscal year ending September 30, 1985, $49,000,000 for the fiscal year ending September 30, 1986, and $52,000,000 for the fiscal year ending September 30, 1987.

(As amended Oct. 30, 1984, Pub. L. 98-551, § 7, 98 Stat. 2820.)

AMENDMENTS

1984—Subsec. (l)(1). Pub. L. 98-551, § 7(a), added provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987, added "and Health Care Technology Assessment" after "Research", substituted "and at least 10 per centum of such amount or $1,500,000, whichever is less, shall be available only for the user liaison program and the technical assistance program referred to in section 242c(c)(2) of this title and for dissemination activities directly undertaken through such Center" for "and at least 5 per centum of such amount or $1,000,000, whichever is less, shall be available only for dissemination activities directly undertaken through such Center", added "For health care technology assessment activities undertaken under subsections (b)(5), (e), (f), and (g) of section 242c of this title the Secretary shall obligate from funds appropriated under this paragraph not less than $3,000,000 for the fiscal year ending September 30, 1985, $3,500,000 for the fiscal year ending September 30, 1986, and $4,000,000 for the fiscal year ending September 30, 1987. For grants under section 242n of this title the Secretary shall obligate from funds appropriated under this paragraph not less than $500,000 for the fiscal year ending September 30, 1985, $750,000 for the fiscal year ending September 30, 1986, and $750,000 for the fiscal year ending September 30, 1987.", and in last sentence substituted "for any fiscal year" for "for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984,".

Subsec. (l)(2). Pub. L. 98-551, § 7(b), added provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242b, 242c, 242p of this title.

§ 242n. Grants for a council on health care technology

(a) Establishment; initial grant; application; written assurances

(1) In accordance with this section, the Secretary shall make grants for the planning, development, establishment, and operation of a council on health care technology.

(2)(A)(i) The Secretary shall make an initial grant under paragraph (1) for the planning, development, and establishment of the council. The amount of an initial grant may not exceed $500,000 and may be made for not more than two-thirds of the cost of the planning, development, and establishment of the council.

(ii) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application for an initial grant under paragraph (1). If the Academy submits an acceptable application, the Secretary shall make the initial grant to the Academy. If the Academy does not submit an acceptable application for an initial grant under paragraph (1), the Secretary shall request one or more appropriate nonprofit private entities to submit an application for an initial grant under paragraph (1) and shall make a grant to the entity which submits the best acceptable application.

(B) The Secretary may not make a grant for the operation of the council unless the application submitted to the Secretary for the grant contains written assurances from the applicant that the applicant will expend from non-Federal sources for the operation of the council an amount equal to at least twice the amount of the grant applied for.

(b) Purposes

The purposes of the council shall include—

(1) promoting the development and application of appropriate health care technology assessments; and

(2) the review of existing health care technologies in order to identify obsolete or inappropriately used health care technologies.

(c) Functions; assessment of health care technology

(1) In order to qualify for a grant under this section for the operation of the council, the applicant must demonstrate that it has the capability to, and that under the grant it will—

(A) serve as a clearinghouse for information on health care technologies and health care technology assessment;

(B) collect and analyze data concerning specific health care technologies;

(C) identify needs in the assessment of specific health care technologies and research on assessment methodologies;

(D) develop and evaluate criteria and methodologies for health care technology assessment;

(E) promote education, training, and technical assistance in the use of health care technology assessment methodologies and results; and

(F) stimulate, coordinate, and commission assessments of health care technologies.

(2) No funds from any grant made by the Secretary under this section for the planning, development, and establishment of the council may be used to conduct any assessment of a health care technology.

(d) Composition of council

In order to qualify for an initial grant under this section to plan, develop, and establish the council under this section, the applicant must assure that the council will be composed of at least 10 members—

(1) each of whom has education, training, experience, or expertise relating to the quality and cost effectiveness of health care technologies, and

(2) who, as a group, provide representation of organizations of health professionals, hospitals, and other health care providers, health care insurers, employers, consumers, and manufacturers of products for health care.

(e) Annual report

As a condition for receiving a grant under this section, the applicant must agree to submit to the Secretary an annual report on the council's activities under the grant. The Secretary shall provide for timely transmittal of a copy of each such report to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(f) Applications

No grant may be made under this section unless an application is submitted to the Secretary in such form and containing such information as the Secretary shall prescribe.

(g) Repealed. Pub. L. 99-117, § 8(a)(7), Oct. 7, 1985, 99 Stat. 494

(h) Redesignated (f)

(As amended Oct. 30, 1984, Pub. L. 98-551, § 8, 98 Stat. 2820; Oct. 7, 1985, Pub. L. 99-117, § 8(a), 99 Stat. 493.)

AMENDMENTS

1985—Pub. L. 99-117, § 8(a)(1), substituted "Grants for a council on health care technology" for "Council on Health Care Technology" in section catchline.

Subsec. (a)(1). Pub. L. 99-117, § 8(a)(2), substituted "council on health care technology" for "Council on Health Care Technology" and struck out sentence which directed the Council to comply with the provisions of this section.

Subsec. (a)(2)(A)(i). Pub. L. 99-117, § 8(a)(3), (4), (9), designated existing provisions of subpar. (A) as cl. (i), substituted "for the planning, development, and establishment of the council" for "to the National Academy of Sciences for the planning, development, and establishment of the Council with the membership prescribed by subsection (d)(1) of this section", "The amount of an initial grant" for "The amount of such grant", and "council" for "Council".

Subsec. (a)(2)(A)(ii). Pub. L. 99-117, § 8(a)(5), added cl. (ii).

Subsecs. (a)(2)(B), (b). Pub. L. 99-117, § 8(a)(9), substituted "council" for "Council" wherever appearing.

Subsec. (c)(1). Pub. L. 99-117, § 8(a)(6), substituted "In order to qualify for a grant under this section for the operation of the council, the applicant must demonstrate that it has the capability to, and that under the grant it will" for "The Council shall".

Subsec. (c)(2). Pub. L. 99-117, § 8(a)(9), substituted "council" for "Council".

Subsec. (d). Pub. L. 99-117, § 8(a)(7), added subsec. (d). Former subsec. (d), which provided for the Council on Health Care Technology to be composed of at least ten members appointed by the National Academy of Sciences from individuals who had education, training, experience, or expertise relating to the quality and cost-effectiveness of health care technologies and who were representatives of organizations of health professionals, hospitals, and other health care providers, health care insurers, employers, consumers, and manufacturers of products for health care, three members appointed by the Secretary of Health and Human Services, and the Director of the Office of Technology Assessment, as an ex officio member, was struck out.

Subsec. (e). Pub. L. 99-117, § 8(a)(7), added subsec. (e).

Subsec. (f). Pub. L. 99-117, § 8(a)(7), (8), redesignated subsec. (h) as (f). Former subsec. (f), which provided that the President of the National Academy of Sciences shall designate one of the members appointed to the initial Council under former subsec. (d)(1)(A) of this section as Chairman of the Council for a one-year term and that thereafter the members of the Council shall elect one of its members as Chairman for such terms as may be determined by the Council, was struck out.

Subsec. (g). Pub. L. 99-117, § 8(a)(7), struck out subsec. (g) which provided that the recipient of a grant under subsection (a) of this section shall submit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on the Council's activities. See subsec. (e) of this section.

Subsec. (h). Pub. L. 99-117, § 8(a)(8), redesignated subsec. (h) as (f).

1984—Subsec. (a). Pub. L. 98-551 amended subsec. (a) generally, substituting provisions relating to the establishment of the Council on Health Care Technology and grant authority of the Secretary for provisions which related to the establishment of the National Center for Health Care Technology and appointment of its Director.

Subsec. (b). Pub. L. 98-551 amended subsec. (b) generally, substituting provisions relating to the purposes of the Council for provisions relating to grants and contracts for the National Center for Health Care Technology.

Subsec. (c). Pub. L. 98-551 amended subsec. (c) generally, substituting provisions relating to the functions of the Council and prohibitions on grants for assessment of health care technology for provisions relating to centers for assessments, multidisciplinary research, evaluations and demonstrations.

Subsec. (d). Pub. L. 98-551 amended subsec. (d) generally, substituting provisions relating to the composition of the Council and filling of vacancies thereon for provisions relating to review requirements.

Subsec. (e). Pub. L. 98-551, in amending section generally, struck out subsec. (e) which related to interagency cooperation and consultation and nonduplication of efforts.

Subsec. (f). Pub. L. 98-551 amended subsec. (f) generally, substituting provisions relating to the Chairman of the Council and his or her term for provisions relating to the National Council on Health Care Technology which was to terminate Sept. 30, 1984.

Subsec. (g). Pub. L. 98-551 amended subsec. (g) generally, substituting provisions relating to reports to be submitted to Congressional committees for provisions relating to the definition of health care technology.

Subsec. (h). Pub. L. 98-551 amended subsec. (h) generally, substituting provisions relating to application requirements for provisions authorizing appropriations for the National Center for Health Care Technology.

Effective Date of 1985 Amendment

Section 8(b) of Pub. L. 99-117 provided that: "The amendments made by this section [amending this section] shall take effect as of the date of the enactment of the Health Promotion and Disease Prevention Amendments of 1984 [Oct. 30, 1984]."

Part B—Federal-State Cooperation

§ 243. General grant of authority for cooperation

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Development of plan to control epidemics and meet emergencies or problems resulting from disasters; cooperative planning; temporary assistance; reimbursement of United States

(1) The Secretary is authorized to develop (and may take such action as may be necessary to implement) a plan under which personnel, equipment, medical supplies, and other resources of the Service and other agencies under the jurisdiction of the Secretary may be effectively used to control epidemics of any disease or condition and to meet other health emergencies or problems. The Secretary may enter into agreements providing for the cooperative planning between the Service and public and private community health programs and agencies to cope with health problems (including epidemics and health emergencies).

[*See main edition for text of* (*2*)]

(As amended Oct. 7, 1985, Pub. L. 99-117, § 11(a), 99 Stat. 494.)

Amendments

1985—Subsec. (c)(1). Pub. L. 99-117 struck out "referred to in section 247b(f) of this title" after "epidemics of any disease or condition", "involving or resulting from disasters or any such disease" after "health emergencies or problems" in first sentence, and struck out "resulting from disasters or any disease or condition referred to in section 247b(f) of this title" after "(including epidemics and health emergencies)" in second sentence.

§ 246. Grants and services to States

[*See main edition for text*]

(As amended Oct. 7, 1985, Pub. L. 99-117, § 12(a), 99 Stat. 495.)

Amendments

1985—Subsec. (g). Pub. L. 99-117 directed that subsec. (g) be repealed. Previously, subsec. (g) was repealed by Pub. L. 96-398. See 1980 Amendment note below.

§ 247. Repealed. Pub. L. 99-117, § 12(b), Oct. 7, 1985, 99 Stat. 495

Section, act July 1, 1944, ch. 373, title III, § 315, as added Nov. 10, 1978, Pub. L. 95-626, title II, § 203, 92 Stat. 3578, and amended July 10, 1979, Pub. L. 96-32, § 6(h), 93 Stat. 83, related to formula grants to States for preventive health service programs.

§ 247b. Project grants for preventive health services

[*See main edition for text of* (*a*) *to* (*i*)]

(j) Authorization of appropriations

(1) For grants under subsection (a) of this section for preventive health service programs to immunize individuals against vaccine-preventable diseases there are authorized to be appropriated $29,500,000 for the fiscal year ending September 30, 1982, $32,000,000 for the fiscal year ending September 30, 1983, $34,500,000 for the fiscal year ending September 30, 1984, $52,000,000 for the fiscal year ending September 30, 1985, $59,000,000 for the fiscal year ending September 30, 1986, and $65,000,000 for the fiscal year ending September 30, 1987.

(2) For grants under subsection (a) of this section for preventive health service programs for tuberculosis there are authorized to be appropriated $9,000,000 for the fiscal year ending September 30, 1982, $10,000,000 for the fiscal year ending September 30, 1983, $11,000,000 for the fiscal year ending September 30, 1984, $8,000,000 for the fiscal year ending September 30, 1985, $9,000,000 for the fiscal year ending September 30, 1986, and $10,000,000 for the fiscal year ending September 30, 1987.

(As amended Oct. 30, 1984, Pub. L. 98-555, § 2, 98 Stat. 2854; Oct. 7, 1985, Pub. L. 99-117, § 11(c), 99 Stat. 495.)

References in Text

Section 247 of this title, referred to in subsec. (b)(3), was repealed by Pub. L. 99-117, § 12(b), Oct. 7, 1985, 99 Stat. 495.

Amendments

1985—Subsec. (j). Pub. L. 99-117 amended the directory language of Pub. L. 97-35, § 928(b), to correct a technical error. See 1981 Amendment note below.

1984—Subsec. (j)(1). Pub. L. 98-555, § 2(a), substituted "immunize individuals against vaccine-preventable diseases" for "immunize children against immunizable diseases" and added provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

Subsec. (j)(2). Pub. L. 98-555, § 2(b), added provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

1981—Subsec. (j). Pub. L. 97-35, § 928(b), as amended by Pub. L. 99-117, substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984, for provisions setting forth appropriations through the fiscal year ending Sept. 30, 1981, and provisions setting forth limitations, conditions, etc., for appropriations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 247c, 300w-1 of this title.

§ 247c. Sexually transmitted diseases; acquired immune deficiency syndrome; prevention and control projects and programs

(a) Technical assistance to public and nonprofit private entities and scientific institutions

The Secretary may provide technical assistance to appropriate public and nonprofit private entities and to scientific institutions for their research in, and training and public health programs for, the prevention and control of sexually transmitted diseases.

(b) Research, demonstration, and public information and education projects

The Secretary may make grants to States, political subdivisions of States, and any other public and nonprofit private entity for—

(1) research into the prevention and control of sexually transmitted diseases;

(2) demonstration projects for the prevention and control of sexually transmitted diseases;

(3) public information and education programs for the prevention and control of such diseases,[2] and

(4) education, training, and clinical skills improvement activities in the prevention and control of such diseases for health professionals (including allied health personnel).

(c) Project grants to States

The Secretary is also authorized to make project grants to States and, in consultation with the State health authority, to political subdivisions of States, for—

(1) sexually transmitted diseases surveillance activities, including the reporting, screening, and followup of diagnostic tests for, and diagnosed cases of, sexually transmitted diseases;

(2) casefinding and case followup activities respecting sexually transmitted diseases, including contact tracing of infectious cases of sexually transmitted diseases and routine testing, including laboratory tests and followup systems;

(3) interstate epidemiologic referral and followup activities respecting sexually transmitted diseases; and

(4) such special studies or demonstrations to evaluate or test sexually transmitted diseases prevention and control strategies and activities as may be prescribed by the Secretary.

(d) Acquired immune deficiency syndrome

The Secretary, acting through the Director of the Centers for Disease Control, may make grants to public and nonprofit private entities for information and education programs on, and for the diagnosis, prevention, and control of, acquired immune deficiency syndrome. The authority to make grants under this section for acquired immune deficiency syndrome is not the exclusive authority to make grants under this chapter for acquired immune deficiency syndrome.

(e) Authorization of appropriations; terms and conditions; payments; recordkeeping; audit; grant reduction; information disclosure

(1) For the purpose of making grants under subsections (b), (c), and (d) of this section there are authorized to be appropriated $45,000,000 for the fiscal year ending September 30, 1979, $51,500,000 for the fiscal year ending September 30, 1980, $59,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for the fiscal year ending September 30, 1982, $46,500,000 for the fiscal year ending September 30, 1983, $50,000,000 for the fiscal year ending September 30, 1984, $57,000,000 for the fiscal year ending September 30, 1985, $62,500,000 for the fiscal year ending September 30, 1986, and $68,000,000 for the fiscal year ending September 30, 1987. For grants under subsection (b) of this section in any fiscal year, the Secretary shall obligate not less than 10 per centum of the amount appropriated for such fiscal year under the preceding sentence. Grants made under subsection (b), (c), or (d) of this section shall be made on such terms and conditions as the Secretary finds necessary to carry out the purposes of such subsection, and payments under any such grants shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary. If the appropriations under the first sentence for fiscal year 1985 exceed $50,000,000, one-half of the amount in excess of $50,000,000 shall be made available for grants under subsection (d) of this section; if the appropriations under the first sentence for fiscal year 1986 exceed $52,500,000, one-half of the amount in excess of $52,500,000 shall be made available for such grants; and if the appropriations under the first sentence for fiscal year 1987 exceed $55,000,000, one-half of the amount in excess of $55,000,000 shall be made available for such grants.

(2) Each recipient of a grant under this section shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant was given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

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[2] So in original. The comma probably should be a semicolon.

(3) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of grants under this section that are pertinent to such grants.

(4) The Secretary, at the request of a recipient of a grant under this section, may reduce such grant by the fair market value of any supplies or equipment furnished to such recipient and by the amount of pay, allowances, travel expenses, and any other costs in connection with the detail of an officer or employee of the United States to the recipient when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such recipient and for the purpose of carrying out the program with respect to which the grant under this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies, equipment, or personal services on which the reduction of such grant is based.

(5) All information obtained in connection with the examination, care, or treatment of any individual under any program which is being carried out with a grant made under this section shall not, without such individual's consent, be disclosed except as may be necessary to provide service to him or as may be required by a law of a state or political subdivision of a State. Information derived from any such program may be disclosed—

(A) in summary, statistical, or other form, or

(B) for clinical or research purposes,

but only if the identity of the individuals diagnosed or provided care or treatment under such program is not disclosed.

(f) Conditional limitation on use of funds

Except as provided in section 247b(g)(2) of this title, no funds appropriated under any provision of this chapter other than this section may be used to make grants in any fiscal year for programs or projects respecting sexually transmitted diseases if (1) grants for such programs or projects are authorized by this section, and (2) all the funds authorized to be appropriated under this section for that fiscal year have not been appropriated for that fiscal year and obligated in that fiscal year.

(g) Consent of individuals

Nothing in this section shall be construed to require any State or any political subdivision of a State to have a sexually transmitted diseases program which would require any person, who objects to any treatment provided under such a program, to be treated under such a program.

(As amended Oct. 30, 1984, Pub. L. 98-555, § 3, 98 Stat. 2854.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-555, § 3(b)(1), substituted "research in, and training and public health programs for, the prevention and control of sexually transmitted diseases" for "research, training, and public health programs for the prevention and control of venereal disease".

Subsec. (b). Pub. L. 98-555, § 3(b)(2), in amending subsec. (b) generally, designated existing provisions as pars. (1) to (3), added par. (4), and substituted references to sexually transmitted diseases for reference to venereal disease.

Subsec. (c). Pub. L. 98-555, § 3(b)(3), (6)(A), substituted "sexually transmitted diseases" for "venereal disease" wherever appearing, struck out par. (4) relating to professional venereal disease education, training and clinical skills improvement activities, and redesignated par. (5) as (4).

Subsec. (d). Pub. L. 98-555, § 3(b)(5)(A), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98-555, § 3(a), (b)(4), (5), redesignated subsec. (d) as (e), and in par. (1) of subsec. (e) as so redesignated, substituted "(b), (c), and (d)" for "(b) and (c)", added provisions authorizing appropriations for the fiscal years ending Sept. 30, 1985, 1986, and 1987, substituted "10 per centum" for "5 per centum", and added provisions directing that one-half the excess of appropriations in fiscal years 1985, 1986, and 1987 over certain amounts be made available for grants under subsec. (d). Notwithstanding language of section 3(b)(5)(B)(ii) directing the substitution of "(b), (c), or (d)" for "(b) or (c)" in second sentence of subsec. (e)(1), the amendment was executed by making the substitution in third sentence of subsec. (e)(1) to reflect the probable intent of Congress because "(b) or (c)" did not appear in second sentence. Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 98-555, § 3(b)(5)(A), (6)(A), (C), redesignated subsecs. (e) and (f) as (f) and (g), respectively. in subsecs. (f) and (g) as so redesignated, substituted "sexually transmitted diseases" for "venereal disease", and struck out former subsec. (g) which defined venereal disease.

§ 247d. Public health emergencies

(a) Determination of existence of emergency; authorization to act

If the Secretary determines, after consultation with the Director of the National Institutes of Health, the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Commissioner of the Food and Drug Administration, or the Director of the Centers for Disease Control, that—

(1) a disease or disorder presents a public health emergency, or

(2) a public health emergency otherwise exists and the Secretary has the authority to take action with respect to such emergency,

the Secretary, acting through such Director, Administrator, or Commissioner, may take such action as may be appropriate to respond to the public health emergency, including making grants and entering into contracts and conducting and supporting investigations into the cause, treatment, or prevention of a disease or disorder described in paragraph (1).

(b) Public Health Emergency Fund; authorization of appropriations; annual report to Congress

(1) There is established in the Treasury a fund designated the "Public Health Emergency Fund" to be available to the Secretary without fiscal year limitation to carry out subsection (a) of this section. There is authorized to be appropriated to the fund $30,000,000 for fiscal year 1984. For fiscal year 1985 and each fiscal year thereafter there is authorized to be appropriated to the fund such sums as may be necessary

to have $30,000,000 in the fund at the beginning of such fiscal year.

(2) The Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than ninety days after the end of a fiscal year—

(A) on the expenditures made from the Public Health Emergency Fund in such fiscal year; and

(B) describing each public health emergency for which the expenditures were made and the activities undertaken with respect to each emergency which were conducted or supported by expenditures from the Fund.

(July 1, 1944, ch. 373, title III, § 319, as added July 13, 1983, Pub. L. 98-49, 97 Stat. 245.)

PRIOR PROVISIONS

A prior section 247d, act July 1, 1944, ch. 373, title III, § 319, formerly § 310, as added Sept. 25, 1962, Pub. L. 87-692, 76 Stat. 592; amended Aug. 5, 1965, Pub. L. 89-109, § 3, 79 Stat. 436; Oct. 15, 1968, Pub. L. 90-574, title II, § 201, 82 Stat. 1006; Mar. 12, 1970, Pub. L. 91-209, 84 Stat. 52; June 18, 1973, Pub. L. 93-45, title I, § 105, 87 Stat. 91; renumbered § 319, July 23, 1974, Pub. L. 93-353, title I, § 102(d), 88 Stat. 362; and amended July 29, 1975, Pub. L. 94-63, title IV, § 401(a), title VII, § 701(c), 89 Stat. 334, 352; Apr. 22, 1976, Pub. L. 94-278, title VIII, § 801(a), 90 Stat. 414, relating to migrant health centers, was renumbered section 329 of act July 1, 1944, by Pub. L. 95-626 and transferred to section 254b of this title.

PART C—HOSPITALS, MEDICAL EXAMINATIONS, AND MEDICAL CARE

§ 247e. Hansen's disease program

(a) Care and treatment

The Secretary—

(1) shall provide care and treatment (including outpatient care) without charge at the Gillis W. Long Hansen's Disease Center in Carville, Louisiana, to any person suffering from Hansen's disease who needs and requests care and treatment for that disease; and

(2) may provide for the care and treatment (including outpatient care) of Hansen's disease without charge for any person who requests such care and treatment.

(b) Payments to Board of Health of Hawaii

The Secretary shall make payments to the Board of Health of Hawaii for the care and treatment (including outpatient care) in its facilities of persons suffering from Hansen's disease at a rate, determined from time to time by the Secretary, which shall, subject to the availability of appropriations, be approximately equal to the operating cost per patient of those facilities, except that the rate determined by the Secretary shall not be greater than the comparable operating cost per Hansen's disease patient at the Gillis W. Long Hansen's Disease Center in Carville, Louisiana.

(As amended Oct. 7, 1985, Pub. L. 99-117, § 2(a), 99 Stat. 491.)

AMENDMENTS

1985—Pub. L. 99-117 substituted "Hansen's disease program" for "Receipt, apprehension, detention, treatment, and release of lepers" in section catchline.

Subsec. (a). Pub. L. 99-117 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Service shall, in accordance with regulations, receive into any hospital of the Service suitable for his accommodation any person afflicted with leprosy who presents himself for care, detention, or treatment, or who may be apprehended under subsection (b) of this section or section 264 of this title, and any person afflicted with leprosy duly consigned to the care of the Service by the proper health authority of any State. The Surgeon General is authorized, upon the request of any health authority, to send for any person within the jurisdiction of such authority who is afflicted with leprosy and to convey such person to the appropriate hospital for detention and treatment. When the transportation of any such person is undertaken for the protection of the public health the expense of such removal shall be met from funds available for the maintenance of hospitals of the Service. Such funds shall also be available, subject to regulations, for transportation of recovered indigent leper patients to their homes, including subsistence allowance while traveling. When so provided in appropriations available for any fiscal year for the maintenance of hospitals of the Service, the Surgeon General is authorized and directed to make payments to the Board of Health of Hawaii for the care and treatment in its facilities of persons afflicted with leprosy at a per diem rate, determined from time to time by the Surgeon General, which shall, subject to the availability of appropriations, be approximately equal to the per diem operating cost per patient of such facilities, except that such per diem rate shall not be greater than the comparable per diem operating cost per patient at the National Leprosarium, Carville, Louisiana."

Subsec. (b). Pub. L. 99-117 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The Surgeon General may provide by regulation for the apprehension, detention, treatment, and release of persons being treated by the Service for leprosy."

§ 248c. Continued use of former Public Health Service facilities

[See main edition for text of (a)]

(b) Termination of approved status

The Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy may terminate, for purposes of chapter 55 of title 10, the approved status, of any facility described in subsection (a) of this section to furnish medical or dental care to members and former members of the uniformed services and their dependents as provided for in section 248d(e) of this title.

(c) Reimbursement of approved facilities for medical and dental care provided to members and former members of the uniformed services and dependents

The Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy shall reimburse any facility described in subsection (a) of this section for medical and dental care provided by such facility to members and former members of the uniformed services and their dependents who receive such care under chapter 55 of title 10. The rates of reimbursement shall be negotiated and agreed upon by the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, and the appropriate officials representing the facility concerned. The rates of reimbursement shall be based upon medical and dental care costs in the area in which the facility concerned is located.

(As amended Pub. L. 98-94, title XII, § 1252(f), Sept. 24, 1983, 97 Stat. 699; Pub. L. 98-557, § 17(f)(1), Oct. 30, 1984, 98 Stat. 2868.)

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98-557 added references to the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy.

1983—Subsec. (b). Pub. L. 98-94 substituted reference to section 248d(e) of this title for a description of the procedure for terminating the approved status of facilities described in subsec. (a) for the former provision which had referred to the termination of the approved status of such facilities at any time after the expiration of three years after the date of the transfer of such facility under section 248b of this title, with the termination of such status in the case of any such facility to be effected only by an order jointly issued by the Secretary of Defense and the Secretary of Health and Human Services which identified the facility whose approved status was being terminated and specified the date on which such status was being terminated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 248d of this title.

§ 248d. Public Health Service facilities providing medical care for dependents, members, and former members of uniformed services

(a) Demonstration projects; comparisons with care furnished by contract providers

The Secretary of Defense, in consultation with the Secretary of Health and Human Services and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, shall conduct demonstration projects for the purpose of comparing and evaluating the cost-effectiveness, accessibility, patient acceptance, and the quality of medical care contracted for by the Secretary of Defense under sections 1079 and 1086 of title 10, with the medical care provided in those facilities deemed to be facilities of the uniformed services by virtue of section 248c of this title. The Secretary of Defense shall begin conducting such projects within one year after September 24, 1983, and continue conducting such projects for not less than three years.

(b) Alternative payment mechanisms

The projects carried out by the Secretary of Defense under this subsection shall utilize various alternative mechanisms for the payment of medical services provided eligible persons, including capitation, prospective payment, all-inclusive fee-for-service charges, and other concepts and programs consistent with the purpose of this section.

(c) Designation of additional civilian medical facilities

If the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy determine such action is necessary in order to permit a meaningful evaluation of alternative methods of providing medical care to persons eligible for such care under sections 1079 and 1086 of title 10, they may jointly designate additional civilian medical facilities to be facilities of the uniformed services for the purposes of section 1079 of such title. The Secretary may designate a facility under the authority of this subsection for such purposes only if such action is agreed to by the governing body of the facility.

(d) Reports to Congress on study and project results

The Secretary of Defense, in consultation with the Secretary of Health and Human Services and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, shall submit annually to the Committees on Appropriations and on Armed Services of the Senate and the House of Representatives a written report on the results of the studies and projects carried out under this section. The first such report shall be submitted not later than one year after September 24, 1983. The last such report shall be submitted not later than one year after the completion of all such studies and projects.

(e) Termination of status

The Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy may terminate, for purposes of chapter 55 of title 10, the status of any facility referred to in subsection (a) or (c) of this section to furnish medical or dental care to members and former members of the uniformed services or their dependents, and such termination may become effective at any time after December 31, 1987. The termination of such status in the case of any such facility may be effected only by an order jointly issued by the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy which identifies the facility whose status is being terminated and specifies the date on which such status is being terminated. A copy of each such order shall be furnished to the affected facility and the Committees on Appropriations and on Armed Services of the Senate and the House of Representatives and shall become effective in accordance with the terms of the notice, but not earlier than six months following the date on which a copy of the notice has been furnished to the facility and the committees. Any facility described in subsection (a) of this section or designated under subsection (c) of this section may terminate its status or designation made under that subsection at any time after the expiration of six months following the date on which a copy of the order terminating the status or designation has been furnished the facility.

(Pub. L. 98-94, title XII, § 1252(a)-(e), Sept. 24, 1983, 97 Stat. 698; Pub. L. 98-557, § 17(f)(2), Oct. 30, 1984, 98 Stat. 2868.)

Codification

Section was enacted as part of the Department of Defense Authorization Act, 1984, and not as part of the Public Health Service Act which comprises this chapter.

Amendments

1984—Subsecs. (a), (c) to (e). Pub. L. 98-557 added references to the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy.

Section Referred to in Other Sections

This section is referred to in section 248c of this title.

§ 249. Medical care and treatment of quarantined and detained persons

Section Referred to in Other Sections

This section is referred to in sections 254e, 300aa-1, 2651 of this title; title 24 section 168b.

§ 250a. Transfer of appropriations

There may be transferred to the Health Resources and Services Administration such amounts as may be necessary, in the discretion of the Attorney General, for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions.

(Dec. 13, 1985, Pub. L. 99-180, title II, § 200, 99 Stat. 1144.)

Similar Provisions

Similar provisions were contained in the following prior appropriation acts:

Aug. 30, 1984, Pub. L. 98-411, title II, § 200, 98 Stat. 1556.

Nov. 28, 1983, Pub. L. 98-166, title II, § 200, 97 Stat. 1084.

Sept. 24, 1979, Pub. L. 96-68, title II, § 200, 93 Stat. 421.

§ 251. Medical examination and treatment of Federal employees; medical care at remote stations

(a) The Surgeon General is authorized to provide at institutions, hospitals, and station of the Service medical, surgical, and hospital services and supplies for persons entitled to treatment under subchapter I of Chapter 81 of title 5 and extensions thereof. The Surgeon General may also provide for making medical examinations of—

(1) employees of the Federal Government for retirement purposes;

[*See main edition for text of* (*2*) *and* (*3*)]

(4) employees eligible for benefits under the Longshore and Harbor Workers' Compensation Act, as amended [33 U.S.C. 901 et seq.], as requested by any deputy commissioner thereunder.

[*See main edition for text of* (*b*)]

(As amended Jan. 14, 1983, Pub. L. 97-468, title VI, § 615(b)(4), 96 Stat. 2578; Sept. 28, 1984, Pub. L. 98-426, § 27(d)(2), 98 Stat. 1654.)

References in Text

The Longshore and Harbor Workers' Compensation Act, as amended, referred to in subsec. (a)(4), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

Amendments

1984—Subsec. (a)(4). Pub. L. 98-426 substituted "Longshore and Harbor Workers' Compensation Act" for "Longshoremen's and Harbor Workers' Compensation Act".

1983—Subsec. (a)(1). Pub. L. 97-468 struck out "employees of the Alaska Railroad and" before "employees of the Federal Government".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97-468 became effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97-468.

Section Referred to in Other Sections

This section is referred to in section 254e of this title; title 24 section 168b.

§ 253. Medical services to Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service

[*See main edition for text of* (*a*)]

(b) Health care for involuntarily separated officers and dependents

(1) The Secretary may provide health care for an officer of the Regular or Reserve Corps involuntarily separated from the Service, and for any dependent of such officer, if—

(A) the officer or dependent was receiving health care at the expense of the Service at the time of separation; and

(B) the Secretary finds that the officer or dependent is unable to obtain appropriate insurance for the conditions for which the officer or dependent was receiving health care.

(2) Health care may be provided under paragraph (1) for a period of not more than one year from the date of separation of the officer from the Service.

[*See main edition for text of* (*c*)]

(As amended Oct. 7, 1985, Pub. L. 99-117, § 5, 99 Stat. 492.)

Amendments

1985—Subsec. (b). Pub. L. 99-117 added subsec. (b).

§ 253a. Medical services to retired personnel of National Oceanic and Atmospheric Administration

(a) Eligibility

Subject to regulations of the President, retired ships' officers and retired members of the crews of vessels of the National Oceanic and Atmospheric Administration shall be entitled to medical, surgical, and dental treatment and hospitalization by the Public Health Service if the ships' officer or crew member, (1) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee was continuous from that date until retirement, or (2) was retired as a vessel employee of the National Oceanic and Atmospheric Administration on or before July 1, 1963, or on July 19, 1963, whichever is later.

(b) Treatment of dependents of personnel

Subject to regulations of the President, dependent members of families (as defined in such regulations) of ships' officers and members of crews of vessels of the National Oceanic and Atmospheric Administration, whether such ships' officers and members of crew are on active duty or retired, shall be furnished medical advice and outpatient treatment by the Public Health Service and, if suitable accommodations are available, they shall also be furnished hospitalization by the Public Health Service if the ships' officer or crew member (1) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee has been continuous from that time, or (2) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee was continuous from that time until retirement, or (3) was retired as a vessel employee of the National Oceanic and Atmospheric Administration on or before July 1, 1963, or on July 19, 1963, whichever is later. When dependent members of families are hospitalized, a per diem charge, at such uniform rate as may be prescribed from time to time for the hospitalization of dependents of members of the uniformed services at hospitals of the uniformed services pursuant to section 1078(a) of title 10 shall be made.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-498, title III, § 310(b), (c), Oct. 19, 1984, 98 Stat. 2306, 2307.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-498, § 310(b), substituted "by the Public Health Service if" for "at facilities of the Public Health Service: *Provided*, That".

Subsec. (b). Pub. L. 98-498, § 310(c), struck out "at its hospitals and relief stations" before "and, if suitable accommodations" and substituted "by the Public Health Service if" for "at hospitals of the Public Health Service: *Provided*, That".

PART D—PRIMARY HEALTH CARE

SUBPART I—PRIMARY HEALTH CENTERS

§ 254a-1. Repealed. Pub. L. 99-117, § 12(c), Oct. 7, 1985, 99 Stat. 495

Section, act July 1, 1944, ch. 373, title III, § 328, as added Nov. 10, 1978, Pub. L. 95-626, title I, § 114, 92 Stat. 3563, and amended Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to hospital-affiliated primary care centers.

§ 254b. Migrant health centers

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 218, 254g, 256a, 300e-12, 300e-14a, 1396b of this title; title 29 section 777b.

§ 254c. Community health centers

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254g, 256a, 300e-12, 300n, 300y-1, 300y-2, 300y-3, 300y-5, 1396b, 9840 of this title; title 7 section 3178.

SUBPART II—NATIONAL HEALTH SERVICE CORPS PROGRAM

§ 254e. Health manpower shortage areas

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254d, 254f, 254g, 254k, 254*l*, 254m, 254n, 254p, 294h, 294n, 295g-8, 296k, 296m, 1395x, 9840 of this title; title 5 section 8902.

§ 254g. Cost sharing

(a) Charges for services; collection of payments; payment to United States; calculation of payments; annual report

The Secretary shall require, as a condition to the approval of an application under section 254f of this title for the assignment of a member of the Corps, that the entity which submitted the application enter into an agreement for a specific assignment period (not to exceed 4 years) with the Secretary under which—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) the entity, if not a small health center, shall pay to the United States, as prescribed by the Secretary in each calendar quarter (or other period as may be specified in the agreement) during which any Corps member is assigned to such entity, the sum of—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) if such entity received a loan under section 254h(c) of this title or a grant under section 254f(d)(2) of this title, an amount which bears the same ratio to the amount of such loan or grant as the number of days in such quarter (or other period) during which any Corps members were assigned to the entity bears to the number of days in the assignment period after such entity received such loan or grant;

(4) the entity, if a small health center, shall pay to the United States, in each calendar quarter (or other period as may be specified in the agreement) during which any Corps member is assigned to such entity, an amount determined by the Secretary in accordance with subsection (f) of this section; and

(5) the entity shall prepare and submit to the Secretary an annual report, in such form and manner, as the Secretary may require.

(b) Waiver of payment; use of funds

(1) The Secretary may waive in whole or in part, on a prospective or retrospective basis, the application of the requirement of subsection (a)(3) of this section for an entity which is not a small health center if he determines that the entity is financially unable to meet such requirement or if he determines that compliance with such requirement would unreasonably limit the ability of the entity to provide for the adequate support of the provision of health services by Corps members.

(2) The Secretary may waive in whole or in part, on a prospective or retrospective basis, the application of the requirement of subsection (a)(3) of this section for any entity which is not a small health center and which is located in a health manpower shortage area in which a significant percentage of the individuals are elderly, living in poverty, or have other characteristics which indicate an inability to repay, in whole or in part, the amounts required in subsection (a)(3) of this section.

(3) In the event that the Secretary grants a waiver under paragraph (1) or (2), and does not, pursuant to paragraph (5), require payment by the entity in the amount described in subsection (f)(1) of this section, the entity shall be required to use the total amount of funds collected by such entity in accordance with subsection (a)(2) of this section for the improvement of the capability of such entity to deliver health services to the individuals in, or served by, the health manpower shortage area.

[*See main edition for text of* (*4*)]

(5)(A) If the Secretary determines that an entity which is not a small health center is eligible for a waiver under paragraph (1) or (2), the Secretary may waive the application of subsection (a)(3) of this section for such entity and require such entity to make payment in an amount equal to the amount described in subsection (f)(1) of this section that would be payable by such entity if such entity were a small health center.

(B) The Secretary may waive in whole or in part, on a prospective or retrospective basis, the application of the requirement of subparagraph (A) for any entity if the Secretary determines that the entity is financially unable to meet such requirement or that compliance with such requirement would unreasonably limit the ability of the entity to provide for the adequate support of the provision of health services by Corps members. Funds which would be paid to the United States but for a waiver under this subparagraph shall be used by an entity to—

(i) expand or improve its provision of health services;

(ii) increase the number of individuals served;

(iii) renovate or modernize facilities for its provision of health services;

(iv) improve the administration of its health service programs; or

(v) to establish a financial reserve to assure its ability to continue providing health services.

(c) Excess funds

The excess (if any) of the amount of funds collected by an entity which is not a small health center in accordance with subsection (a)(2) of this section over the amount paid to the United States in accordance with subsection (a)(3) of this section or subsection (b)(5)(A) of this section shall be used by the entity to expand and improve the provision of health services to the individuals in the health manpower shortage area for which the entity submitted an application or to recruit and retain health manpower to provide health services for such individuals.

[*See main edition for text of* (*d*) *and* (*e*)]

(f) Small health centers

(1) An entity which is a small health center shall pay to the United States, as prescribed by the Secretary in each calendar quarter (or other period as may be specified in the agreement) during which any Corps member is assigned to such entity, an amount equal to the amount (prorated for a calendar quarter or other period) by which the revenues that the center may reasonably expect to receive during an annual period for the provision of health services exceeds the costs that the center may reasonably expect to incur in the provision of such services, except that the amount that an entity shall pay to the United States under this paragraph shall not exceed the amount such entity would pay to the United States under paragraph (3) of subsection (a) of this section if such paragraph applied to such entity.

(2)(A) To determine for purposes of paragraph (1) the revenues and costs which an entity that is a small health center may reasonably be expected to receive and incur in an annual period for the provision of health services, the entity shall submit to the Secretary before the beginning of such period a proposed budget which—

(i) describes the primary and supplemental health services (as defined in section 254c of this title) which are needed by the area the entity serves in such period; and

(ii) states the revenues and costs which the entity expects to receive and incur in providing such health services in such period.

(B) From the submission under subparagraph (A) and other information available to the Secretary, the Secretary shall determine—

(i) the primary and supplemental health services (as defined in section 254c of this title) needed in the area the entity serves;

(ii) the fees, premiums, third party reimbursements, and other revenues the entity making the submission may reasonably expect to receive from the provision of such services; and

(iii) the costs which the entity may reasonably expect to incur in providing such services.

The revenues and costs determined by the Secretary shall be the revenues and costs used in making the determination under paragraph (1).

(3) The Secretary may waive in whole or in part, on a prospective or retrospective basis, the application of paragraph (1) for an entity which is a small health center if the Secretary determines that the entity needs all or part of the amounts otherwise payable under such paragraph to—

(A) expand or improve its provision of health services;

(B) increase the number of individuals served;

(C) renovate or modernize facilities for its provision of health services;

(D) improve the administration of its health service programs; or

(E) establish a financial reserve to assure its ability to continue providing health services.

(4) The excess (if any) of the amount of funds collected by an entity which is a small health center in accordance with subsection (a)(2) of this section over the amount paid to the United States in accordance with paragraph (1) of this subsection shall be used by the center for the purposes set out in subparagraphs (A) through (E) of paragraph (3) of this subsection or to recruit and retain health manpower to provide health services to the individuals in the health manpower shortage area for which the entity submitted an application.

(5) For purposes of this section, the term "small health center" means an entity other than—

(A) a hospital (or part of a hospital);

(B) a public entity; or

(C) an entity that is receiving a grant under section 254b of this title or section 254c of this title, except that such term includes an entity whose grant is less than the total of the amounts, calculated on an annual basis, specified in subparagraphs (A) and (B) of subsection (a)(3) of this section.

(As amended Dec. 1, 1983, Pub. L. 98–194, § 3, 97 Stat. 1345.)

AMENDMENTS

1983—Subsec. (a)(3). Pub. L. 98–194, § 3(a)(1)(A), inserted ", if not a small health center," after "the entity" in provisions preceding subpar. (A).

Subsec. (a)(4), (5). Pub. L. 98–194, § 3(a)(1), (C), (D), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(1). Pub. L. 98–194, § 3(b)(1), (2), inserted ", on a prospective or retrospective basis," after "in whole or in part", and "which is not a small health center" after "for an entity".

Subsec. (b)(2). Pub. L. 98–194, § 3(b)(3), (4), inserted ", on a prospective or retrospective basis," after "in whole or in part", and "is not a small health center and which" after "for any entity which".

Subsec. (b)(3). Pub. L. 98–194, § 3(b)(5), inserted "and does not, pursuant to paragraph (5), require payment by the entity in the amount described in subsection (f)(1) of this section," after "paragraph (1) or (2),".

Subsec. (b)(5). Pub. L. 98–194, § 3(b)(6), added par. (5).

Subsec. (c). Pub. L. 98–194, § 3(c), inserted "which is not a small health center" after "an entity", and "or subsection (b)(5)(A) of this section" before "shall be used by the entity".

Subsec. (f). Pub. L. 98–194, § 3(d), added subsec. (f).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 4 of Pub. L. 98–194 provided that: "The amendments made by section 3 [amending this section] shall apply with respect to agreements entered into under section 334 of the Public Health Service Act [this section] after the date of the enactment of this Act [Dec. 1, 1983], but, to the extent feasible, the Secretary of Health and Human Services shall revise agreements entered into under such section 334 before such date to reflect the amendments made by section 3."

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 98–194 provided that: "Congress finds and declares that—

"(1) rural health clinics are an important part of America's health care delivery system;

"(2) National Health Service Corps personnel assigned to rural health clinics located in health manpower shortage areas have provided valuable and needed staffing help for such clinics;

"(3) rural health clinics receiving assistance from National Health Service Corps personnel should be expected to reimburse the Federal Government for a reasonable share of the costs of such personnel; and

"(4) the criteria which should be applied to reimbursement by such clinics for use of such personnel should be a fair and equitable one which reflects the needs of such clinics and the populations served by such clinics, as well as the value of the services rendered by such personnel."

§ 254*l*. National Health Service Corps Scholarship Program

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Scholarship provisions; contract with educational institution; increase in monthly stipend

(1) A scholarship provided to a student for a school year under a written contract under the Scholarship Program shall consist of—

[*See main edition for text of* (*A*) *and* (*B*), (*2*) *and* (*3*); (*h*) *and* (*i*)]

(As amended Oct. 22, 1985, Pub. L. 99–129, title II, § 210(b), 99 Stat. 537.)

AMENDMENTS

1985—Subsec. (g)(1). Pub. L. 99–129 struck out "or under section 294z of this title (relating to scholarships for first-year students of exceptional financial need)," after "Scholarship Program".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 228 of Pub. L. 99–129 provided that:

"(a) Except as provided in subsection (b), this Act and the amendments and repeals made by this Act [enacting sections 294q–1 to 294q–3 of this title, amending sections 254*l*, 292a, 292b, 292h, 292j, 293c, 294a, 294b, 294d, 294e, 294g, 294j, 294m to 294p, 294z, 295f to 295f–2, 295g, 295g–1, 295g–3, 295g–4, 295g–6 to 295g–8, 295g–8b, 295h, 295h–1a to 295h–1c, 296k, 296*l*, 296m, 297a, 298b–5, and 300aa–14 of this title, repealing sections 292c, 295 to 295e–5, 295g–2, 295g–5, 295g–8a, and 295g–9 of this title, enacting provisions set out as notes under sections 201, 292h, 293c, 294d, 294n, and 300aa–14 of this title and section 462 of the Appendix to Title 50, War and National Defense, and amending provisions set out as a note under section 298b–5 of this title] shall take effect on the date of enactment of this Act [Oct. 22, 1985].

"(b)(1) The amendments made by section 101(a) of this Act [amending section 294a of this title] shall take effect as of October 1, 1985.

"(2) The amendments made by section 208(e) of this Act [amending section 294e of this title] shall take effect nine months after the date of enactment of this Act [Oct. 22, 1985]."

"(3) The amendment made by section 208(h) of this Act [amending section 294a of this title] shall take effect as of October 1, 1983.

"(4) The provisions of section 746 of the Public Health Service Act (as added by the amendment made by section 209(h)(2) of this Act) [section 294g-2 of this title] shall take effect as of June 30, 1984.

"(5) The amendments made by section 209(j) of this Act [amending sections 294m and 297a of this title] shall take effect as of June 30, 1984.

"(6) The amendments made by section 213(a) of this Act [amending section 295g-1 of this title] shall take effect as of October 1, 1985."

Section Referred to in Other Sections

This section is referred to in sections 242a, 254d, 254m, 254n, 254o, 254q of this title.

§ 254m. Obligated service under contract

[See main edition for text of (a) to (d)]

(e) Service under National Research Service Award program; credits against obligated service time

Notwithstanding any other provision of this subchapter, service of an individual under a National Research Service Award awarded under subparagraph (A) or (B) of section 288(a)(1)[1] of this title shall be counted against the period of obligated service which the individual is required to perform under the Scholarship Program or under section 234 of this title as in effect on September 30, 1977.

[See main edition for credits]

Codification

Section 288 of this title, referred to in subsec. (e), in the original referred to section 472(a)(1), meaning section 472(a)(1) of the Public Health Service Act, which was classified to section 289*l*-1(a)(1) of this title. Title IV of the Public Health Service Act was amended generally by section 2 of Pub. L. 99-158, Nov. 20, 1985, 99 Stat. 822, and provisions formerly contained in section 472(a)(1) were restated in section 487(a)(1) of the Public Health Service Act, which is classified to section 288(a)(1) of this title.

Section Referred to in Other Sections

This section is referred to in sections 210, 242a, 254n, 254o of this title.

§ 254r. Indian Health Scholarships

(a) Authorization of appropriations

In addition to the sums authorized to be appropriated under section 254q(a) of this title to carry out the Scholarship Program, there are authorized to be appropriated $5,450,000 for the fiscal year ending September 30, 1978, $6,300,000 for the fiscal year ending September 30, 1979, $7,200,000 for the fiscal year ending September 30, 1980, $9,000,000 for the fiscal year ending September 30, 1981, $10,300,000 for the fiscal year ending September 30, 1982, $11,800,000 for the fiscal year ending September 30, 1983, and $13,600,000 for the fiscal year ending September 30, 1984, to provide scholarships under the Scholarship Program to provide physicians, osteopaths, dentists, veterinarians, nurses, optometrists, podiatrists, pharmacists, clinical psychologists, public health personnel, and allied health professionals to provide services to Indians. Such scholarships shall be designated "Indian Health Scholarships" and shall be made in accordance with this subpart, except as provided in subsection (b) of this section.

[See main edition for text of (b) and (c)]

(As amended Oct. 30, 1984, Pub. L. 98-551, § 3, 98 Stat. 2817.)

Amendments

1984—Subsec. (a). Pub. L. 98-551 added "clinical psychologists,".

SUBPART III—HOME HEALTH SERVICES

§ 255. Home health services

(a) Purpose; authorization of grants and loans; considerations; conditions on loans; appropriations

[See main edition for text of (1) to (4)]

(5) There are authorized to be appropriated for grants and loans under this subsection $5,000,000 for each of the fiscal years ending on September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

(b) Grants and contracts for training programs for paraprofessionals; considerations; applications; appropriations

[See main edition for text of (1) to (4)]

(5) There are authorized to be appropriated for grants and contracts under this subsection $2,000,000 for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

[See main edition for text of (c) and (d)]

(As amended Oct. 30, 1984, Pub. L. 98-555, § 6, 98 Stat. 2856.)

Amendments

1984—Subsecs. (a)(5), (b)(5). Pub. L. 98-555 added provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

PART E—NARCOTIC ADDICTS AND OTHER DRUG ABUSERS

§ 257. Care and treatment of narcotic addicts

Amendment of Subsection (a)

Pub. L. 98-473, title II, §§ 232(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2031, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), subsection (a) of this section is amended by deleting "or convicted of offenses against the United States and sentenced to treatment" and "addicts who are committed to the custody of the Attorney General pursuant to provisions of the Federal Youth Corrections Act [18 U.S.C. 5005 et seq.],". See Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure.

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[1] See Codification note below.

REFERENCES IN TEXT

The Federal Youth Corrections Act, referred to in subsec. (a), is act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1086, as amended, which was classified generally to chapter 402 (§ 5005 et seq.) of Title 18, Crimes and Criminal Procedure, and was repealed by Pub. L. 98-473, title II, § 218(a)(8), Oct. 12, 1984, 98 Stat. 2027.

§ 259. Convict addicts or other persons with drug abuse or drug dependence problems

AMENDMENT OF SUBSECTION (d)

Pub. L. 98-473, title II, §§ 232(b), 235(a)(1), Oct. 12, 1984, 98 Stat. 2031, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), subsection (d) of this section is amended by adding "or supervised release" after "parole". See Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure.

PART F—LICENSING OF BIOLOGICAL PRODUCTS AND CLINICAL LABORATORIES AND CONTROL OF RADIATION

SUBPART 1—BIOLOGICAL PRODUCTS

§ 262. Regulation of biological products

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 236, 263 of this title; title 21 sections 360aa, 360bb, 360cc, 360ee, 392; title 35 section 156.

PART G—QUARANTINE AND INSPECTION

§ 264. Regulations to control communicable diseases

EX. ORD. NO. 12452. REVISED LIST OF QUARANTINABLE COMMUNICABLE DISEASES

Ex. Ord. No. 12452, Dec. 22, 1983, 48 F.R. 56927, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 264(b) of Title 42 of the United States Code, it is hereby ordered as follows:

SECTION 1. Based upon the recommendation of the National Advisory Health Council and the Assistant Secretary for Health of the Department of Health and Human Services, and for the purposes of specifying certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of communicable diseases, the following named communicable diseases are hereby specified pursuant to Section 264(b) of Title 42 of the United States Code: Cholera or suspected Cholera, Diphtheria, infectious Tuberculosis, Plague, suspected Smallpox, Yellow Fever, and suspected Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Congo-Crimean, and others not yet isolated or named).

SEC. 2. Executive Order No. 9708 of March 26, 1946, Executive Order No. 10532 of May 28, 1954, and Executive Order No. 11070 of December 12, 1962, are hereby revoked.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 266, 271 of this title; title 45 section 546.

PART H—ORGAN TRANSPLANTS

PRIOR PROVISIONS

A prior part H, which related to grants to Alaska for mental health, was omitted in the general revision of part H by Pub. L. 98-507, title II, § 201, Oct. 19, 1984, 98 Stat. 2342.

Another prior part H, entitled "National Library of Medicine", as added by act Aug. 3, 1956, ch. 907, 70 Stat. 960, was redesignated part I and it is classified to section 275 et seq. of this title.

§ 273. Assistance for organ procurement organizations

(a) Grant authority of Secretary

(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b) of this section.

(2) The Secretary may make grants for the establishment, initial operation, and expansion of qualified organ procurement organizations described in subsection (b) of this section.

(3) In making grants under paragraphs (1) and (2), the Secretary shall—

(A) take into consideration any recommendations made by the Task Force on Organ Transplantation established under section 101 of the National Organ Transplant Act [42 U.S.C. 273 note], and

(B) give special consideration to applications which cover geographical areas which are not adequately served by organ procurement organizations.

(b) Qualified organizations

(1) A qualified organ procurement organization for which grants may be made under subsection (a) of this section is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for the procurement of kidneys,

(D) has procedures to obtain payment for non-renal organs provided to transplant centers,

(E) has a defined service area which is a geographical area of sufficient size which (unless the service area comprises an entire State) will include at least fifty potential organ donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,

(F) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(G) has a board of directors or an advisory board which—

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) members who represent the public residing in such area,

(III) a physician with knowledge, experience, or skill in the field of histocompatability,

(IV) a physician with knowledge or skill in the field of neurology, and

(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G) with the organization, a member who is a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2), and

(iii) has no authority over any other activity of the organization.

(2) An organ procurement organization shall—

(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

(B) conduct and participate in systematic efforts, including professional education, to acquire all useable organs from potential donors,

(C) arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network under section 274(b)(2)(D) of this title,

(D) arrange for the appropriate tissue typing of donated organs,

(E) have a system to allocate donated organs among transplant centers and patients according to established medical criteria,

(F) provide or arrange for the transportation of donated organs to transplant centers,

(G) have arrangements to coordinate its activities with transplant centers in its service area,

(H) participate in the Organ Procurement Transplantation Network established under section 274 of this title,

(I) have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all useable tissues are obtained from potential donors, and

(J) evaluate annually the effectiveness of the organization in acquiring potentially available organs.

(c) Authorization of appropriations

For grants under subsection (a) of this section there are authorized to be appropriated $5,000,000 for fiscal year 1985, $8,000,000 for fiscal year 1986, and $12,000,000 for fiscal year 1987.

(July 1, 1944, ch. 373, title III, § 371, as added Oct. 19, 1984, Pub. L. 98-507, title II, § 201, 98 Stat. 2342.)

REFERENCES IN TEXT

Section 101 of the National Organ Transplant Act, referred to in subsec. (a)(3)(A), is section 101 of Pub. L. 98-507, which is set out as a note below.

The Social Security Act, referred to in subsec. (b)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 273, act July 1, 1944, ch. 373, title III, § 371, as added July 28, 1956, ch. 772, title II, § 201, 70 Stat. 709, which authorized grants to the Territory of Alaska for an integrated mental health program, was repealed effective July 1, 1959, by Pub. L. 86-70, § 31(b)(1), June 25, 1959, 73 Stat. 148.

A prior section 371 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960, which was renumbered section 381 and classified to section 275 of this title, was repealed by Pub. L. 99-158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

SHORT TITLE

For short title of Pub. L. 98-507, which enacted this part as the "National Organ Transplant Act", see section 1 of Pub. L. 98-507, set out as a Short Title of 1984 Amendments note under section 201 of this title.

TASK FORCE ON ORGAN PROCUREMENT AND TRANSPLANTATION

Title I of Pub. L. 98-507 provided that:

"ESTABLISHMENT AND DUTIES OF TASK FORCE

"SEC. 101. (a) Not later than ninety days after the date of the enactment of this Act [Oct. 19, 1984], the Secretary of Health and Human Services (hereinafter in this title referred to as the 'Secretary') shall establish a Task Force on Organ Transplantation (hereinafter in this title referred to as the 'Task Force').

"(b)(1) The Task Force shall—

"(A) conduct comprehensive examinations of the medical, legal, ethical, economic, and social issues presented by human organ procurement and transplantation,

"(B) prepare the assessment described in paragraph (2) and the report described in paragraph (3), and

"(C) advise the Secretary with respect to the development of regulations for grants under section 371 of the Public Health Service Act [this section].

"(2) The Task Force shall make an assessment of immunosuppressive medications used to prevent organ rejection in transplant patients, including—

"(A) an analysis of the safety, effectiveness, and costs (including cost-savings from improved success rates of transplantation) of different modalities of treatment;

"(B) an analysis of the extent of insurance reimbursement for long-term immunosuppressive drug therapy for organ transplant patients by private insurers and the public sector;

"(C) an identification of problems that patients encounter in obtaining immunosuppressive medications; and

"(D) an analysis of the comparative advantages of grants, coverage under existing Federal programs, or other means to assure that individuals who need such medications can obtain them.

"(3) The Task Force shall prepare a report which shall include—

"(A) an assessment of public and private efforts to procure human organs for transplantation and an identification of factors that diminish the number of organs available for transplantation;

"(B) an assessment of problems in coordinating the procurement of viable human organs including skin and bone;

"(C) recommendations for the education and training of health professionals, including physicians, nurses, and hospital and emergency care personnel, with respect to organ procurement;

"(D) recommendations for the education of the general public, the clergy, law enforcement officers, members of local fire departments, and other agencies and individuals that may be instrumental in effecting organ procurement;

"(E) recommendations for assuring equitable access by patients to organ transplantation and for assuring the equitable allocation of donated organs among transplant centers and among patients medically qualified for an organ transplant;

"(F) an identification of barriers to the donation of organs to patients (with special emphasis upon pediatric patients), including an assessment of—

"(i) barriers to the improved identification of organ donors and their families and organ recipients;

"(ii) the number of potential organ donors and their geographical distribution;

"(iii) current health care services provided for patients who need organ transplantation and organ procurement procedures, systems, and programs which affect such patients;

"(iv) cultural factors affecting the family with respect to the donation of the organs; and

"(v) ethical and economic issues relating to organ transplantation needed by chronically ill patients;

"(G) recommendations for the conduct and coordination of continuing research concerning all aspects of the transplantation of organs;

"(H) an analysis of the factors involved in insurance reimbursement for transplant procedures by private insurers and the public sector;

"(I) an analysis of the manner in which organ transplantation technology is diffused among and adopted by qualified medical centers, including a specification of the number and geographical distribution of qualified medical centers using such technology and an assessment of whether the number of centers using such technology is sufficient or excessive and of whether the public has sufficient access to medical procedures using such technology; and

"(J) an assessment of the feasibility of establishing, and of the likely effectiveness of, a national registry of human organ donors.

"MEMBERSHIP

"SEC. 102. (a) The Task Force shall be composed of twenty-five members as follows:

"(1) Twenty-one members shall be appointed by the Secretary of which:

"(A) nine members shall be physicians or scientists who are eminent in the various medical and scientific specialties related to human organ transplantation;

"(B) three members shall be individuals who are not physicians and who represent the field of human organ procurement;

"(C) four members shall be individuals who are not physicians and who as a group have expertise in the fields of law, theology, ethics, health care financing, and the social and behavioral sciences;

"(D) three members shall be individuals who are not physicians or scientists and who are members of the general public; and

"(E) two members shall be individuals who represent private health insurers or self-insurers.

"(2) The Surgeon General of the United States, the Director of the National Institutes of Health, the Commissioner of the Food and Drug Administration, and the Administrator of the Health Care Financing Administration shall be ex officio members.

"(b) No individual who is a full-time officer or employee of the United States may be appointed under subsection (a)(1) to the Task Force. A vacancy in the Task Force shall be filled in the manner in which the original appointment was made. A vacancy in the Task Force shall not affect its powers.

"(c) Members shall be appointed for the life of the Task Force.

"(d) The Task Force shall select a Chairman from among its members who are appointed under subsection (a)(1).

"(e) Thirteen members of the Task Force shall constitute a quorum, but a lesser number may hold hearings.

"(f) The Task Force shall hold its first meeting on a date specified by the Secretary which is not later than thirty days after the date on which the Secretary establishes the Task Force under section 101. Thereafter, the Task Force shall meet at the call of the Chairman or a majority of its members, but shall meet at least three times during the life of the Task Force.

"(g)(1) Each member of the Task Force who is not an officer or employee of the United States shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including traveltime) during which such member is engaged in the actual performance of duties as a member of the Task Force. Each member of the Task Force who is an officer or employee of the United States shall receive no additional compensation.

"(2) While away from their homes or regular places of business in the performance of duties for the Task Force, all members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

"SUPPORT FOR THE TASK FORCE

"SEC. 103. (a) Upon request of the Task Force, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Task Force to assist the Task Force in carrying out its duties under this Act [Pub. L. 98-507, see Short Title of 1984 Amendments note set out under section 201 of this title].

"(b) The Secretary shall provide the Task Force with such administrative and support services as the Task Force may require to carry out its duties.

"REPORT

"SEC. 104. (a) The Task Force may transmit to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives such interim reports as the Task Force considers appropriate.

"(b) Not later than 7 months after the date on which the Task Force is established by the Secretary under section 101, the Task Force shall transmit a report to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives on its assessment under section 101(b)(2) of immunosuppressive medications used to prevent organ rejection.

"(c) Not later than twelve months after the date on which the Task Force is established by the Secretary under section 101, the Task Force shall transmit a final report to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives. The final report of the Task Force shall include—

"(1) a description of any findings and conclusions of the Task Force made pursuant to any examination conducted under section 101(b)(1)(A),

"(2) the matters specified in section 101(b)(3), and

"(3) such recommendations as the Task Force considers appropriate.

"TERMINATION

"SEC. 105. The Task Force shall terminate three months after the date on which the Task Force transmits the report required by section 104(c)."

BONE MARROW REGISTRY DEMONSTRATION AND STUDY

Section 401 of Pub. L. 98-507 provided that:

"(a) Not later than nine months after the date of enactment of this Act [Oct. 19, 1984], the Secretary of Health and Human Services shall hold a conference on the feasibility of establishing and the effectiveness of a national registry of voluntary bone marrow donors.

"(b) If the conference held under subsection (a) finds that it is feasible to establish a national registry of voluntary donors of bone marrow and that such a registry is likely to be effective in matching donors with recipients, the Secretary of Health and Human Services, acting through the Assistant Secretary for Health, shall, for purposes of the study under subsection (c), establish a registry of voluntary donors of bone marrow. The Secretary shall assure that—

> "(1) donors of bone marrow listed in the registry have given an informed consent to the donation of the bone marrow; and
>
> "(2) the names of the donors in the registry are kept confidential and access to the names and any other information in the registry is restricted to personnel who need the information to maintain and implement the registry, except that access to such other information shall be provided for purposes of the study under subsection (c).

If the conference held under subsection (a) makes the finding described in this subsection, the Secretary shall establish the registry not later than six months after the completion of the conference.

"(c) The Secretary of Health and Human Services, acting through the Assistant Secretary for Health, shall study the establishment and implementation of the registry under subsection (b) to identify the issues presented by the establishment of such a registry, to evaluate participation of bone marrow donors, to assess the implementation of the informed consent and confidentiality requirements, and to determine if the establishment of a permanent bone marrow registry is needed and appropriate. The Secretary shall report the results of the study to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than two years after the date the registry is established under subsection (b)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 274, 274b, 274c of this title.

§ 274. Organ procurement and transplantation network

(a) Contract authority of Secretary; limitation; available appropriations

The Secretary shall by contract provide for the establishment and operation of an Organ Procurement and Transplantation Network which meets the requirements of subsection (b) of this section. The amount provided under such contract in any fiscal year may not exceed $2,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after fiscal year 1984.

(b) Functions

(1) The Organ Procurement and Transplantation Network shall carry out the functions described in paragraph (2) and shall—

> (A) be a private nonprofit entity which is not engaged in any activity unrelated to organ procurement, and
>
> (B) have a board of directors which includes representatives of organ procurement organizations (including organizations which have received grants under section 273 of this title), transplant centers, voluntary health associations, and the general public.

(2) The Organ Procurement and Transplantation Network shall—

> (A) establish in one location or through regional centers—
>
> > (i) a national list of individuals who need organs, and
> >
> > (ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included in the list, especially individuals whose immune system makes it difficult for them to receive organs,
>
> (B) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,
>
> (C) assist organ procurement organizations in the distribution of organs which cannot be placed within the service areas of the organizations,
>
> (D) adopt and use standards of quality for the acquisition and transportation of donated organs,
>
> (E) prepare and distribute, on a regionalized basis, samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatability[1] of such individuals with organ donors,
>
> (F) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,
>
> (G) provide information to physicians and other health professionals regarding organ donation, and
>
> (H) collect, analyze, and publish data concerning organ donation and transplants.

(July 1, 1944, ch. 373, title III, § 372, as added Oct. 19, 1984, Pub. L. 98-507, title II, § 201, 98 Stat. 2344.)

PRIOR PROVISIONS

A prior section 274, act July 1, 1944, ch. 373, title III, § 372, as added July 28, 1956, ch. 772, title II, § 201, 70 Stat. 710, and amended June 25, 1959, Pub. L. 86-70, § 31(b)(2)-(4), 73 Stat. 148, which related to grants to Alaska for a mental health program and payment for construction of hospital facilities, was omitted in the general revision of this part by section 201 of Pub. L. 98-507.

Another section 372 of act July 1, 1944, added by act Aug. 3, 1956, ch. 941, § 1, 70 Stat. 960, and relating to the functions of the National Library of Medicine, which was renumbered section 382 and classified to section 276 of this title, was repealed by Pub. L. 99-158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

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[1] So in original. Probably should be "compatibility".

Section Referred to in Other Sections

This section is referred to in sections 273, 274b, 274c of this title.

§ 274a. Scientific registry

The Secretary shall, by grant or contract, develop and maintain a scientific registry of the recipients of organ transplants. The registry shall include such information respecting patients and transplant procedures as the Secretary deems necessary to an ongoing evaluation of the scientific and clinical status of organ transplantation. The Secretary shall prepare for inclusion in the report under section 274d of this title an analysis of information derived from the registry.

(July 1, 1944, ch. 373, title III, § 373, as added Oct. 19, 1984, Pub. L. 98-507, title II, § 201, 98 Stat. 2345.)

Prior Provisions

A prior section 373 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960, and relating to a Board of Regents of the National Library of Medicine, which was renumbered section 383 and classified to section 277 of this title, was repealed by Pub. L. 99-158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

Section Referred to in Other Sections

This section is referred to in section 274b of this title.

§ 274b. General provisions respecting grants and contracts

(a) Application requirement

No grant may be made under section 273 or 274a of this title or contract entered into under section 274 or 274a of this title unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall by regulation prescribe.

(b) Special considerations and priority; planning and establishment grants

(1) In considering applications for grants under section 273 of this title—

(A) the Secretary shall give priority to any applicant which has a formal agreement of cooperation with all transplant centers in its proposed service area,

(B) the Secretary shall give special consideration to organizations which met the requirements of section 273(b) of this title before October 19, 1984, and

(C) the Secretary shall not discriminate against an applicant solely because it provides health care services other than those related to organ procurement.

The Secretary may not make a grant for more than one organ procurement organization which serve the same service area.

(2) A grant for planning under section 273 of this title may be made for one year with respect to any organ procurement organization and may not exceed $100,000.

(3) Grants under section 273 of this title for the establishment, initial operation, or expansion of organ procurement organizations may be made for two years. No such grant may exceed $500,000 for any year and no organ procurement organization may receive more than $800,000 for initial operation or expansion.

(c) Determination of grant amount; terms of payment; recordkeeping; access for purposes of audits and examination of records

(1) The Secretary shall determine the amount of a grant made under section 273 or 274a of this title. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

(2)(A) Each recipient of a grant under section 273 or 274a of this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(B) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under section 273 or 274a of this title that are pertinent to such grant.

(d) "Transplant center" and "organ" defined

For purposes of this part:

(1) The term "transplant center" means a health care facility in which transplants of organs are performed.

(2) The term "organ" means the human kidney, liver, heart, lung, pancreas, and any other human organ (other than corneas and eyes) specified by the Secretary by regulation and for purposes of section 274a of this title, such term includes bone marrow.

(July 1, 1944, ch. 373, title III, § 374, as added Oct. 19, 1984, Pub. L. 98-507, title II, § 201, 98 Stat. 2345.)

Prior Provisions

A prior section 374 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 961, and relating to acceptance and administration of gifts to the National Library of Medicine and to the establishment of memorials to donors, which was renumbered section 384 and classified to section 278 of this title, was repealed by Pub. L. 99-158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

§ 274c. Administration

The Secretary shall, during fiscal years 1985, 1986, 1987, and 1988, designate and maintain an identifiable administrative unit in the Public Health Service to—

(1) administer this part and coordinate with the organ procurement activities under title

XVIII of the Social Security Act [42 U.S.C. 1395 et seq.],

(2) conduct a program of public information to inform the public of the need for organ donations,

(3) provide technical assistance to organ procurement organizations receiving funds under section 273 of this title, the Organ Procurement and Transplantation Network established under section 274 of this title, and other entities in the health care system involved in organ donations, procurement, and transplants, and

(4) one year after the date on which the Task Force on Organ Transplantation transmits its final report under section 104(c) of the National Organ Transplant Act [42 U.S.C. 273 note], and annually thereafter through fiscal year 1988, submit to Congress an annual report on the status of organ donation and coordination services and include in the report an analysis of the efficiency and effectiveness of the procurement and allocation of organs and a description of problems encountered in the procurement and allocation of organs.

(July 1, 1944, ch. 373, title III, § 375, as added Oct. 19, 1984, Pub. L. 98-507, title II, § 201, 98 Stat. 2346.)

References in Text

The Social Security Act, referred to in par. (1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 104(c) of the National Organ Transplant Act, referred to in par. (4), is section 104(c) of Pub. L. 98-507, which is set out as a note under section 273 of this title.

Prior Provisions

A prior section 375 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962, and relating to definitions, which was renumbered section 385 and classified to section 279 of this title, was repealed by Pub. L. 99-158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

§ 274d. Report

The Secretary shall annually publish a report on the scientific and clinical status of organ transplantation. The Secretary shall consult with the Director of the National Institutes of Health and the Commissioner of the Food and Drug Administration in the preparation of the report.

(July 1, 1944, ch. 373, title III, § 376, as added Oct. 19, 1984, Pub. L. 98-507, title II, § 201, 98 Stat. 2346.)

Prior Provisions

A prior section 376 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962, and relating to Library facilities, which was renumbered section 386 and classified to section 280 of this title, was repealed by Pub. L. 99-158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

Section Referred to in Other Sections

This section is referred to in section 274a of this title.

§ 274e. Prohibition of organ purchases

(a) Prohibition

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.

(b) Penalties

Any person who violates subsection (a) of this section shall be fined not more than $50,000 or imprisoned not more than five years, or both.

(c) Definitions

For purposes of subsection (a) of this section:

(1) The term "human organ" means the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin, and any other human organ specified by the Secretary of Health and Human Services by regulation.

(2) The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(3) The term "interstate commerce" has the meaning prescribed for it by section 321(b) of title 21.

(Pub. L. 98-507, title III, § 301, Oct. 19, 1984, 98 Stat. 2346.)

Codification

Section was enacted as part of the National Organ Transplant Act, and not as part of the Public Health Service Act which comprises this chapter.

Part I—Biomedical Ethics

Amendments

1985—Pub. L. 99-158, §§ 3(b), 11, Nov. 20, 1985, 99 Stat. 879, 883, added part I "Biomedical Ethics", and repealed former part I "National Library of Medicine".

§ 275. Biomedical Ethics Board

(a) Establishment

There is established in the legislative branch of the Government the Biomedical Ethics Board (hereinafter referred to as the "Board").

(b) Membership; term of office; vacancies; chairman and vice chairman; meetings

(1) The Board shall consist of twelve members as follows:

(A) Six Members of the Senate appointed as follows: Three members appointed by the Majority Leader of the Senate from the majority party and three members appointed by the Minority Leader from the minority party.

(B) Six Members of the House of Representatives appointed by the Speaker of the House of Representatives, three from the majority party and three from the minority party.

(2) The term of office of a member of the Board shall expire when the member leaves the

office of Senator or Representative, as the case may be, or upon the expiration of eight years after the date of the member's appointment to the Board, whichever occurs first.

(3) Vacancies in the membership of the Board shall not affect the power of the remaining members to execute the functions of the Board and shall be filled in the same manner as in the case of the original appointment.

(4) The Board shall select a chairman and a vice chairman from among its members at the beginning of each Congress. The vice chairman shall act as chairman in the absence of the chairman or in the event of the incapacity of the chairman. The chairmanship and vice chairmanship shall alternate between the Senate and the House of Representatives with each Congress. The chairman during each even-numbered Congress shall be selected by the Members of the House of Representatives on the Board from among their number. The vice chairman during each Congress shall be chosen in the same manner from that House of Congress other than the House of Congress of which the chairman is a Member.

(5) The Board shall meet once every three months unless such meeting is dispensed with by the chairman, and may meet at any time upon the request of four or more members of the Board or upon the call of the chairman.

(c) Functions; annual report to Congress; report to Congress on research and developments in genetic engineering

(1) The Board shall study and report to the Congress on a continuing basis on the ethical issues arising from the delivery of health care and biomedical and behavioral research, including the protection of human subjects of such research and developments in genetic engineering (including activities in recombinant DNA technology) which have implications for human genetic engineering.

(2)(A) Except as provided in subparagraph (B), an annual report shall be transmitted to the Congress identifying the issues which were the subject of the study conducted under paragraph (1) and identifying areas, programs, and practices of medicine and biomedical and behavioral research which have significant ethical implications and which would be appropriate subjects for study.

(B) A report on research and developments in genetic engineering (including activities in recombinant DNA technology) which have implications for human genetic engineering shall be transmitted to the Congress not later than eighteen months after the appointment of the Committee under subsection (d) of this section.

(d) Biomedical Ethics Advisory Committee; appointment, membership, compensation, etc.; functions; public hearings; availability of additional personnel and information; gifts and donations; use of mails

(1) To conduct the studies and make the reports required by subsection (c) of this section, the Board shall appoint a Biomedical Ethics Advisory Committee (hereinafter referred to as the "Committee"). The Committee shall consist of fourteen members as follows:

(A) Four of the members shall be appointed by the Board from individuals who are distinguished in biomedical or behavioral research.

(B) Three of the members shall be appointed by the Board from individuals who are distinguished in the practice of medicine or otherwise distinguished in the provision of health care.

(C) Five of the members shall be appointed by the Board from individuals who are distinguished in one or more of the fields of ethics, theology, law, the natural sciences (other than the biomedical or behavioral sciences), the social sciences, the humanities, health administration, government, and public affairs.

(D) Two of the members shall be appointed by the Board from individuals who are representatives of citizens with an interest in biomedical ethics but who possess no specific expertise.

(2)(A) The Committee, by majority vote, shall elect from its members a chairman and a vice chairman and appoint an executive director who shall serve for such time and under such conditions as the Committee may prescribe. In the absence of the chairman, or in the event of the incapacity of the chairman, the vice chairman shall act as chairman.

(B) The term of office of each member of the Committee shall be four years, except that any such member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. Terms of the members shall be staggered so as to establish a rotating membership.

(C) The members of the Committee shall receive no pay for their services as members of the Committee, but shall be allowed necessary travel expenses (or, in the alternative, mileage for use of privately owned vehicles and a per diem in lieu of subsistence at not to exceed the rate prescribed in sections 5702 and 5704 of title 5) and other necessary expenses incurred by them in the performance of duties as a member of the Committee, without regard to the provisions of subchapter 1 [1] of chapter 57 and section 5731 of title 5, and regulations promulgated thereunder.

(D) The executive director of the Committee, with the approval of the Committee, may employ such staff and consultants as necessary to prepare studies and reports for the Committee.

(3)(A) The Committee may, for the purpose of carrying out its functions, hold such public hearings, sit and act at such times and places, and take such testimony, as the Committee considers appropriate.

(B) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Committee to assist the Committee in carrying out its functions.

(C) The Committee may secure directly from any department or agency of the United States information necessary to enable it to carry out its functions. Upon request of the chairman of the Committee, the head of such department or agency shall furnish such information to the Committee.

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[1] So in original. Probably should be "subchapter I".

(D) The Committee may accept, use, and dispose of gifts or donations or services or property.

(E) The Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) Authorization of appropriations

To enable the Board and the Committee to carry out their functions there are authorized to be appropriated $2,000,000 for fiscal year 1986, $2,500,000 for fiscal year 1987, and $3,000,000 for fiscal year 1988.

(July 1, 1944, ch. 373, title III, § 381, as added Nov. 20, 1985, Pub. L. 99-158, § 11, 99 Stat. 883.)

PRIOR PROVISIONS

A prior section 275, act July 1, 1944, ch. 373, title III, § 381, formerly § 371, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960, and renumbered § 381, Mar. 13, 1970, Pub. L. 91-212, § 10(a)(3), 84 Stat. 66, which established a National Library of Medicine in the Public Health Service and stated the congressional purposes for such establishment, was repealed by Pub. L. 99-158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 289g of this title.

§§ 276 to 280a-1. Repealed. Pub. L. 99-158, § 3(b), Nov. 20, 1985, 99 Stat. 879

Section 276, acts July 1, 1944, ch. 373, title III, § 382, formerly § 372, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960, and renumbered and amended Mar. 13, 1970, Pub. L. 91-212, § 10(a)(3), (b)(1), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92-157, title III, § 301(d)(1), 85 Stat. 463, related to the functions of the Secretary with regard to acquisition, etc., of materials and rules for public access to materials.

Section 277, acts July 1, 1944, ch. 373, title III, § 383, formerly § 373, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960, amended Oct. 22, 1965, Pub. L. 89-291, § 4, 79 Stat. 1067, and renumbered and amended Mar. 13, 1970, Pub. L. 91-212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Oct. 30, 1970, Pub. L. 91-515, title VI, § 601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92-157, title III, § 301(d)(2), 85 Stat. 464; Nov. 9, 1978, Pub. L. 95-622, title II, § 212, 92 Stat. 3421, related to the establishment, etc., of Board of Regents.

Section 278, acts July 1, 1944, ch. 373, title III, § 384, formerly § 374, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 961, and renumbered and amended Mar. 13, 1970, Pub. L. 91-212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695; Apr. 26, 1983, Pub. L. 98-24, § 2(a)(2), 97 Stat. 176, related to the acceptance and administration of gifts and the establishment of memorials to donors.

Section 279, acts July 1, 1944, ch. 373, title III, § 385, formerly § 375, as added Aug. 3, 1956, ch. 907 § 1, 70 Stat. 962, and renumbered and amended Mar. 13, 1970, Pub. L. 91-212, § 10(a)(3), (b)(2), 84 Stat. 66, set out the definition of "medicine" and "medical".

Section 280, acts July 1, 1944, ch. 373, title III, § 386, formerly § 376, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962, and renumbered and amended Mar. 13, 1970, Pub. L. 91-212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92-157, title III, § 301(d)(3), 85 Stat. 464, authorized appropriations for erection and equipment of the Library.

Section 280a, acts July 1, 1944, ch. 373, title III, § 387, formerly § 377, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962, amended 1970 Reorg. Plan No. 2 § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, and renumbered Mar. 13, 1970, Pub. L. 91-212, § 10(a)(3), 84 Stat. 66, related to the transfer of the Armed Forces Medical Library to the Public Health Service for use in the administration of part I.

Section 280a-1, acts July 1, 1944, ch. 373, title III, § 388, formerly 378, as added Oct. 22, 1965, Pub. L. 89-291, § 3, 79 Stat. 1067, and renumbered and amended Mar. 13, 1970, Pub. L. 91-212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92-157, title III, § 301(d)(4), 85 Stat. 464, related to the establishment of regional branches.

PART J—ASSISTANCE TO MEDICAL LIBRARIES

§§ 280b to 280b-2. Repealed. Pub. L. 99-158, § 3(b), Nov. 20, 1985, 99 Stat. 879

Section 280b, acts July 1, 1944, ch. 373, title III, § 390, as added Oct. 22, 1965, Pub. L. 89-291, § 2, 79 Stat. 1059, and amended Mar. 13, 1970, Pub. L. 91-212, §§ 4(b), 5(b), 6(b), 84 Stat. 64, 65; July 23, 1974, Pub. L. 93-353, title II, §§ 201(a), (b), 202(a), 88 Stat. 371, 372; Aug. 1, 1977, Pub. L. 95-83, title II, § 202, 91 Stat. 386; Nov. 9, 1978, Pub. L. 95-622, title II, § 211, 92 Stat. 3420; Aug. 13, 1981, Pub. L. 97-35, title IX, § 925(a), 95 Stat. 569, set forth findings and declaration of policy and authorized appropriations with regard to assistance to medical libraries.

Section 280b-1, acts July 1, 1944, ch. 373, title III, § 391, as added Oct. 22, 1965, Pub. L. 89-291, § 2, 79 Stat. 1059, and amended Mar. 13, 1970, Pub. L. 91-212, § 10(b)(3), 84 Stat. 66; July 23, 1974, Pub. L. 93-353, title II, § 202(b), 88 Stat. 372, defined "sciences related to health", "National Medical Libraries Assistance Advisory Board", "Board", and "medical library".

Section 280b-2, acts July 1, 1944, ch. 373, title III, § 392, as added Oct. 22, 1965, Pub. L. 89-291, § 2, 79 Stat. 1060, and amended Mar. 13, 1970, Pub. L. 91-212, § 10(b)(4), (d)(2)(A), 84 Stat. 66, 67; July 23, 1974, Pub. L. 93-353, title II, § 202(c), 88 Stat. 372, related to the composition, functions, etc., of the National Medical Libraries Assistance Advisory Board.

§§ 280b-4 to 280b-11. Repealed. Pub. L. 99-158, § 3(b), Nov. 20, 1985, 99 Stat. 879

Section 280b-4, acts July 1, 1944, ch. 373, title III, § 393, formerly § 394, as added Oct. 22, 1965, Pub. L. 89-291, § 2, 79 Stat. 1062, amended Mar. 13, 1970, Pub. L. 91-212, §§ 2(b), 10(d)(2)(A), 84 Stat. 63, 67; June 18, 1973, Pub. L. 93-45, title I, § 107(a), 87 Stat. 92, and renumbered and amended July 23, 1974, Pub. L. 93-353, title II, §§ 203(a), 204, 88 Stat. 372, 373, related to grants for training in medical library sciences.

Section 280b-5, acts July 1, 1944, ch. 373, title III, § 394, formerly § 395, as added Oct. 22, 1965, Pub. L. 89-291, § 2, 79 Stat. 1062, amended Mar. 13, 1970, Pub.

L. 91-212, §§ 2(c), (d), 4(a), 5(a), 10(c)(1)(A), (B), (2)(A)-(C), (d)(2)(A), 84 Stat. 63, 64, 66, 67; June 18, 1973, Pub. L. 93-45, title I, § 107(b), (c), 87 Stat. 92, and renumbered and amended July 23, 1974, Pub. L. 93-353, title II, §§ 203(b), 204, 88 Stat. 372, 373, related to assistance for special scientific projects, and research and development in medical library science and related fields.

Section 280b-6, act July 1, 1944, ch. 373, title III, § 396, as added Oct. 22, 1965, Pub. L. 89-291, § 2, 79 Stat. 1063 was redesignated as subsecs. (b) and (c) of section 280b-5 of this title by Pub. L. 91-212, § 10(c)(2), Mar. 13, 1970, 84 Stat. 66.

Section 280b-7, acts July 1, 1944, ch. 373, title III, § 395, formerly § 397, as added Oct. 22, 1965, Pub. L. 89-291, § 2, 79 Stat. 1063, renumbered § 396 and amended Mar. 13, 1970, Pub. L. 91-212, §§ 2(e), 6(a)(1), (2), 10(c)(3), (d)(2)(A), 84 Stat. 63, 64, 67; June 18, 1973, Pub. L. 93-45, title I, § 107(d), 87 Stat. 92, and renumbered § 395 and amended July 23, 1974, Pub. L. 93-353, title II, §§ 203(c), 204, 88 Stat. 372, 373, related to grants for establishing, expanding, and improving basic medical library or related resources.

Section 280b-8, acts July 1, 1944, ch. 373, title III, § 396, formerly § 398, as added Oct. 22, 1965, Pub. L. 89-291, § 2, 79 Stat. 1065, renumbered § 397 and amended Mar. 13, 1970, Pub. L. 91-212, §§ 2(f), 7, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93-45, title I, § 107(e), 87 Stat. 92, and renumbered § 396 and amended July 23, 1974, Pub. L. 93-353, title II, §§ 202(e), (f), 203(d), 204, 88 Stat. 372, 373, related to grants for establishment of regional medical libraries.

Section 280b-9, acts July 1, 1944, ch. 373, title III, § 397, formerly § 399, as added Oct. 22, 1965, Pub. L. 89-291, § 2, 79 Stat. 1066, renumbered § 398 and amended Mar. 13, 1970, Pub. L. 91-212, §§ 2(g), 8, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93-45, title I, § 107(f), 87 Stat. 92, and renumbered § 397 and amended July 23, 1974, Pub. L. 93-353, title II, §§ 203(e), 204, 88 Stat. 372, 373, related to grants to provide support for biomedical scientific publications.

Section 280b-10, acts July 1, 1944, ch. 373, title III, § 398, formerly § 399a, as added Oct. 22, 1965, Pub. L. 89-291, § 2, 79 Stat. 1066, renumbered § 399, Mar. 13, 1970, Pub. L. 91-212, § 10(c)(3), 84 Stat. 67, and renumbered § 398, July 23, 1974, Pub. L. 93-353, title II, § 204, 88 Stat. 373, related to the continuing availability of appropriated funds.

Section 280b-11, acts July 1, 1944, ch. 373, title III, § 399, formerly § 399b, as added Oct. 22, 1965, Pub. L. 89-291, § 2, 79 Stat. 1066, renumbered § 399a and amended Mar. 13, 1970, Pub. L. 91-212, § 10(c)(3), (d)(2)(A), 84 Stat. 67; renumbered § 399, July 23, 1974, Pub. L. 93-353, title II, § 204, 88 Stat. 373; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695, related to the maintenance of records by recipients of grants and audits thereof by the Secretary of Health and Human Services and the Comptroller General of the United States.

SUBCHAPTER III—NATIONAL RESEARCH INSTITUTES

CODIFICATION

Title IV of the Public Health Service Act, comprising this subchapter, was originally enacted by act July 1, 1944, ch. 373, 58 Stat. 707, at which time title IV related solely to the National Cancer Institute. Because of the extensive amendments, reorganization of the subject matter, and expansion of title IV by the acts listed below, title IV is shown herein as having been added by Pub. L. 99-158, without reference to intervening amendments.

The provisions of title IV as originally enacted were subsequently redesignated as part A of title IV and amended, and parts B to I of title IV were added and amended by the following acts: June 16, 1948, ch. 481, 62 Stat. 464; June 24, 1948, ch. 621, 62 Stat. 598; Aug. 15, 1950, ch. 714, 64 Stat. 443; Oct. 5, 1961, Pub. L. 87-395, 75 Stat. 824; Oct. 17, 1962, Pub. L. 87-838, 76 Stat. 1072; Aug. 16, 1968, Pub. L. 90-489, 82 Stat. 771; Oct. 30, 1970, Pub.L. 91-515, 84 Stat. 1297; Dec. 23, 1971, Pub. L. 92-218, 85 Stat. 778; May 19, 1972, Pub. L. 92-305, 86 Stat. 162; Sept. 19, 1972, Pub. L. 92-423, 86 Stat. 679; Apr. 22, 1974, Pub. L. 93-270, 88 Stat. 90; May 14, 1974, Pub. L. 93-282, 88 Stat. 126; May 31, 1974, Pub. L. 93-296, 88 Stat. 184; July 12, 1974, Pub. L. 93-348, 88 Stat. 342; July 23, 1974, Pub. L. 93-352, 88 Stat. 358; July 23, 1974, Pub. L. 93-354, 88 Stat. 373; Jan. 4, 1975, Pub. L. 93-640, 88 Stat. 2217; July 29, 1975, Pub. L. 94-63, 89 Stat. 304; Nov. 28, 1975, Pub. L. 94-135, 89 Stat. 713; Apr. 21, 1976, Pub. L. 94-273, 90 Stat. 375; Apr. 22, 1976, Pub. L. 94-278, 90 Stat. 401; Oct. 19, 1976, Pub. L. 94-562, 90 Stat. 2645; Aug. 1, 1977, Pub. L. 95-83, 91 Stat. 383; Nov. 9, 1978, Pub. L. 95-622, 92 Stat. 3412; Nov. 9, 1978, Pub. L. 95-623, 92 Stat. 3443; July 10, 1979, Pub. L. 96-32, 93 Stat. 82; Oct. 7, 1980, Pub. L. 96-398, 94 Stat. 1564; Dec. 17, 1980, Pub. L. 96-538, 94 Stat. 3183; Aug. 13, 1981, Pub. L. 97-35, 95 Stat. 358; Apr. 26, 1984, Pub. L. 98-24, 97 Stat. 175.

Title IV was subsequently amended generally and completely reorganized by Pub. L. 99-158, § 2, Nov. 20, 1985, 99 Stat. 822.

PART A—NATIONAL INSTITUTES OF HEALTH

§ 281. Organization of National Institutes of Health

(a) Agency of Public Health Service

The National Institutes of Health is an agency of the Service.

(b) Agencies within

(1) The following national research institutes are agencies of the National Institutes of Health:

(A) The National Cancer Institute.

(B) The National Heart, Lung, and Blood Institute.

(C) The National Institute of Diabetes and Digestive and Kidney Diseases.

(D) The National Institute of Arthritis and Musculoskeletal and Skin Diseases.

(E) The National Institute on Aging.

(F) The National Institute of Allergy and Infectious Diseases.

(G) The National Institute of Child Health and Human Development.

(H) The National Institute of Dental Research.

(I) The National Eye Institute.

(J) The National Institute of Neurological and Communicative Disorders and Stroke.

(K) The National Institute of General Medical Sciences.

(L) The National Institute of Environmental Health Sciences.

(2) The following entities are agencies of the National Institutes of Health:

(A) The National Library of Medicine.

(B) The Division of Research Resources.

(C) The John E. Fogarty International Center for Advanced Study in the Health Sciences.

(D) The National Center for Nursing Research.

(c) Establishment of additional national research institutes; reorganization or abolition of institutes

(1) The Secretary may establish in the National Institutes of Health one or more additional national research institutes to conduct and support research, training, health information, and other programs with respect to any particular disease or groups of diseases or any other aspect of human health if—

(A) the Secretary determines that an additional institute is necessary to carry out such activities; and

(B) the additional institute is not established before the expiration of 180 days after the Secretary has provided the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate written notice of the determination made under subparagraph (A) with respect to the institute.

(2) The Secretary may reorganize the functions of any national research institute and may abolish any national research institute if the Secretary determines that the institute is no longer required. A reorganization or abolition may not take effect under this paragraph before the expiration of 180 days after the Secretary has provided the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate written notice of the reorganization or abolition.

(d) "National research institute" defined

For purposes of this subchapter, the term "national research institute" means a national research institute listed in subsection (b) of this section or established under subsection (c) of this section. A reference to the National Institutes of Health includes its agencies.

(July 1, 1944, ch. 373, title IV, § 401, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 822.)

Research on Lupus Erythematosus

Section 5 of Pub. L. 99-158 provided that:

"(a) Establishment of Committee.—The Secretary shall establish a Lupus Erythematosus Coordinating Committee to plan, develop, coordinate, and implement comprehensive Federal initiatives in research on Lupus Erythematosus.

"(b) Committee Composition and Meetings.—(1) The Committee shall be composed of—

"(A) the Director of the National Institute of Neurological and Communicative Disorders and Stroke (or the designee of such Director);

"(B) the Director of the National Institute of Allergy and Infectious Diseases (or the designee of such Director);

"(C) the Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases (or the designee of such Director);

"(D) the Director of the National Institute of General Medical Sciences (or the designee of such Director);

"(E) the Director of the National Heart, Lung, and Blood Institute (or the designee of such Director);

"(F) the Director of the National Institute of Diabetes and Digestive and Kidney Diseases (or the designee of such Director); and

"(G) the Director of the Centers for Disease Control (or the designee of such Director).

"(2) The Committee shall meet at least four times a year. The Secretary shall designate as chairman of the Committee the Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

"(c) Report.—The Committee shall prepare a report for Congress on its activities. The report shall include a description of research projects on Lupus Erythematosus conducted or supported by Federal agencies in the fiscal year for which the report is made, the nature and purpose of each such project, the amounts expended for each such project, and an identification of the entity which conducted the research under each such project. Such report shall be submitted not later than 18 months after the date of the date of enactment of this Act [Nov. 20, 1985]. The Committee shall terminate one month after the report is submitted."

Interagency Committee on Learning Disabilities

Section 9 of Pub. L. 99-158 provided that:

"(a) Establishment.—Not later than 90 days after the date of enactment of this Act [Nov. 20, 1985], the Director of the National Institutes of Health shall establish an Interagency Committee on Learning Disabilities to review and assess Federal research priorities, activities, and findings regarding learning disabilities (including central nervous system dysfunction in children).

"(b) Composition.—The Committee shall be composed of such representatives as the Director may designate, but shall include representatives from the National Institute of Neurological and Communicative Disorders and Stroke, the National Institute of Child Health and Human Development, the National Institute of Allergy and Infectious Diseases, the National Eye Institute, the National Institute of Environmental Health Sciences, the Division of Research Resources of the National Institutes of Health, the Food and Drug Administration, the National Institute of Mental Health, and the Department of Education.

"(c) Report.—Not later than 18 months after the date of enactment of this Act [Nov. 20, 1985], the Committee shall report to the Congress on its activities under subsection (a) and shall include in the report—

"(1) the number of persons affected by learning disabilities and the demographic data which describes such persons;

"(2) a description of the current research findings on the cause, diagnosis, treatment, and prevention of learning disabilities; and

"(3) recommendations for legislation and administrative actions—

"(A) to increase the effectiveness of research on learning disabilities and to improve the dissemination of the findings of such research; and

"(B) respecting specific priorities for research in the cause, diagnosis, treatment, and prevention of learning disabilities.

"(d) Termination.—The Committee shall terminate 90 days after the date of the submission of the report under subsection (c)."

§ 282. Director of National Institutes of Health

(a) Appointment

The National Institutes of Health shall be headed by the Director of the National Institutes of Health (hereafter in this subchapter referred to as the "Director of NIH") who shall be appointed by the President by and with the advice and consent of the Senate. The Director of NIH shall perform functions as provided under subsection (b) of this section and as the Secretary may otherwise prescribe.

(b) Duties and authority

In carrying out the purposes of section 241 of this title, the Secretary, acting through the Director of NIH—

(1) shall be responsible for the overall direction of the National Institutes of Health and for the establishment and implementation of general policies respecting the management and operation of programs and activities within the National Institutes of Health;

(2) shall coordinate and oversee the operation of the national research institutes and administrative entities within the National Institutes of Health;

(3) shall assure that research at or supported by the National Institutes of Health is subject to review in accordance with section 289a of this title;

(4) for the national research institutes and administrative entities within the National Institutes of Health—

(A) may acquire, construct, improve, repair, operate, and maintain, at the site of such institutes and entities, laboratories, and other research facilities, other facilities, equipment, and other real or personal property, and

(B) may acquire, without regard to section 34 of title 40, by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for use for a period not to exceed ten years;

(5) may secure resources for research conducted by or through the National Institutes of Health;

(6) may, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific peer review groups as are needed to carry out the requirements of this subchapter and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups;

(7) may secure for the National Institutes of Health consultation services and advice of persons from the United States or abroad;

(8) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

(9) may, for purposes of study, admit and treat at facilities of the National Institutes of Health individuals not otherwise eligible for such treatment;

(10) may accept voluntary and uncompensated services; and

(11) may perform such other administrative functions as the Secretary determines are needed to effectively carry out this subchapter.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under paragraph (6). The members of such a group shall be individuals who by virtue of their training or experience are eminently qualified to perform the review functions of such group. Not more than one-fourth of the members of any such group shall be officers or employees of the United States.

(c) Availability of substances and organisms for research

The Director of NIH may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

(d) Services of experts or consultants; number; payment of expenses, conditions, recovery

(1) The Director of NIH may obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of service) the services of not more than two hundred experts or consultants, with scientific or other professional qualifications, for the National Institutes of Health.

(2)(A) Except as provided in subparagraph (B), experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment.

(B) Expenses specified in subparagraph (A) shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

(e) Dissemination of research information

The Director of NIH shall—

(1) advise the agencies of the National Institutes of Health on medical applications of research;

(2) coordinate, review, and facilitate the systematic identification and evaluation of, clinically relevant information from research conducted by or through the national research institutes;

(3) promote the effective transfer of the information described in paragraph (2) to the health care community and to entities that require such information; and

(4) monitor the effectiveness of the activities described in paragraph (3).

(f) Associate Director for Prevention; functions; report to Director

There shall be in the National Institutes of Health an Associate Director for Prevention. The Director of NIH shall delegate to the Associate Director for Prevention the functions of the Director relating to the promotion of the disease prevention research programs of the national research institutes and the coordination of such programs among the national research institutes and between the national research institutes and other public and private entities. The Associate Director shall annually report to the Director of NIH on the prevention activities undertaken by the Associate Director. The report shall include a detailed statement of the expenditures made for the activities reported on and the personnel used in connection with such activities.

(July 1, 1944, ch. 373, title IV, § 402, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 823.)

References in Text

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b)(6), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (b)(6), is set out under section 5332 of Title 5.

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (d)(2)(A), are classified generally to section 5701 et seq. of Title 5.

Section Referred to in Other Sections

This section is referred to in sections 283, 284, 289a of this title.

§ 283. Biennial report of Director to President and Congress; contents

The Secretary shall transmit to the President and to the Congress a biennial report which shall be prepared by the Director of NIH and which shall consist of—

(1) a description of the activities carried out by and through the National Institutes of Health and the policies respecting the programs of the National Institutes of Health and such recommendations respecting such policies as the Secretary considers appropriate;

(2) a description of the activities undertaken to improve grants and contracting accountability and technical and scientific peer review procedures of the National Institutes of Health and the national research institutes;

(3) the reports made by the Associate Director for Prevention under section 282(f) of this title during the period for which the biennial report is prepared; and

(4) the biennial reports of the Directors of each of the national research institutes, the Director of the Division of Research Resources, and the Director of the National Center for Nursing Research.

The first report under this section shall be submitted not later than July 1, 1986, and shall relate to the fiscal year ending September 30, 1985. The next report shall be submitted not later than December 30, 1988, and shall relate to the two-fiscal-year period ending on the preceding September 30. Each subsequent report shall be submitted not later than 90 days after the end of the two-fiscal-year period for which the report is to be submitted.

(July 1, 1944, ch. 373, title IV, § 403, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 826.)

Section Referred to in Other Sections

This section is referred to in sections 284b, 287a-1, 287c-3 of this title.

PART B—GENERAL PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

§ 284. Directors of national research institutes

(a) Appointment

The Director of the National Cancer Institute shall be appointed by the President and the Directors of the other national research institutes shall be appointed by the Secretary. Each Director of a national research institute shall report directly to the Director of NIH.

(b) Duties and authority; grants, contracts, and cooperative agreements

(1) In carrying out the purposes of section 241 of this title with respect to the human diseases or disorders or other aspects of human health for which the national research institutes were established, the Secretary, acting through the Director of each national research institute—

(A) shall encourage and support research, investigations, experiments, demonstrations, and studies in the health sciences related to—

(i) the maintenance of health,

(ii) the detection, diagnosis, treatment, and prevention of human diseases and disorders,

(iii) the rehabilitation of individuals with human diseases, disorders, and disabilities, and

(iv) the expansion of knowledge of the processes underlying human diseases, disorders, and disabilities, the processes underlying the normal and pathological functioning of the body and its organ systems, and the processes underlying the interactions between the human organism and the environment;

(B) may, subject to the peer review prescribed under section 289a(b) of this title and any advisory council review under section 284a(a)(3)(A)(i) of this title, conduct the research, investigations, experiments, demonstrations, and studies referred to in subparagraph (A);

(C) may conduct and support research training (i) for which fellowship support is not provided under section 288 of this title, and (ii) which is not residency training of physicians or other health professionals;

(D) may develop, implement, and support demonstrations and programs for the application of the results of the activities of the institute to clinical practice and disease prevention activities;

(E) may develop, conduct, and support public and professional education and information programs;

(F) may secure, develop and maintain, distribute, and support the development and maintenance of resources needed for research;

(G) may make available the facilities of the institute to appropriate entities and individuals engaged in research activities and cooperate with and assist Federal and State agencies charged with protecting the public health;

(H) may accept unconditional gifts made to the institute for its activities, and, in the case of gifts of a value in excess of $50,000, establish suitable memorials to the donor;

(I) may secure for the institute consultation services and advice of persons from the United States or abroad;

(J) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

(K) may accept voluntary and uncompensated services; and

(L) may perform such other functions as the Secretary determines are needed to carry out effectively the purposes of the institute.

The indemnification provisions of section 2354 of title 10 shall apply with respect to contracts entered into under this subsection and section 282(b) of this title.

(2) Support for an activity or program under this subsection may be provided through grants, contracts, and cooperative agreements. The Secretary, acting through the Director of each national research institute—

(A) may enter into a contract for research, training, or demonstrations only if the contract has been recommended after technical and scientific peer review required by regulations under section 289a of this title; and

(B) may make grants and cooperative agreements under paragraph (1) for research, training, or demonstrations, except that—

(i) if the direct cost of the grant or cooperative agreement to be made does not exceed $50,000, such grant or cooperative agreement may be made only if such grant or cooperative agreement has been recommended after technical and scientific peer review required by regulations under section 289a of this title, and

(ii) if the direct cost of the grant or cooperative agreement to be made exceeds $50,000, such grant or cooperative agreement may be made only if such grant or cooperative agreement has been recommended after technical and scientific peer review required by regulations under section 289a of this title and is recommended under section 284a(a)(3)(A)(ii) of this title by the advisory council for the national research institute involved.

(c) Coordination with other public and private entities; cooperation with other national research institutes; appointment of additional peer review groups

In carrying out subsection (b) of this section, each Director of a national research institute—

(1) shall coordinate, as appropriate, the activities of the institute with similar programs of other public and private entities;

(2) shall cooperate with the Directors of the other national research institutes in the development and support of multidisciplinary research and research that involves more than one institute; and

(3) may, with the approval of the advisory council for the institute and the Director of NIH, appoint technical and scientific peer review groups in addition to those appointed under section 282(b)(6) of this title.

(July 1, 1944, ch. 373, title IV, § 405, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 826.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 284a, 285a-2, 285b-3, 289a of this title.

§ 284a. Advisory councils

(a) Establishment; acceptance of conditional gifts; functions

(1) Except as provided in subsection (h) of this section, the Secretary shall appoint an advisory council for each national research institute which (A) shall advise, assist, consult with, and make recommendations to the Secretary and the Director of such institute on matters related to the activities carried out by and through the institute and the policies respecting such activities, and (B) shall carry out the special functions prescribed by part C of this subchapter.

(2) Each advisory council for a national research institute may recommend to the Secretary acceptance, in accordance with section 300aa of this title, of conditional gifts for study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the institute was established, for the acquisition of grounds, or for the construction, equipping, or maintenance of facilities for the institute.

(3) Each advisory council for a national research institute—

(A)(i) may on the basis of the materials provided under section 289a(b)(2) of this title respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research,

(ii) may review applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 284(b)(2) of this title and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the institute;

(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the institute was established and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; compensation

(1) Each advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary.

(2) The ex officio members of an advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the national research institute for which the council is established, the Chief Medical Director of the Veterans' Administration or the Chief Dental Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of an advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the national research institute for which the advisory council is established.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule.

(c) Term of office; reappointment; vacancy

The term of office of an appointed member of an advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; term of office

The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the national research institute for which the advisory council is established to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least three times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the national research institute for which the advisory council was established.

(f) Appointment of executive secretary; training and orientation for new members

The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Comments and recommendations for inclusion in biennial report; additional reports

Each advisory council may prepare, for inclusion in the biennial report made under section 284b of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the national research institute for which it was established in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the institute. Each advisory council may prepare such additional reports as it may determine appropriate.

(h) Advisory councils in existence; application of section to National Cancer Advisory Board and advisory council to National Heart, Lung, and Blood Institute

(1) Except as provided in paragraph (2), this section does not terminate the membership of any advisory council for a national research institute which was in existence on November 20, 1985. After November 20, 1985—

(A) the Secretary shall make appointments to each such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by this section;

(B) each advisory council shall organize itself in accordance with this section and exercise the functions prescribed by this section; and

(C) the Director of each national research institute shall perform for such advisory council the functions prescribed by this section.

(2)(A) The National Cancer Advisory Board shall be the advisory council for the National Cancer Institute. This section applies to the National Cancer Advisory Board, except that—

(i) appointments to such Board shall be made by the President;

(ii) the term of office of an appointed member shall be 6 years;

(iii) of the members appointed to the Board not less than five members shall be individuals knowledgeable in environmental carcinogenesis (including carcinogenesis involving occupational and dietary factors);

(iv) the chairman of the Board shall be selected by the President from the appointed members and shall serve as chairman for a term of two years;

(v) the ex officio members of the Board shall be the Secretary, the Director of the Office of Science and Technology Policy, the Director of NIH, the Chief Medical Director of the Veterans' Administration, the Director of the National Institute for Occupational Safety and Health, the Director of the National Institute of Environmental Health Sciences, the Secretary of Labor, the Commissioner of the Food and Drug Administration, the Administrator of the Environmental Protection Agency, the Chairman of the Consumer Product Safety Commission, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers); and

(vi) the Board shall meet at least four times each fiscal year.

(B) This section applies to the advisory council to the National Heart, Lung, and Blood Institute, except that the advisory council shall meet at least four times each fiscal year.

(July 1, 1944, ch. 373, title IV, § 406, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 828.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(4), is set out under section 5332 of Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 284, 284b, 285c-6, 289c of this title.

§ 284b. Biennial report

The Director of each national research institute, after consultation with the advisory council for the institute, shall prepare for inclusion in the biennial report made under section 283 of this title a biennial report which shall consist of a description of the activities of the institute and program policies of the Director of the institute in the fiscal years respecting which the report is prepared. The Director of each national research institute may prepare such additional reports as the Director determines appropriate. The Director of each national research institute shall provide the advisory council for the institute an opportunity for the submission of the written comments referred to in section 284a(g) of this title.

(July 1, 1944, ch. 373, title IV, § 407, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 831.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 284a, 285a-5, 285b-6, 285c-7, 285g-3 of this title.

§ 284c. Authorization of appropriations; amounts obligated for administrative expenses; annual report to Congress

(a) In addition to amounts otherwise authorized to be appropriated under this subchapter for the National Institutes of Health, the following amounts are authorized to be appropriated:

(1)(A) For the National Cancer Institute (other than its programs under section 285a-1 of this title), there are authorized to be appropriated $1,194,000,000 for fiscal year 1986, $1,270,000,000 for fiscal year 1987, and $1,344,000,000 for fiscal year 1988.

(B) For the programs under section 285a-1 of this title, there are authorized to be appropriated $68,000,000 for fiscal year 1986, $74,000,000 for fiscal year 1987, and $80,000,000 for fiscal year 1988.

(2)(A) For the National Heart, Lung, and Blood Institute (other than its programs under section 285b-1 of this title), there are authorized to be appropriated $809,000,000 for fiscal year 1986, $871,000,000 for fiscal year 1987, and $927,000,000 for fiscal year 1988. Of the amount appropriated under this subsection for such fiscal year, not less than 15 percent of such amount shall be reserved for programs respecting diseases of the lung and not less than 15 percent of such amount shall be reserved for programs respecting blood diseases and blood resources.

(B) For the programs under section 285b-1 of this title, there are authorized to be appropriated $82,000,000 for fiscal year 1986, $90,000,000 for fiscal year 1987, and $98,000,000 for fiscal year 1988.

(b)(1) Except as provided in paragraph (2), the sum of the amounts obligated in any fiscal year for administrative expenses of the National Institutes of Health may not exceed an amount which is 5.5 percent of the total amount appropriated for such fiscal year for the National Institutes of Health.

(2) Paragraph (1) does not apply to the National Library of Medicine, the National Center for Nursing Research, the John E. Fogarty International Center for Advanced Study in the Health Sciences, the Warren G. Magnuson Clinical Center, and the Office of Medical Applications of Research.

(3) For purposes of paragraph (1), the term "administrative expenses" means expenses incurred for the support of activities relevant to the award of grants, contracts, and cooperative agreements and expenses incurred for general administration of the scientific programs and activities of the National Institutes of Health. In identifying expenses incurred for such support and administration the Secretary shall consult with the Comptroller General of the United States.

(4) Not later than December 31, 1987, and December 31 of each succeeding year, the Secretary shall report to the Congress the amount obligated in the fiscal year preceding such date for administrative expenses of the National Institutes of Health and the total amount appropriated for the National Institutes of Health for such fiscal year. The Secretary shall consult with the Comptroller General of the United States in preparing each report.

(July 1, 1944, ch. 373, title IV, § 408, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 831.)

PART C—SPECIFIC PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 284a of this title.

SUBPART 1—NATIONAL CANCER INSTITUTE

§ 285. Purpose of Institute

The general purpose of the National Cancer Institute (hereafter in this subpart referred to as the "Institute") is the conduct and support of research, training, health information dissemination, and other programs with respect to the cause, diagnosis, prevention, and treatment of cancer and the continuing care of cancer patients and the families of cancer patients.

(July 1, 1944, ch. 373, title IV, § 410, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 832.)

§ 285a. National Cancer Program

The National Cancer Program shall consist of (1) an expanded, intensified, and coordinated cancer research program encompassing the research programs conducted and supported by the Institute and the related research programs of the other national research institutes, including an expanded and intensified research program for the prevention of cancer caused by occupational or environmental exposure to carcinogens, and (2) the other programs and activities of the Institute.

(July 1, 1944, ch. 373, title IV, § 411, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 832.)

§ 285a-1. Cancer control programs

The Director of the Institute shall establish and support demonstration, education, and other programs for the detection, diagnosis, prevention, and treatment of cancer and for rehabilitation and counseling respecting cancer. Programs established and supported under this section shall include—

(1) locally initiated education and demonstration programs (and regional networks of such programs) to transmit research results and to disseminate information respecting—

(A) the detection, diagnosis, prevention, and treatment of cancer,

(B) the continuing care of cancer patients and the families of cancer patients, and

(C) rehabilitation and counseling respecting cancer,

to physicians and other health professionals who provide care to individuals who have cancer;

(2) the demonstration of and the education of students of the health professions and health professionals in—

(A) effective methods for the prevention and early detection of cancer and the identification of individuals with a high risk of developing cancer, and

(B) improved methods of patient referral to appropriate centers for early diagnosis and treatment of cancer; and

(3) the demonstration of new methods for the dissemination of information to the general public concerning the prevention, early detection, diagnosis, and treatment and control of cancer and information concerning unapproved and ineffective methods, drugs, and devices for the diagnosis, prevention, treatment, and control of cancer.

(July 1, 1944, ch. 373, title IV, § 412, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 832.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 284c of this title.

§ 285a-2. Special authorities of Director

(a) The Director of the Institute shall establish an information and education center to collect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to cancer patients and their families, physicians and other health professionals, and the general public, information on cancer research, diagnosis, prevention, and treatment (including information respecting nutrition programs for cancer patients and the relationship between nutrition and cancer). The Director of the Institute may take such action as may be necessary to insure that all channels for the dissemination and exchange of scientific knowledge and information are maintained between the Institute and other scientific, medical, and biomedical disciplines and organizations nationally and internationally.

(b) The Director of the Institute in carrying out the National Cancer Program—

(1) shall establish or support the large-scale production or distribution of specialized biological materials and other therapeutic substances for cancer research and set standards of safety and care for persons using such materials;

(2) shall, in consultation with the advisory council for the Institute, support (A) research in the cancer field outside the United States by highly qualified foreign nationals which can be expected to benefit the American people, (B) collaborative research involving American and foreign participants, and (C) the training of American scientists abroad and foreign scientists in the United States;

(3) shall, in consultation with the advisory council for the Institute, support appropriate programs of education and training (including continuing education and laboratory and clinical research training);

(4) shall encourage and coordinate cancer research by industrial concerns where such concerns evidence a particular capability for such research;

(5) may obtain (with the approval of the advisory council for the Institute and in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of service) the services of not more than one hundred and fifty-one experts or consultants who have scientific or professional qualifications;

(6)(A) may, in consultation with the advisory council for the Institute, acquire, construct, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director determines necessary;

(B) may, in consultation with the advisory council for the Institute, make grants for construction or renovation of facilities; and

(C) may, in consultation with the advisory council for the Institute, acquire, without regard to section 34 of title 40, by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

(7) may, in consultation with the advisory council for the Institute, appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments to advise the Director with respect to the Director's functions;

(8) may, subject to section 284(b)(2) of this title and without regard to section 3324 of title 31 and section 5 of title 41, enter into such contracts, leases, cooperative agreements, as may be necessary in the conduct of functions of the Director, with any public agency, or with any person, firm, association, corporation, or educational institution;

(9) shall maintain and operate the International Cancer Research Data Bank, which shall collect, catalog, store, and disseminate insofar as feasible through the use of information systems accessible to the public, general practitioners, and oncologic investigators, the results of cancer research and treatment undertaken in any country for the use of any person involved in cancer research and treatment in any country; and

(10)(A) shall, notwithstanding section 284(a) of this title, prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate (including an estimate of the number and type of personnel needs for the Institute) for the National Cancer Program, after reasonable opportunity for comment (but without change) by the Secretary, the Director of NIH, and the Institute's advisory council; and (B) may receive from the President and the Office of Management and Budget directly all funds appropriated by Congress for obligation and expenditure by the Institute.

Except as otherwise provided, experts and consultants whose services are obtained under paragraph (5) shall be paid or reimbursed, in accordance with title 5 for their travel to and from their place of service and for other expenses associated with their assignment. Such expenses shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (5) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Director of the Institute. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under the preceding sentence.

(July 1, 1944, ch. 373, title IV, § 413, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 833.)

REFERENCES IN TEXT

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (b), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

§ 285a-3. National cancer research and demonstration centers

(a) Cooperative agreements and grants for establishing and supporting

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for centers for basic and clinical research into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for cancer.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(b) Uses for Federal payments under cooperative agreements or grants

Federal payments made under a cooperative agreement or grant under subsection (a) of this section may be used for—

(1) construction (notwithstanding any limitation under section 289e of this title);

(2) staffing and other basic operating costs, including such patient care costs as are required for research;

(3) clinical training, including training for allied health professionals, continuing education for health professionals and allied health professions personnel, and information programs for the public respecting cancer; and

(4) demonstration purposes.

As used in this paragraph, the term "construction" does not include the acquisition of land, and the term "training" does not include research training for which National Research Service Awards may be provided under section 288 of this title.

(c) Period of support; additional periods

Support of a center under subsection (a) of this section may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 414, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 835.)

§ 285a-4. President's Cancer Panel; establishment, membership, etc., functions

(a)(1) The President's Cancer Panel (hereafter in this section referred to as the "Panel") shall be composed of three persons appointed by the President who by virtue of their training, experience, and background are exceptionally qualified to appraise the National Cancer Program. At least two members of the Panel shall be distinguished scientists or physicians.

(2)(A) Members of the Panel shall be appointed for three-year terms, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term, and (ii) a member may serve until the member's successor has taken office. If a vacancy occurs in the Panel, the President shall make an appointment to fill the vacancy not later than 90 days after the date the vacancy occurred.

(B) The President shall designate one of the members to serve as the chairman of the Panel for a term of one year.

(C) Members of the Panel shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties as members of the Panel and shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment.

(3) The Panel shall meet at the call of the chairman, but not less often than four times a year. A transcript shall be kept of the proceedings of each meeting of the Panel, and the chairman shall make such transcript available to the public.

(b) The Panel shall monitor the development and execution of the activities of the National Cancer Program, and shall report directly to the President. Any delays or blockages in rapid execution of the Program shall immediately be brought to the attention of the President. The Panel shall submit to the President periodic progress reports on the National Cancer Program and shall submit to the President, the Secretary, and the Congress an annual evaluation of the efficacy of the Program and suggestions for improvements, and shall submit such other reports as the President shall direct.

(July 1, 1944, ch. 373, title IV, § 415, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 835.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(2)(C), is set out under section 5332 of Title 5, Government Organization and Employees.

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (a)(2)(C), are classified generally to section 5701 et seq. of Title 5.

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a panel established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 285a-5. Associate Director for Prevention; appointment; function

(a) There shall be in the Institute an Associate Director for Prevention to coordinate and promote the programs in the Institute concerning the prevention of cancer. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(b) The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 416, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 836.)

SUBPART 2—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

§ 285b. Purpose of Institute

The general purpose of the National Heart, Lung, and Blood Institute (hereafter in this subpart referred to as the "Institute") is the conduct and support of research, training, health information dissemination, and other programs with respect to heart, blood vessel, lung, and blood diseases and with respect to the use of blood and blood products and the management of blood resources.

(July 1, 1944, ch. 373, title IV, § 418, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 836.)

§ 285b-1. Heart, blood vessel, lung, and blood disease prevention and control and programs

The Director of the Institute, under policies established by the Director of NIH and after consultation with the advisory council for the Institute, shall establish programs as necessary for cooperation with other Federal health agencies, State, local, and regional public health agencies, and nonprofit private health agencies in the diagnosis, prevention, and treatment (including the provision of emergency medical services) of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis, and treatment of such diseases of children.

(July 1, 1944, ch. 373, title IV, § 419, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 836.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 284c of this title.

§ 285b-2. Information and education

The Director of the Institute shall collect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to patients, families of patients, physicians and other health professionals, and the general public, information on research, prevention, diagnosis, and treatment of heart, blood vessel, lung, and blood diseases, the maintenance of health to reduce the incidence of such diseases, and on the use of blood and blood products and the management of blood resources. In carrying out this section the Director of the Institute shall place special emphasis upon—

(1) the dissemination of information regarding diet and nutrition, environmental pollutants, exercise, stress, hypertension, cigarette smoking, weight control, and other factors affecting the prevention of arteriosclerosis and other cardiovascular diseases and of pulmonary and blood diseases; and

(2) the dissemination of information designed to encourage children to adopt healthful habits respecting the risk factors related to the prevention of such diseases.

(July 1, 1944, ch. 373, title IV, § 420, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 837.)

§ 285b-3. National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program; administrative provisions

(a)(1) The National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program (hereafter in this subpart referred to as the "Program") may provide for—

(A) investigation into the epidemiology, etiology, and prevention of all forms and aspects of heart, blood vessel, lung, and blood diseases, including investigations into the social, environmental, behavioral, nutritional, biological, and genetic determinants and influences involved in the epidemiology, etiology, and prevention of such diseases;

(B) studies and research into the basic biological processes and mechanisms involved in the underlying normal and abnormal heart, blood vessel, lung, and blood phenomena;

(C) research into the development, trial, and evaluation of techniques, drugs, and devices (including computers) used in, and approaches to, the diagnosis, treatment (including the provision of emergency medical services), and prevention of heart, blood vessel, lung, and blood diseases and the rehabilitation of patients suffering from such diseases;

(D) establishment of programs that will focus and apply scientific and technological efforts involving the biological, physical, and engineering sciences to all facets of heart, blood vessel, lung, and blood diseases with emphasis on the refinement, development, and evaluation of technological devices that will assist, replace, or monitor vital organs and improve instrumentation for detection, diagnosis, and treatment of such diseases;

(E) establishment of programs for the conduct and direction of field studies, large-scale testing and evaluation, and demonstration of preventive, diagnostic, therapeutic, and rehabilitative approaches to, and emergency medical services for, such diseases;

(F) studies and research into blood diseases and blood, and into the use of blood for clinical purposes and all aspects of the management of blood resources in the United States, including the collection, preservation, fractionation, and distribution of blood and blood products;

(G) the education (including continuing education) and training of scientists, clinical investigators, and educators, in fields and specialties (including computer sciences) requisite to the conduct of clinical programs respecting heart, blood vessel, lung, and blood diseases and blood resources;

(H) public and professional education relating to all aspects of such diseases, including the prevention of such diseases, and the use of blood and blood products and the management of blood resources;

(I) establishment of programs for study and research into heart, blood vessel, lung, and blood diseases of children (including cystic fibrosis, hyaline membrane, hemolytic diseases such as sickle cell anemia and Cooley's anemia, and hemophilic diseases) and for the development and demonstration of diagnostic, treatment, and preventive approaches to such diseases; and

(J) establishment of programs for study, research, development, demonstrations and evaluation of emergency medical services for people who become critically ill in connection with heart, blood vessel, lung, or blood diseases.

(2) The Program shall be coordinated with other national research institutes to the extent that they have responsibilities respecting such diseases and shall give special emphasis to the continued development in the Institute of programs related to the causes of stroke and to effective coordination of such programs with related stroke programs in the National Institute of Neurological and Communicative Disorders and Stroke. The Director of the Institute, with the advice of the advisory council for the Institute, shall revise annually the plan for the Program and shall carry out the Program in accordance with such plan.

(b) In carrying out the Program, the Director of the Institute, under policies established by the Director of NIH—

(1) may, after approval of the advisory council for the Institute, obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of such service) the services of not more than one hundred experts or consultants who have scientific or professional qualifications;

(2)(A) may, in consultation with the advisory council for the Institute, acquire and construct, improve, repair, operate, alter, renovate, and maintain, heart, blood vessel, lung, and blood disease and blood resource laboratories, research, training, and other facilities, equipment, and such other real or personal property as the Director determines necessary;

(B) may, in consultation with the advisory council for the Institute, make grants for construction or renovation of facilities; and

(C) may, in consultation with the advisory council for the Institute, acquire, without regard to section 34 of title 40, by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

(3) subject to section 284(b)(2) of this title and without regard to section 3324 of title 31 and section 5 of title 41, may enter into such contracts, leases, cooperative agreements, or other transactions, as may be necessary in the conduct of the Director's functions, with any public agency, or with any person, firm, association, corporation, or educational institutions; and

(4) may make grants to public and nonprofit private entities to assist in meeting the cost of the care of patients in hospitals, clinics, and related facilities who are participating in research projects.

Except as otherwise provided, experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment. Such expenses shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Director of the Institute. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under the preceding sentence.

(July 1, 1944, ch. 373, title IV, § 421, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 837.)

REFERENCES IN TEXT

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (b), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

§ 285b-4. National research and demonstration centers

(a) Heart, blood vessel, lung, blood diseases, and blood resources; utilization of centers for prevention programs

(1) The Director of the Institute may provide, in accordance with subsection (c) of this section, for the development of—

(A) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for heart and blood vessel diseases;

(B) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for lung diseases (including bronchitis, emphysema, asthma, cystic fibrosis, and other lung diseases of children); and

(C) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for blood diseases and research into blood, in the use of blood products and in the management of blood resources.

(2) The centers developed under paragraph (1) shall, in addition to being utilized for research, training, and demonstrations, be utilized for the following prevention programs for cardiovascular, pulmonary, and blood diseases:

(A) Programs to develop improved methods of detecting individuals with a high risk of developing cardiovascular, pulmonary, and blood diseases.

(B) Programs to develop improved methods of intervention against those factors which cause individuals to have a high risk of developing such diseases.

(C) Programs to develop health professions and allied health professions personnel highly skilled in the prevention of such diseases.

(D) Programs to develop improved methods of providing emergency medical services for persons with such diseases.

(E) Programs of continuing education for health and allied health professionals in the diagnosis, prevention, and treatment of such diseases and the maintenance of health to reduce the incidence of such diseases and information programs for the public respecting the prevention and early diagnosis and treatment of such diseases and the maintenance of health.

(3) The research, training, and demonstration activities carried out through any such center may relate to any one or more of the diseases referred to in paragraph (1) of this subsection.

(b) Sickle cell anemia

The Director of the Institute shall provide, in accordance with subsection (c) of this section, for the development of ten centers for basic and clinical research into the diagnosis, treatment, and control of sickle cell anemia.

(c) Cooperative agreements and grants for establishing and supporting; uses for Federal payments; period of support, additional periods

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for centers for basic and clinical research into, training in, and demonstration of the management of blood resources and advanced diagnostic, prevention, and treatment methods for heart, blood vessel, lung, or blood diseases.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(3) Federal payments made under a cooperative agreement or grant under paragraph (1) may be used for—

(A) construction (notwithstanding any limitation under section 289e of this title);

(B) staffing and other basic operating costs, including such patient care costs as are required for research;

(C) training, including training for allied health professionals; and

(D) demonstration purposes.

As used in this subsection, the term "construction" does not include the acquisition of land, and the term "training" does not include research training for which National Research Service Awards may be provided under section 288 of this title.

(4) Support of a center under paragraph (1) may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 422, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 839.)

285b-5. Interagency Technical Committee; functions

(a) The Secretary shall establish an Interagency Technical Committee on Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources which shall be responsible for coordinating those aspects of all Federal health programs and activities relating to heart, blood vessel, lung, and blood diseases and blood resources to assure the adequacy and technical soundness of such programs and activities and to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities.

(b) The Director of the Institute shall serve as chairman of the Committee and the Committee shall include representation from all Federal departments and agencies whose programs involve health functions or responsibilities relevant to the functions of the Committee, as determined by the Secretary.

(July 1, 1944, ch. 373, title IV, § 423, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 841.)

§ 285b-6. Associate Director for Prevention; appointment; function

(a) There shall be in the Institute an Associate Director for Prevention to coordinate and promote the programs in the Institute concerning the prevention of heart, blood vessel, lung, and blood diseases. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(b) The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 424, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 841.)

SUBPART 3—NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

§ 285c. Purpose of Institute

The general purpose of the National Institute of Diabetes and Digestive and Kidney Diseases (hereafter in this subpart referred to as the "Institute") is the conduct and support of research, training, health information dissemination, and other programs with respect to diabetes mellitus and endocrine and metabolic diseases, digestive diseases and nutritional disorders, and kidney, urologic, and hematologic diseases.

(July 1, 1944, ch. 373, title IV, § 426, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 841.)

REVIEW OF DISEASE RESEARCH PROGRAMS OF THE NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

Section 10 of Pub. L. 99-158 provided that: "The Secretary of Health and Human Services shall conduct an administrative review of the disease research programs of the National Institute of Diabetes and Digestive and Kidney Diseases to determine if any of such programs could be more effectively and efficiently managed by other national research institutes. The Secretary shall complete such review within the one-year period beginning on the date of enactment of this Act [Nov. 20, 1985]."

§ 285c-1. Data systems and information clearinghouses

(a) National Diabetes Data System and National Diabetes Clearinghouse

The Director of the Institute shall (1) establish the National Diabetes Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with diabetes, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing diabetes, and (2) establish the National Diabetes Information Clearinghouse to facilitate and enhance knowledge and understanding of diabetes on the part of health professionals, patients, and the public through the effective dissemination of information.

(b) National Digestive Diseases Data System and National Digestive Diseases Information Clearinghouse

The Director of the Institute shall (1) establish the National Digestive Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with digestive diseases, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing digestive diseases, and (2) establish the National Digestive Diseases Information Clearinghouse to facilitate and enhance knowledge and understanding of digestive diseases on the part of health professionals, patients, and the public through the effective dissemination of information.

(c) National Kidney and Urologic Diseases Data System and National Kidney and Urologic Diseases Information Clearinghouse

The Director of the Institute shall (1) establish the National Kidney and Urologic Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with kidney and urologic diseases, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing kidney and urologic diseases, and (2) establish the National Kidney and Urologic Diseases Information Clearinghouse to facilitate and enhance knowledge and understanding of kidney and urologic diseases on the part of health professionals, patients, and the public through the effective dissemination of information.

(July 1, 1944, ch. 373, title IV, § 427, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 841.)

§ 285c-2. Division Directors for Diabetes, Endocrinology, and Metabolic Diseases, Digestive Diseases and Nutrition, and Kidney, Urologic, and Hematologic Diseases; functions

(a)(1) In the Institute there shall be a Division Director for Diabetes, Endocrinology, and Metabolic Diseases, a Division Director for Digestive Diseases and Nutrition, and a Division Director for Kidney, Urologic, and Hematologic Diseases. Such Division Directors, under the supervision of the Director of the Institute, shall be responsible for—

(A) developing a coordinated plan (including recommendations for expenditures) for each of the national research institutes within the National Institutes of Health with respect to research and training concerning diabetes, endocrine and metabolic diseases, digestive diseases and nutrition, and kidney, urologic, and hematologic diseases;

(B) assessing the adequacy of management approaches for the activities within such institutes concerning such diseases and nutrition and developing improved approaches if needed;

(C) monitoring and reviewing expenditures by such institutes concerning such diseases and nutrition; and

(D) identifying research opportunities concerning such diseases and nutrition and recommending ways to utilize such opportunities.

(2) The Director of the Institute shall transmit to the Director of NIH the plans, recommendations, and reviews of the Division Directors under subparagraphs (A) through (D) of paragraph (1) together with such comments and recommendations as the Director of the Institute determines appropriate.

(b) The Director of the Institute, acting through the the[1] Division Director for Diabetes, Endocrinology, and Metabolic Diseases, the Division Director for Digestive Diseases and Nutrition, and the Division Director for Kidney, Urologic, and Hematologic Diseases, shall—

(1) carry out programs of support for research and training (other than training for which National Research Service Awards may be made under section 288 of this title) in the diagnosis, prevention, and treatment of diabetes mellitus and endocrine and metabolic diseases, digestive diseases and nutritional disorders, and kidney, urologic, and hematologic diseases, including support for training in medical schools, graduate clinical training, graduate training in epidemiology, epidemiology studies, clinical trials, and interdisciplinary research programs; and

(2) establish programs of evaluation, planning, and dissemination of knowledge related to such research and training.

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[1] So in original.

(July 1, 1944, ch. 373, title IV, § 428, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 842.)

§ 285c-3. Interagency coordinating committees

(a) Establishment and purpose

For the purpose of—

(1) better coordination of the research activities of all the national research institutes relating to diabetes mellitus, digestive diseases, and kidney, urologic, and hematologic diseases; and

(2) coordinating those aspects of all Federal health programs and activities relating to such diseases to assure the adequacy and technical soundness of such programs and activities and to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities;

the Secretary shall establish a Diabetes Mellitus Interagency Coordinating Committee, a Digestive Diseases Interagency Coordinating Committee, and a Kidney, Urologic, and Hematologic Diseases Coordinating Committee (hereafter in this section individually referred to as a "Committee").

(b) Membership; chairman; meetings

Each Committee shall be composed of the Directors of each of the national research institutes and divisions involved in research with respect to the diseases for which the Committee is established, the Division Director of the Institute for the diseases for which the Committee is established, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers) and shall include representation from all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to such diseases, as determined by the Secretary. Each Committee shall be chaired by the Director of NIH (or the designee of the Director). Each Committee shall meet at the call of the chairman, but not less often than four times a year.

(c) Annual report

Each Committee shall prepare an annual report for—

(1) the Secretary;

(2) the Director of NIH; and

(3) the Advisory Board established under section 285c-4 of this title for the diseases for which the Committee was established,

detailing the work of the Committee in carrying out paragraphs (1) and (2) of subsection (a) of this section in the fiscal year for which the report was prepared. Such report shall be submitted not later than 120 days after the end of each fiscal year.

(July 1, 1944, ch. 373, title IV, § 429, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 843.)

§ 285c-4. Advisory boards

(a) Establishment

The Secretary shall establish in the Institute the National Diabetes Advisory Board, the National Digestive Diseases Advisory Board, and the National Kidney and Urologic Diseases Advisory Board (hereafter in this section individually referred to as an "Advisory Board").

(b) Membership; ex officio members

Each Advisory Board shall be composed of eighteen appointed members and nonvoting ex officio members as follows:

(1) The Secretary shall appoint—

(A) twelve members from individuals who are scientists, physicians, and other health professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to the diseases with respect to which the Advisory Board is established; and

(B) six members from the general public who are knowledgeable with respect to such diseases, including at least one member who is a person who has such a disease and one member who is a parent of a person who has such a disease.

Of the appointed members at least five shall by virtue of training or experience be knowledgeable in the fields of health education, nursing, data systems, public information, and community program development.

(2)(A) The following shall be ex officio members of each Advisory Board:

(i) The Assistant Secretary for Health, the Director of NIH, the Director of the National Institute of Diabetes and Digestive and Kidney Diseases, the Director of the Centers for Disease Control, the Chief Medical Director of the Veterans' Administration, the Assistant Secretary of Defense for Health Affairs, and the Division Director of the National Institute of Diabetes and Digestive and Kidney Diseases for the diseases for which the Board is established (or the designees of such officers).

(ii) Such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

(B) In the case of the National Diabetes Advisory Board, the following shall also be ex officio members: The Director of the National Heart, Lung, and Blood Institute, the Director of the National Eye Institute, the Director of the National Institute of Child Health and Human Development, and the Administrator of the Health Resources and Services Administration (or the designees of such officers).

(c) Compensation

Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Board.

(d) Term of office; vacancy

The term of office of an appointed member of an Advisory Board is four years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in an Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days from the date the vacancy occurred.

(e) Chairman

The members of each Advisory Board shall select a chairman from among the appointed members.

(f) Executive director; professional and clerical staff; administrative support services and facilities

The Secretary shall, after consultation with and consideration of the recommendations of an Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, such services of consultants, such information, and (through contracts or other arrangements) such administrative support services and facilities, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

(g) Meetings

Each Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

(h) Functions of National Diabetes Advisory Board and National Digestive Diseases Advisory Board

The National Diabetes Advisory Board and the National Digestive Diseases Advisory Board shall—

(1) review and evaluate the implementation of the plan (referred to in section 285c-7 of this title) respecting the diseases with respect to which the Advisory Board was established and periodically update the plan to ensure its continuing relevance;

(2) for the purpose of assuring the most effective use and organization of resources respecting such diseases, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan, the coordinating committee for such diseases, and with key non-Federal entities involved in activities affecting the control of such diseases.

(i) Subcommittees; establishment and membership

In carrying out its functions, each Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

(j) Annual report

Each Advisory Board shall prepare an annual report for the Secretary which—

(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to the diseases with respect to which the Advisory Board was established;

(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such diseases in such fiscal year; and

(4) contains the Advisory Board's recommendations (if any) for changes in the plan referred to in section 285c-7 of this title.

(k) Termination

Each Advisory Board shall expire on September 30, 1988.

(*l*) Termination of predecessor boards; time within which to appoint members

The National Diabetes Advisory Board and the National Digestive Diseases Advisory Board in existence on November 20, 1985, shall terminate upon the appointment of a successor Board under subsection (a) of this section. The Secretary shall make appointments to the Advisory Boards established under subsection (a) of this section before the expiration of 90 days after November 20, 1985. The members of the Boards in existence on November 20, 1985, may be appointed, in accordance with subsections (b) and (d) of this section, to the Boards established under subsection (a) of this section for diabetes and digestive diseases, except that at least one-half of the members of the National Diabetes Advisory Board in existence on November 20, 1985, shall be appointed to the National Diabetes Advisory Board first established under subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 430, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 844.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (c), is set out under section 5332 of Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285c-3 of this title.

§ 285c–5. Research and training centers; development or expansion

(a) Diabetes mellitus and related endocrine and metabolic diseases

(1) Consistent with applicable recommendations of the National Commission on Diabetes, the Director of the Institute shall provide for the development or substantial expansion of centers for research and training in diabetes mellitus and related endocrine and metabolic diseases. Each center developed or expanded under this subsection shall—

(A) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Secretary; and

(B) conduct—

(i) research in the diagnosis and treatment of diabetes mellitus and related endocrine and metabolic diseases and the complications resulting from such diseases;

(ii) training programs for physicians and allied health personnel in current methods of diagnosis and treatment of such diseases and complications, and in research in diabetes; and

(iii) information programs for physicians and allied health personnel who provide primary care for patients with such diseases or complications.

(2) A center may use funds provided under paragraph (1) to provide stipends for nurses and allied health professionals enrolled in research training programs described in paragraph (1)(B)(ii).

(b) Digestive diseases and related functional, congenital, metabolic disorders, and normal development of digestive tract

Consistent with applicable recommendations of the National Digestive Diseases Advisory Board, the Director shall provide for the development or substantial expansion of centers for research in digestive diseases and related functional, congenital, metabolic disorders, and normal development of the digestive tract. Each center developed or expanded under this subsection—

(1) shall utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research qualifications as may be prescribed by the Secretary;

(2) shall develop and conduct basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of digestive diseases and nutritional disorders and related functional, congenital, or metabolic complications resulting from such diseases or disorders;

(3) shall encourage research into and programs for—

(A) providing information for patients with such diseases and the families of such patients, physicians and others who care for such patients, and the general public;

(B) model programs for cost effective and preventive patient care; and

(C) training physicians and scientists in research on such diseases, disorders, and complications; and

(4) may perform research and participate in epidemiological studies and data collection relevant to digestive diseases and disorders and disseminate such research, studies, and data to the health care profession and to the public.

(c) Kidney and urologic diseases

The Director shall provide for the development or substantial expansion of centers for research in kidney and urologic diseases. Each center developed or expanded under this subsection—

(1) shall utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research qualifications as may be prescribed by the Secretary;

(2) shall develop and conduct basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of kidney and urologic diseases;

(3) shall encourage research into and programs for—

(A) providing information for patients with such diseases, disorders, and complications and the families of such patients, physicians and others who care for such patients, and the general public;

(B) model programs for cost effective and preventive patient care; and

(C) training physicians and scientists in research on such diseases; and

(4) may perform research and participate in epidemiological studies and data collection relevant to kidney and urologic diseases in order to disseminate such research, studies, and data to the health care profession and to the public.

(d) Geographic distribution; period of support, additional periods

Insofar as practicable, centers developed or expanded under this section should be geographically dispersed throughout the United States and in environments with proven research capabilities. Support of a center under this section may be for a period of not to exceed five years and such period may be extended by the Director of the Institute for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 431, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 846.)

Section Referred to in Other Sections

This section is referred to in section 285c-7 of this title.

§ 285c-6. Advisory council subcommittees

There are established within the advisory council for the Institute appointed under section 284a of this title a subcommittee on diabetes and endocrine and metabolic diseases, a subcommittee on digestive diseases and nutrition, and a subcommittee on kidney, urologic, and hematologic diseases. The subcommittees shall be composed of members of the advisory council who are outstanding in the diagnosis, prevention, and treatment of the diseases for which the subcommittees are established and members of the advisory council who are leaders in the fields of education and public affairs. The subcommittees are authorized to review applications made to the Director of the Institute for grants for research and training projects relating to the diagnosis, prevention, and treatment of the diseases for which the subcommittees are established and shall recommend to the advisory council those applications and contracts that the subcommittees determine will best carry out the purposes of the Institute. The subcommittees shall also review and evaluate the diabetes and endocrine and metabolic diseases, digestive diseases and nutrition, and kidney, urologic, and hematologic diseases programs of the Institute and recommend to the advisory council such changes in the administration of such programs as the subcommittees determine are necessary.

(July 1, 1944, ch. 373, title IV, § 432, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 847.)

§ 285c-7. Biennial report

The Director of the Institute shall prepare for inclusion in the biennial report made under section 284b of this title a description of the Institute's activities—

(1) under the current diabetes plan under the National Diabetes Mellitus Research and Education Act; and

(2) under the current digestive diseases plan formulated under the Arthritis, Diabetes, and Digestive Diseases Amendments of 1976.

The description submitted by the Director shall include an evaluation of the activities of the centers supported under section 285c-5 of this title.

(July 1, 1944, ch. 373, title IV, § 433, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 848.)

References in Text

The National Diabetes Mellitus Research and Education Act, referred to in par. (1), is Pub. L. 93-354, July 23, 1974, 88 Stat. 373, as amended, which enacted former sections 289c-1a, 289c-2, and 289c-3 of this title, amended section 247b and former section 289c-1 of this title, and enacted provisions formerly set out as notes under section 289c-2 of this title. For complete classification of this Act to the Code, see Short Title of 1974 Amendments note set out under section 201 of this title and Tables.

The Arthritis, Diabetes, and Digestive Diseases Amendments of 1976, referred to in par. (2), is Pub. L. 94-562, Oct. 19, 1976, 90 Stat. 2645, as amended, which enacted former sections 289c-3a, 289c-7, and 289c-8 of this title, amended former sections 289c-2, 289c-5, and 289c-6 of this title, and enacted provisions formerly set out as notes under sections 289a, 289c-3a, and 289c-7 of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendments note set out under section 201 of this title and Tables.

Section Referred to in Other Sections

This section is referred to in section 285c-4 of this title.

SUBPART 4—NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES

§ 285d. Purpose of Institute

The general purpose of the National Institute of Arthritis and Musculoskeletal and Skin Diseases (hereafter in this subpart referred to as the "Institute") is the conduct and support of research and training, the dissemination of health information, and other programs with respect to arthritis and musculoskeletal and skin diseases, including sports-related disorders.

(July 1, 1944, ch. 373, title IV, § 435, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 848.)

§ 285d-1. National arthritis and musculoskeletal diseases program

(a) Plan to expand, intensify, and coordinate activities; submission; periodic review and revision

The Director of the Institute, with the advice of the Institute's advisory council, shall prepare and transmit to the Director of NIH a plan for a national arthritis and musculoskeletal diseases program to expand, intensify, and coordinate the activities of the Institute respecting arthritis and musculoskeletal diseases. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise such plan and shall transmit any revisions of such plan to the Director of NIH.

(b) Coordination of activities with other national research institutes; minimum activities under program

Activities under the national arthritis and musculoskeletal diseases program shall be coordinated with the other national research institutes to the extent that such institutes have responsibilities respecting arthritis and musculoskeletal diseases, and shall, at least, provide for—

(1) investigation into the epidemiology, etiology, and prevention of all forms of arthritis and musculoskeletal diseases, including sports-related disorders, primarily through the support of basic research in such areas as immunology, genetics, biochemistry, microbiology, physiology, bioengineering, and any other scientific discipline which can contribute important knowledge to the treatment and understanding of arthritis and musculoskeletal diseases;

(2) research into the development, trial, and evaluation of techniques, drugs, and devices

used in the diagnosis, treatment, including medical rehabilitation, and prevention of arthritis and musculoskeletal diseases;

(3) research on the refinement, development, and evaluation of technological devices that will replace or be a substitute for damaged bone, muscle, and joints and other supporting structures; and

(4) the establishment of mechanisms to monitor the causes of athletic injuries and identify ways of preventing such injuries on scholastic athletic fields.

(c) Program to be carried out in accordance with plan

The Director of the Institute shall carry out the national arthritis and musculoskeletal diseases program in accordance with the plan prepared under subsection (a) of this section and any revisions of such plan made under such subsection.

(July 1, 1944, ch. 373, title IV, § 436, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 848.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285d-7 of this title.

§ 285d-2. Research and training

The Director of the Institute shall—

(1) carry out programs of support for research and training (other than training for which National Research Service Awards may be made under section 288 of this title) in the diagnosis, prevention, and treatment of arthritis and musculoskeletal and skin diseases, including support for training in medical schools, graduate clinical training, graduate training in epidemiology, epidemiology studies, clinical trials, and interdisciplinary research programs; and

(2) establish programs of evaluation, planning, and dissemination of knowledge related to such research and training.

(July 1, 1944, ch. 373, title IV, § 437, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 849.)

§ 285d-3. Data system and information clearinghouse

(a) The Director of the Institute shall establish the National Arthritis and Musculoskeletal and Skin Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with arthritis and musculoskeletal and skin diseases, including where possible, data involving general populations for the purpose of detection of individuals with a risk of developing arthritis and musculoskeletal and skin diseases.

(b) The Director of the Institute shall establish the National Arthritis and Musculoskeletal and Skin Diseases Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of arthritis and musculoskeletal and skin diseases by health professionals, patients, and the public.

(July 1, 1944, ch. 373, title IV, § 438, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 849.)

§ 285d-4. Interagency coordinating committees

(a) Establishment and purpose

For the purpose of—

(1) better coordination of the research activities of all the national research institutes relating to arthritis, musculoskeletal diseases, and skin diseases, including sports-related disorders; and

(2) coordinating the aspects of all Federal health programs and activities relating to arthritis, musculoskeletal diseases, and skin diseases in order to assure the adequacy and technical soundness of such programs and activities and in order to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities,

the Secretary shall establish an Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee and a Skin Diseases Interagency Coordinating Committee (hereafter in this section individually referred to as a "Committee").

(b) Membership; chairman; meetings

Each Committee shall be composed of the Directors of each of the national research institutes and divisions involved in research regarding the diseases with respect to which the Committee is established, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and representatives of all other Federal departments and agencies (as determined by the Secretary) whose programs involve health functions or responsibilities relevant to arthritis and musculoskeletal diseases or skin diseases, as the case may be. Each Committee shall be chaired by the Director of NIH (or the designee of the Director). Each Committee shall meet at the call of the chairman, but not less often than four times a year.

(c) Annual report

Not later than 120 days after the end of each fiscal year, each Committee shall prepare and transmit to the Secretary, the Director of NIH, the Director of the Institute, and the advisory council for the Institute a report detailing the activities of the Committee in such fiscal year in carrying out paragraphs (1) and (2) of subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 439, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 849.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285d-7 of this title.

§ 285d-5. Arthritis and musculoskeletal diseases demonstration projects

(a) Grants for establishment and support

The Director of the Institute may make grants to public and private nonprofit entities to establish and support projects for the development and demonstration of methods for screening, detection, and referral for treatment of arthritis and musculoskeletal diseases and for the dissemination of information on such methods to the health and allied health professions. Activities under such projects shall be coordinated with Federal, State, local, and regional health agencies, centers assisted under section 285d-6 of this title, and the data system established under subsection (c) of this section.

(b) Programs included

Projects supported under this section shall include—

(1) programs which emphasize the development and demonstration of new and improved methods of screening and early detection, referral for treatment, and diagnosis of individuals with a risk of developing arthritis and musculoskeletal diseases;

(2) programs which emphasize the development and demonstration of new and improved methods for patient referral from local hospitals and physicians to appropriate centers for early diagnosis and treatment;

(3) programs which emphasize the development and demonstration of new and improved means of standardizing patient data and recordkeeping;

(4) programs which emphasize the development and demonstration of new and improved methods of dissemination of knowledge about the programs, methods, and means referred to in paragraphs (1), (2), and (3) of this subsection to health and allied health professionals;

(5) programs which emphasize the development and demonstration of new and improved methods for the dissemination to the general public of information—

(A) on the importance of early detection of arthritis and musculoskeletal diseases, of seeking prompt treatment, and of following an appropriate regimen; and

(B) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive treatment, and control methods for arthritis and unapproved and ineffective drugs and devices for arthritis and musculoskeletal diseases; and

(6) projects for investigation into the epidemiology of all forms and aspects of arthritis and musculoskeletal diseases, including investigations into the social, environmental, behavioral, nutritional, and genetic determinants and influences involved in the epidemiology of arthritis and musculoskeletal diseases.

(c) Standardization of patient data and recordkeeping

The Director shall provide for the standardization of patient data and recordkeeping for the collection, storage, analysis, retrieval, and dissemination of such data in cooperation with projects assisted under this section, centers assisted under section 285d-6 of this title, and other persons engaged in arthritis and musculoskeletal disease programs.

(July 1, 1944, ch. 373, title IV, § 440, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 850.)

§ 285d-6. Multipurpose arthritis and musculoskeletal diseases centers

(a) Development, modernization, and operation

The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including staffing and other operating costs such as the costs of patient care required for research) of new and existing centers for arthritis and musculoskeletal diseases. For purposes of this section, the term "modernization" means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

(b) Duties and functions

Each center assisted under this section shall—

(1)(A) use the facilities of a single institution or a consortium of cooperating institutions, and (B) meet such qualifications as may be prescribed by the Secretary; and

(2) conduct—

(A) basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of arthritis and musculoskeletal diseases and complications resulting from arthritis and musculoskeletal diseases, including research into implantable biomaterials and biomechanical and other orthopedic procedures;

(B) training programs for physicians, scientists, and other health and allied health professionals;

(C) information and continuing education programs for physicians and other health and allied health professionals who provide care for patients with arthritis and musculoskeletal diseases; and

(D) programs for the dissemination to the general public of information—

(i) on the importance of early detection of arthritis and musculoskeletal diseases, of seeking prompt treatment, and of following an appropriate regimen; and

(ii) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive, treatment, and control methods and unapproved and ineffective drugs and devices.

A center may use funds provided under subsection (a) of this section to provide stipends for health professionals enrolled in training programs described in paragraph (2)(B).

(c) Optional programs

Each center assisted under this section may conduct programs to—

(1) establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals with a risk of developing arthritis and musculoskeletal diseases;

(2) disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping; and

(3) develop community consultative services to facilitate the referral of patients to centers for treatment.

(d) Geographical distribution

The Director of the Institute shall, insofar as practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of children affected by arthritis and musculoskeletal diseases.

(e) Period of support; additional periods

Support of a center under this section may be for a period of not to exceed five years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 441, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 851.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285d-5 of this title.

§ 285d-7. Advisory Board

(a) Establishment

The Secretary shall establish in the Institute the National Arthritis Advisory Board (hereafter in this section referred to as the "Advisory Board").

(b) Membership; ex officio members

The Advisory Board shall be composed of eighteen appointed members and nonvoting, ex officio members, as follows:

(1) The Secretary shall appoint—

(A) twelve members from individuals who are scientists, physicians, and other health professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to arthritis, musculoskeletal diseases, and skin diseases; and

(B) six members from the general public who are knowledgeable with respect to such diseases, including at least one member who is a person who has such a disease and one member who is a parent of a person who has such a disease.

Of the appointed members at least five shall by virtue of training or experience be knowledgeable in health education, nursing, data systems, public information, or community program development.

(2) The following shall be ex officio members of the Advisory Board:

(A) the Assistant Secretary for Health, the Director of NIH, the Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the Director of the Centers for Disease Control, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

(c) Compensation

Members of the Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Advisory Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Advisory Board.

(d) Term of office; vacancy

The term of office of an appointed member of the Advisory Board is four years. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days after the date the vacancy occurred.

(e) Chairman

The members of the Advisory Board shall select a chairman from among the appointed members.

(f) Executive director, professional and clerical staff; administrative support services and facilities

The Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, and (through contracts or other arrangements) with such administrative support services and facilities, such information, and such services of consultants, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

(g) Meetings

The Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

(h) Duties and functions

The Advisory Board shall—

(1) review and evaluate the implementation of the plan prepared under section 285d-1(a) of this title and periodically update the plan to ensure its continuing relevance;

(2) for the purpose of assuring the most effective use and organization of resources respecting arthritis, musculoskeletal diseases and skin diseases, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Insti-

tute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

(3) maintain liaison with other advisory bodies for Federal agencies involved in the implementation of such plan, the interagency coordinating committees for such diseases established under section 285d-4 of this title, and with key non-Federal entities involved in activities affecting the control of such diseases.

(i) Subcommittees; establishment and membership

In carrying out its functions, the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

(j) Annual report

The Advisory Board shall prepare an annual report for the Secretary which—

(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to arthritis, musculoskeletal diseases, and skin diseases;

(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such diseases in such fiscal year for which the report is made; and

(4) contains the Advisory Board's recommendations (if any) for changes in the plan prepared under section 285d-1 of this title.

(k) Termination of predecessor board; time within which to appoint members

The National Arthritis Advisory Board in existence on November 20, 1985, shall terminate upon the appointment of a successor Board under subsection (a) of this section . The Secretary shall make appointments to the Advisory Board established under subsection (a) of this section before the expiration of 90 days after November 20, 1985. The member of the Board in existence on November 20, 1985, may be appointed, in accordance with subsections (b) and (d) of this section, to the Advisory Board established under subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 442, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 852.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (c), is set out under section 5332 of Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SUBPART 5—NATIONAL INSTITUTE ON AGING

§ 285e. Purpose of Institute

The general purpose of the National Institute on Aging (hereafter in this subpart referred to as the "Institute") is the conduct and support of biomedical, social, and behavioral research, training, health information dissemination, and other programs with respect to the aging process and the diseases and other special problems and needs of the aged.

(July 1, 1944, ch. 373, title IV, § 443, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 854.)

STUDY OF PERSONNEL FOR HEALTH NEEDS OF ELDERLY

Section 8 of Pub. L. 99-158 provided that:

"(a) STUDY.—The Secretary shall conduct a study on the adequacy and availability of personnel to meet the current and projected health needs (including needs for home and community-based care) of elderly Americans through the year 2020.

"(b) REPORT.—The Secretary shall report the results of the study to the Congress by March 1, 1987. The report on the study shall contain recommendations on—

"(1) the number of primary care physicians, dentists, and other health personnel needed to provide adequate care for the elderly;

"(2) the training needs of other physicians, dentists, and health personnel to provide care responsive to the particular needs of the elderly;

"(3) necessary changes in medicare and other third party reimbursement programs necessary to support training of primary care and other physicians to meet the needs of the elderly; and

"(4) necessary program changes in third party reimbursement programs (including changes in medicare programs) to support training of other health personnel in the care of the elderly."

§ 285e-1. Special functions

(a) Education and training of adequate numbers of personnel

In carrying out the training responsibilities under this chapter or any other Act for health and allied health professions personnel, the Secretary shall take appropriate steps to insure the education and training of adequate numbers of allied health, nursing, and paramedical personnel in the field of health care for the aged.

(b) Scientific studies

The Director of the Institute shall conduct scientific studies to measure the impact on the biological, medical, social, and psychological aspects of aging of programs and activities assisted or conducted by the Department of Health and Human Services.

(c) Public information and education programs

The Director of the Institute shall carry out public information and education programs designed to disseminate as widely as possible the findings of research sponsored by the Institute, other relevant aging research and studies, and other information about the process of aging which may assist elderly and near-elderly persons in dealing with, and all Americans in understanding, the problems and processes associated with growing older.

(d) Grants for research relating to Alzheimer's Disease

The Director of the Institute shall make grants to public and private nonprofit institutions to conduct research relating to Alzheimer's Disease.

(July 1, 1944, ch. 373, title IV, § 444, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 854.)

§ 285e-2. Alzheimer's Disease centers

(a) Cooperative agreements and grants for establishing and supporting

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for centers for basic and clinical research into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for Alzheimer's Disease.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(b) Use of Federal payments under cooperative agreement or grant

Federal payments made under a cooperative agreement or grant under subsection (a) of this section may be used for—

(1) construction (notwithstanding any limitation under section 289e of this tile);

(2) staffing and other basic operating costs, including such patient care costs as are required for research;

(3) training, including training for allied health professionals; and

(4) demonstration purposes.

As used in this subsection, the term "construction" does not include the acquisition of land, and the term "training" does not include research training for which National Research Service Awards may be provided under section 288 of this title.

(c) Support period; additional periods

Support of a center under subsection (a) of this section may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 445, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 855.)

ALZHEIMER'S DISEASE REGISTRY

Section 12 of Pub. L. 99-158 provided that:

"(a) GRANT AUTHORITY.— The Director of the National Institute on Aging may make a grant to develop a registry for the collection of epidemiological data about Alzheimer's disease and its incidence in the United States, to train personnel in the collection of such data, and for other matters respecting such disease.

"(b) QUALIFICATIONS.—To qualify for a grant under subsection (a) an applicant shall—

"(1) be an accredited school of medicine or public health which has expertise in the collection of epidemiological data about individuals with Alzheimer's disease and in the development of disease registries, and

"(2) have access to a large patient population, including a patient population representative of diverse ethnic backgrounds.

"(c) AUTHORIZATION.—For grants under subsection (a), there are authorized to be appropriated $2,500,000 which shall remain available until expended or through fiscal year 1989, whichever occurs first."

SUBPART 6—NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

§ 285f. Purpose of Institute

The general purpose of the National Institute of Allergy and Infectious Diseases is the conduct and support of research, training, health information dissemination, and other programs with respect to allergic and immunologic diseases and disorders and infectious diseases.

(July 1, 1944, ch. 373, title IV, § 446, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 855.)

SUBPART 7—NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

§ 285g. Purpose of Institute

The general purpose of the National Institute of Child Health and Human Development (hereafter in this subpart referred to as the "Institute") is the conduct and support of research, training, health information dissemination, and other programs with respect to maternal health, child health, mental retardation, human growth and development, including prenatal development, population research, and special health problems and requirements of mothers and children.

(July 1, 1944, ch. 373, title IV, § 448, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 856.)

§ 285g-1. Sudden infant death syndrome research

The Director of the Institute shall conduct and support research which specifically relates to sudden infant death syndrome.

(July 1, 1944, ch. 373, title IV, § 449, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 856.)

§ 285g-2. Mental retardation research

The Director of the Institute shall conduct and support research and related activities into the causes, prevention, and treatment of mental retardation.

(July 1, 1944, ch. 373, title IV, § 450, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 856.)

§ 285g-3. Associate Director for Prevention; appointment; function

(a) There shall be in the Institute an Associate Director for Prevention to coordinate and promote the programs in the Institute concerning the prevention of health problems of mothers and children. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(b) The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 451, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 856.)

SUBPART 8—NATIONAL INSTITUTE OF DENTAL RESEARCH

§ 285h. Purpose of institute

The general purpose of the National Institute of Dental Research is the conduct and support of research, training, health information dissemination, and other programs with respect to the cause, prevention, and methods of diagnosis and treatment of dental and oral diseases and conditions.

(July 1, 1944, ch. 373, title IV, § 453, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 856.)

SUBPART 9—NATIONAL EYE INSTITUTE

§ 285i. Purpose of Institute

The general purpose of the National Eye Institute (hereafter in this subpart referred to as the "Institute") is the conduct and support of research, training, health information dissemination, and other programs with respect to blinding eye diseases, visual disorders, mechanisms of visual function, preservation of sight, and the special health problems and requirements of the blind. The Director of the Institute may carry out a program of grants for public and private nonprofit vision research facilities.

(July 1, 1944, ch. 373, title IV, § 455, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 856.)

SUBPART 10—NATIONAL INSTITUTE OF NEUROLOGICAL AND COMMUNICATIVE DISORDERS AND STROKE

§ 285j. Purpose of Institute

The general purpose of the National Institute of Neurological and Communicative Disorders and Stroke (hereafter in this subpart referred to as the "Institute") is the conduct and support of research, training, health information dissemination, and other programs with respect to neurological disease and disorder, stroke, and disorders of human communication.

(July 1, 1944, ch. 373, title IV, § 457, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 857.)

§ 285j-1. Spinal cord regeneration research

The Director of the Institute shall conduct and support research into spinal cord regeneration.

(July 1, 1944, ch. 373, title IV, § 458, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 857.)

INTERAGENCY COMMITTEE ON SPINAL CORD INJURY

Section 7 of Pub. L. 99-158 provided that:

"(a) ESTABLISHMENT.—Within 90 days after the date of enactment of this Act [Nov. 20, 1985], the Secretary of Health and Human Services shall establish in the National Institute of Neurological and Communicative Diseases and Stroke an Interagency Committee on Spinal Cord Injury (hereafter in this section referred to as the 'Interagency Committee'). The Interagency Committee shall plan, develop, coordinate, and implement comprehensive Federal initiatives in research on spinal cord injury and regeneration.

"(b) COMMITTEE COMPOSITION AND MEETINGS.—(1) The Interagency Committee shall consist of representatives from—

"(A) the National Institute on Neurological and Communicative Disorders and Stroke;

"(B) the Department of Defense;

"(C) the Department of Education;

"(D) the Veterans' Administration;

"(E) the Office of Science and Technology Policy; and

"(F) the National Science Foundation;

designated by the heads of such entities.

"(2) The Interagency Committee shall meet at least four times. The Secretary of Health and Human Services shall select the Chairman of the Interagency Committee from the members of the Interagency Committee.

"(c) REPORT.—Within the 18 months after the date of enactment of this Act [Nov. 20, 1985], the Interagency Committee shall prepare and transmit to the Congress a report concerning its activities under this section. The report shall include a description of research projects on spinal cord injury and regeneration conducted or supported by Federal agencies during such 18-month period, the nature and purpose of each such project, the amounts expended for each such project, and an identification of the entity which conducted the research under each such project.

"(d) TERMINATION.—The Interagency Committee shall terminate 90 days after the date on which the Interagency Committee transmits the report required by subsection (c) to the Congress."

§ 285j-2. Bioengineering research

The Director of the Institute shall make grants or enter into contracts for research on the means to overcome paralysis of the extremities through electrical stimulation and the use of computers.

(July 1, 1944, ch. 373, title IV, § 459, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 857.)

SUBPART 11—NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

§ 285k. Purpose of Institute

The general purpose of the National Institute of General Medical Sciences is the conduct and support of research, training, and, as appropriate, health information dissemination, and other programs with respect to general or basic medical sciences and related natural or behavioral sciences which have significance for two or more other national research institutes or are outside the general area of responsibility of any other national research institute.

(July 1, 1944, ch. 373, title IV, § 461, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 857.)

SUBPART 12—NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

§ 285*l*. Purpose of Institute

The general purpose of the National Institute of Environmental Health Sciences is the conduct and support of research, training, health information dissemination, and other programs with respect to factors in the environment that affect human health, directly or indirectly.

(July 1, 1944, ch. 373, title IV, § 463, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 857.)

PART D—NATIONAL LIBRARY OF MEDICINE

SUBPART 1—GENERAL PROVISIONS

§ 286. National Library of Medicine

(a) Purpose and establishment

In order to assist the advancement of medical and related sciences and to aid the dissemination and exchange of scientific and other information important to the progress of medicine and to the public health, there is established the National Library of Medicine (hereafter in this part referred to as the "Library").

(b) Functions

The Secretary, through the Library and subject to subsection (d) of this section, shall—

(1) acquire and preserve books, periodicals, prints, films, recordings, and other library materials pertinent to medicine;

(2) organize the materials specified in paragraph (1) by appropriate cataloging, indexing, and bibliographical listings;

(3) publish and disseminate the catalogs, indexes, and bibliographies referred to in paragraph (2);

(4) make available, through loans, photographic or other copying procedures, or otherwise, such materials in the Library as the Secretary determines appropriate;

(5) provide reference and research assistance; and

(6) engage in such other activities as the Secretary determines appropriate and as the Library's resources permit.

(c) Exchange, destruction, or disposal of materials not needed

The Secretary may exchange, destroy, or otherwise dispose of any books, periodicals, films, and other library materials not needed for the permanent use of the Library.

(d) Availability of publications, materials, facilities, or services; prescription of rules

(1) The Secretary may, after obtaining the advice and recommendations of the Board of Regents, prescribe rules under which the Library will—

(A) provide copies of its publications or materials,

(B) will make available its facilities for research, or

(C) will make available its bibliographic, reference, or other services,

to public and private entities and individuals.

(2) Rules prescribed under paragraph (1) may provide for making available such publications, materials, facilities, or services—

(A) without charge as a public service,

(B) upon a loan, exchange, or charge basis, or

(C) in appropriate circumstances, under contract arrangements made with a public or other nonprofit entity.

(e) Regional medical libraries; establishment

Whenever the Secretary, with the advice of the Board of Regents, determines that—

(1) in any geographic area of the United States there is no regional medical library adequate to serve such area;

(2) under criteria prescribed for the administration of section 286b-6 of this title, there is a need for a regional medical library to serve such area; and

(3) because there is no medical library located in such area which, with financial assistance under section 286b-6 of this title, can feasibly be developed into a regional medical library adequate to serve such area,

the Secretary may establish, as a branch of the Library, a regional medical library to serve the needs of such area.

(f) Acceptance and administration of gifts; memorials

Section 300aa of this title shall be applicable to the acceptance and administration of gifts made for the benefit of the Library or for carrying out any of its functions, and the Board of Regents shall make recommendations to the Secretary relating to establishment within the Library of suitable memorials to the donors.

(g) "Medicine" and "medical" defined

For purposes of this part, the terms "medicine" and "medical", except when used in section 286a of this title, include preventive and therapeutic medicine, dentistry, pharmacy, hospitalization, nursing, public health, and the fundamental sciences related thereto, and other related fields of study, research, or activity.

(July 1, 1944, ch. 373, title IV, § 465, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 857.)

§ 286a. Board of Regents

(a) Membership; ex officio members

(1)(A) The Board of Regents of the National Library of Medicine consists of ex officio members and ten members appointed by the Secretary.

(B) The ex officio members are the Surgeons General of the Public Health Service, the Army, the Navy, and the Air Force, the Chief Medical Director of the Veterans' Administration, the Dean of the Uniformed Services University of the Health Sciences, the Assistant Director for Biological, Behavioral, and Social Sciences of the National Science Foundation, the

Director of the National Agricultural Library, and the Librarian of Congress (or their designees).

(C) The appointed members shall be selected from among leaders in the various fields of the fundamental sciences, medicine, dentistry, public health, hospital administration, pharmacology, health communications technology, or scientific or medical library work, or in public affairs. At least six of the appointed members shall be selected from among leaders in the fields of medical, dental, or public health research or education.

(2) The Board shall annually elect one of the appointed members to serve as chairman until the next election. The Secretary shall designate a member of the Library staff to act as executive secretary of the Board.

(b) Recommendations on matters of policy; recommendations included in annual report; use of services of members by Secretary

The Board shall advise, consult with, and make recommendations to the Secretary on matters of policy in regard to the Library, including such matters as the acquisition of materials for the Library, the scope, content, and organization of the Library's services, and the rules under which its materials, publications, facilities, and services shall be made available to various kinds of users. The Secretary shall include in the annual report of the Secretary to the Congress a statement covering the recommendations made by the Board and the disposition thereof. The Secretary may use the services of any member of the Board in connection with matters related to the work of the Library, for such periods, in addition to conference periods, as the Secretary may determine.

(c) Term of office; vacancy; reappointment

Each appointed member of the Board shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor of such member was appointed shall be appointed for the remainder of such term. None of the appointed members shall be eligible for reappointment within one year after the end of the preceding term of such member.

(July 1, 1944, ch. 373, title IV, § 466, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 859.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286 of this title.

§ 286a-1. Libarary facilities

There are authorized to be appropriated amounts sufficient for the erection and equipment of suitable and adequate buildings and facilities for use of the Library. The Administrator of General Services may acquire, by purchase, condemnation, donation, or otherwise, a suitable site or sites, selected by the Secretary in accordance with the direction of the Board, for such buildings and facilities and to erect thereon, furnish, and equip such buildings and facilities. The amounts authorized to be appropriated by this section include the cost of preparation of drawings and specifications, supervision of construction, and other administrative expenses incident to the work. The Administrator of General Services shall prepare the plans and specifications, make all necessary contracts, and supervise construction.

(July 1, 1944, ch. 373, title IV, § 467, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 859.)

SUBPART 2—FINANCIAL ASSISTANCE

§ 286b. Authorization of appropriations

For the purpose of grants and contracts under sections 286b-3, 286b-4, 286b-5, 286b-6, and 286b-7 of this title, there are authorized to be appropriated $12,000,000 for fiscal year 1986, $13,000,000 for fiscal year 1987, and $14,000,000 for fiscal year 1988. Funds appropriated under this section shall remain available for such purposes until the end of the fiscal year immediately following the fiscal year for which they were appropriated.

(July 1, 1944, ch. 373, title IV, § 469, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 860.)

§ 286b-1. Definitions

As used in this subpart—

(1) the term "medical library" means a library related to the sciences related to health; and

(2) the term "sciences related to health" includes medicine, osteopathy, dentistry, and public health, and fundamental and applied sciences when related thereto.

(July 1, 1944, ch. 373, title IV, § 470, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 860.)

§ 286b-2. National Medical Libraries Assistance Advisory Board

(a) Board of Regents of National Library of Medicine to serve as

The Board of Regents of the National Library of Medicine shall also serve as the National Medical Libraries Assistance Advisory Board (hereafter in this subpart referred to as the "Board").

(b) Functions

The Board shall advise and assist the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this subpart.

(c) Use of services of members by Secretary

The Secretary may use the services of any member of the Board, in connection with matters related to the administration of this part for such periods, in addition to conference periods, as the Secretary may determine.

(d) Compensation

Appointed members of the Board who are not otherwise in the employ of the United States, while attending conferences of the Board or otherwise serving at the request of the Secretary in connection with the administration of this subpart, shall be entitled to receive compensation, per diem in lieu of subsistence, and travel expenses in the same manner and under the same conditions as that prescribed under section 210(c) of this title when attending conferences, traveling, or serving at the request of the Secretary in connection with the Board's function under this section.

(July 1, 1944, ch. 373, title IV, § 471, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 860.)

Termination of Advisory Boards

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 286b-3. Grants for training in medical library sciences

The Secretary shall make grants—

(1) to individuals to enable them to accept traineeships and fellowships leading to postbaccalaureate academic degrees in the field of medical library science, in related fields pertaining to sciences related to health, or in the field of the communication of information;

(2) to individuals who are librarians or specialists in information on sciences relating to health, to enable them to undergo intensive training or retraining so as to attain greater competence in their occupations (including competence in the fields of automatic data processing and retrieval);

(3) to assist appropriate public and private nonprofit institutions in developing, expanding, and improving training programs in library science and the field of communications of information pertaining to sciences relating to health; and

(4) to assist in the establishment of internship programs in established medical libraries meeting standards which the Secretary shall prescribe.

(July 1, 1944, ch. 373, title IV, § 472, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 860.)

Section Referred to in Other Sections

This section is referred to in sections 286b, 286b-8 of this title.

§ 286b-4. Assistance for special scientific projects, and for research and development in medical library science and related fields

(a) The Secretary shall make grants to physicians and other practitioners in the sciences related to health, to scientists, and to public or nonprofit private institutions on behalf of such physicians, other practitioners, and scientists for the compilation of existing, or the writing of original, contributions relating to scientific, social, or cultural advancements in sciences related to health. In making such grants, the Secretary shall make appropriate arrangements under which the facilities of the Library and the facilities of libraries of public and private nonprofit institutions of higher learning may be made available in connection with the projects for which such grants are made.

(b) The Secretary shall make grants to appropriate public or private nonprofit institutions and enter into contracts with appropriate persons, for purposes of carrying out projects of research, investigations, and demonstrations in the field of medical library science and related activities and for the development of new techniques, systems, and equipment, for processing, storing, retrieving, and distributing information pertaining to sciences related to health.

(July 1, 1944, ch. 373, title IV, § 473, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 861.)

Section Referred to in Other Sections

This section is referred to in sections 286b, 286b-8 of this title.

§ 286b-5. Grants for establishing, expanding, and improving the basic resources of medical libraries and related instrumentalities

(a) The Secretary shall make grants of money, materials, or both, to public or private nonprofit medical libraries and related scientific communication instrumentalities for the purpose of establishing, expanding, and improving their basic medical library or related resources. A grant under this subsection may be used for—

(1) the acquisition of books, journals, photographs, motion picture and other films, and other similar materials;

(2) cataloging, binding, and other services and procedures for processing library resource materials for use by those who are served by the library or related instrumentality;

(3) the acquisition of duplication devices, facsimile equipment, film projectors, recording equipment, and other equipment to facilitate the use of the resources of the library or related instrumentality by those who are served by it; and

(4) the introduction of new technologies in medical librarianship.

(b)(1) The amount of any grant under this section to any medical library or related instrumentality shall be determined by the Secretary on the basis of the scope of library or related services provided by such library or instrumentality in relation to the population and purposes served by it. In making a determination of the scope of services served by any medical library or related instrumentality, the Secretary shall take into account—

(A) the number of graduate and undergraduate students making use of the resources of such library or instrumentality;

(B) the number of physicians and other practitioners in the sciences related to health utilizing the resources of such library or instrumentality;

(C) the type of supportive staffs, if any, available to such library or instrumentality;

(D) the type, size, and qualifications of the faculty of any school with which such library or instrumentality is affiliated;

(E) the staff of any hospital or hospitals or of any clinic or clinics with which such library or instrumentality is affiliated; and

(F) the geographic area served by such library or instrumentality and the availability within such area of medical library or related services provided by other libraries or related instrumentalities.

(2) Grants to such medical libraries or related instrumentalities under this section shall be in such amounts as the Secretary may by regulation prescribe with a view to assuring adequate continuing financial support for such libraries or instrumentalities from other sources during and after the period for which grants are provided, except that in no case shall any grant under this section to a medical library or related instrumentality for any fiscal year exceed $500,000.

(July 1, 1944, ch. 373, title IV, § 474, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 861.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 286b, 286b-8 of this title.

§ 286b-6. Grants and contracts for establishment of regional medical libraries

(a) Existing public or private nonprofit medical libraries

The Secretary, with the advice of the Board, shall make grants to and enter into contracts with existing public or private nonprofit medical libraries so as to enable each of them to serve as the regional medical library for the geographical area in which it is located.

(b) Uses for grants and contracts

The uses for which grants and contracts under this section may be employed include the—

(1) acquisition of books, journals, and other similar materials;

(2) cataloging, binding, and other procedures for processing library resource materials for use by those who are served by the library;

(3) acquisition of duplicating devices and other equipment to facilitate the use of the resources of the library by those who are served by it;

(4) acquisition of mechanisms and employment of personnel for the speedy transmission of materials from the regional library to local libraries in the geographic area served by the regional library; and

(5) planning for services and activities under this section.

(c) Conditions

(1) Grants and contracts under this section shall only be made to or entered into with medical libraries which agree—

(A) to modify and increase their library resources, and to supplement the resources of cooperating libraries in the region, so as to be able to provide adequate supportive services to all libraries in the region as well as to individual users of library services; and

(B) to provide free loan services to qualified users and make available photoduplicated or facsimile copies of biomedical materials which qualified requesters may retain.

(2) The Secretary, in awarding grants and contracts under this section, shall give priority to medical libraries having the greatest potential of fulfilling the needs for regional medical libraries. In determining the priority to be assigned to any medical library, the Secretary shall consider—

(A) the adequacy of the library (in terms of collections, personnel, equipment, and other facilities) as a basis for a regional medical library; and

(B) the size and nature of the population to be served in the region in which the library is located.

(d) Basic resources materials; limitation on grant or contract

Grants and contracts under this section for basic resource materials to a library may not exceed—

(1) 50 percent of the library's annual operating expense (exclusive of Federal financial assistance under this part) for the preceding year; or

(2) in case of the first year in which the library receives a grant under this section for basic resource materials, 50 percent of its average annual operating expenses over the past three years (or if it had been in operation for less than three years, its annual operating expenses determined by the Secretary in accordance with regulations).

(July 1, 1944, ch. 373, title IV, § 475, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 862.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 286, 286b, 286b-8 of this title.

§ 286b-7. Financial support of biomedical scientific publications

(a) The Secretary, with the advice of the Board, shall make grants to, and enter into appropriate contracts with, public or private nonprofit institutions of higher education and individual scientists for the purpose of supporting biomedical scientific publications of a nonprofit nature and to procure the compilation, writing, editing, and publication of reviews, abstracts, indices, handbooks, bibliographies, and related matter pertaining to scientific works and scientific developments.

(b) Grants under subsection (a) of this section in support of any single periodical publication may not be made for more than three years, except in those cases in which the Secretary determines that further support is necessary to carry out the purposes of subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 476, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 863.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 286b, 286b-8 of this title.

§ 286b–8. Grant payments, records, and audit

(a) Payments under grants made under sections 286b-3, 286b-4, 286b-5, 286b-6, and 286b-7 of this title may be made in advance or by way of reimbursement and in such installments as the Secretary shall prescribe by regulation after consultation with the Board.

(b)(1) Each recipient of a grant under this subpart shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients that are pertinent to any grant received under this subpart.

(July 1, 1944, ch. 373, title IV, § 477, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 863.)

PART E—OTHER AGENCIES OF NIH

SUBPART 1—DIVISION OF RESEARCH RESOURCES

§ 287. General purpose

The general purpose of the Division of Research Resources is to strengthen and enhance the research environments of entities engaged in health-related research by developing and supporting essential research resources.

(July 1, 1944, ch. 373, title IV, § 479, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 864.)

§ 287a. Advisory council

(a) Appointment; functions and duties; acceptance of conditional gifts; subcommittees

(1) The Secretary shall appoint an advisory council for the Division of Research Resources which shall advise, assist, consult with, and make recommendations to the Secretary and the Director of the Division on matters related to the activities carried out by and through the Division and the policies respecting such activities.

(2) The advisory council for the Division of Research Resources may recommend to the Secretary acceptance, in accordance with section 300aa of this title, of conditional gifts for study, investigations, and research and for the acquisition of grounds or construction, equipping, or maintenance of facilities for the Division.

(3) The advisory council for the Division—

(A)(i) may make recommendations to the Director of the Division respecting research conducted at the Division,

(ii) may review applications for grants and cooperative agreements for research or training and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the Division;

(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspects of human health with respect to which the Division is concerned and with the approval of the Director of the Division make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; ex officio members; compensation

(1) The advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary.

(2) The ex officio members of the advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the Division of Research Resources, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of the advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the Division.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of the advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of the advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule.

(c) Term of office; vacancy; reappointment

The term of office of an appointed member of the advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; selection; term of office

The chairman of the advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the Division of Research Resources to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Director of the Division of Research Resources, but at least three times each fiscal year. The location of the meetings of the advisory council is subject to the approval of the Director of the Division.

(f) Executive secretary; staff; orientation and training for new members

The Director of the Division of Research Resources shall designate a member of the staff of the Division to serve as the executive secretary of the advisory council. The Director of the Division shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of the Division shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Material for inclusion in biennial report; additional reports

The advisory council may prepare, for inclusion in the biennial report made under section 287a-1 of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the Division of Research Resources in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the Division. The advisory council may prepare such additional reports as it may determine appropriate.

(h) Advisory council in existence on November 20, 1985

This section does not terminate the membership of the advisory council for the Division of Research Resources which was in existence on November 20, 1985. After November 20, 1985—

(1) the Secretary shall make appointments to such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by this section;

(2) the advisory council shall organize itself in accordance with this section and exercise the functions prescribed by this section; and

(3) the Director of the Division of Research Resources shall perform for such advisory council the functions prescribed by this section.

(July 1, 1944, ch. 373, title IV, § 480, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 864.)

References in Text

The General Schedule, referred to in subsec. (b)(4), is set out under section 5332 of Title 5, Government Organization and Employees.

Termination of Advisory Councils

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

Section Referred to in Other Sections

This section is referred to in section 287a-1 of this title.

§ 287a-1. Biennial report

The Director of the Division of Research Resources, after consultation with the advisory council for the Division, shall prepare for inclusion in the biennial report made under section 283 of this title a biennial report which shall consist of a description of the activities of the Division and program policies of the Director of the Division in the fiscal years respecting which the report is prepared. The Director of the Division may prepare such additional reports as the Director determines appropriate. The Director of the Division shall provide the advisory council of the Division an opportunity for the submission of the written comments referred to in section 287a(g) of this title.

(July 1, 1944, ch. 373, title IV, § 481, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 866.)

Section Referred to in Other Sections

This section is referred to in section 287a of this title.

SUBPART 2—JOHN E. FOGARTY INTERNATIONAL CENTER FOR ADVANCED STUDY IN HEALTH SCIENCES

§ 287b. General purpose

The general purpose of the John E. Fogarty International Center for Advanced Study in the Health Sciences is to—

(1) facilitate the assembly of scientists and others in the biomedical, behavioral, and re-

lated fields for discussion, study, and research relating to the development of health science internationally;

(2) provide research programs, conferences, and seminars to further international cooperation and collaboration in the life sciences;

(3) provide postdoctorate fellowships for research training in the United States and abroad and promote exchanges of senior scientists between the United States and other countries;

(4) coordinate the activities of the National Institutes of Health concerned with the health sciences internationally; and

(5) receive foreign visitors to the National Institutes of Health.

(July 1, 1944, ch. 373, title IV, § 482, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 866.)

SUBPART 3—NATIONAL CENTER FOR NURSING RESEARCH

§ 287c. Purpose of the Center

The general purpose of the National Center for Nursing Research (hereafter in this subpart referred to as the "Center") is the conduct and support of, and dissemination of information respecting, basic and clinical nursing research, training, and other programs in patient care research.

(July 1, 1944, ch. 373, title IV, § 483, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 867.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 287c-1 of this title.

§ 287c-1. Specific authorities

To carry out section 287c of this title, the Director of the Center may provide research training and instruction and establish, in the Center and other nonprofit institutions, research traineeships and fellowships in the study and investigation of the prevention of disease, health promotion, and the nursing care of individuals with and the families of individuals with acute and chronic illnesses. The Director of the Center may provide individuals receiving such training and instruction or such traineeships or fellowships with such stipends and allowances (including amounts for travel and subsistence and dependency allowances) as the Director determines necessary. The Director may make grants to nonprofit institutions to provide such training and instruction and traineeships and fellowships.

(July 1, 1944, ch. 373, title IV, § 484, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 867.)

§ 287c-2. Advisory council

(a) Appointment; functions and duties; acceptance of conditional gifts; subcommittees

(1) The Secretary shall appoint an advisory council for the Center which shall advise, assist, consult with, and make recommendations to the Secretary and the Director of the Center on matters related to the activities carried out by and through the Center and the policies respecting such activities.

(2) The advisory council for the Center may recommend to the Secretary acceptance, in accordance with section 300aa of this title, of conditional gifts for study, investigations, and research and for the acquisition of grounds or construction, equipping, or maintenance of facilities for the Center.

(3) The advisory council for the Center—

(A)(i) may make recommendations to the Director of the Center respecting research conducted at the Center,

(ii) may review applications for grants and cooperative agreements for research or training and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the Center;

(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspects of human health with respect to which the Center is concerned and with the approval of the Director of the Center make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; ex officio members; compensation

(1) The advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary.

(2) The ex officio members of the advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the Center, the Chief Nursing Officer of the Veterans' Administration, the Assistant Secretary of Defense for Health Affairs, the Director of the Division of Nursing of the Health Resources and Services Administration (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of the advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the Center. Of the members appointed pursuant to this subparagraph, at least seven shall be professional nurses who are recognized experts in the area of clinical practice, education, or research.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of the advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of the advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule.

(c) Term of office; vacancy; reappointment

The term of office of an appointed member of the advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; selection; term of office

The chairman of the advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the Center to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Director of the Center, but at least three times each fiscal year. The location of the meetings of the advisory council is subject to the approval of the Director of the Center.

(f) Executive secretary; staff; orientation and training for new members

The Director of the Center shall designate a member of the staff of the Center to serve as the executive secretary of the advisory council. The Director of the Center shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of the Center shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Material for inclusion in biennial report; additional reports

The advisory council may prepare, for inclusion in the biennial report made under section 287c-3 of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the Center in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the Center. The advisory council may prepare such additional reports as it may determine appropriate.

(July 1, 1944, ch. 373, title IV, § 485, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 867.)

References in Text

The General Schedule, referred to in subsec. (b)(4), is set out under section 5332 of Title 5, Government Organization and Employees.

Termination of Advisory Councils

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

Section Referred to in Other Sections

This section is referred to in section 287c-3 of this title.

§ 287c-3. Biennial report

The Director of the Center after consultation with the advisory council for the Center, shall prepare for inclusion in the biennial report made under section 283 of this title a biennial report which shall consist of a description of the activities of the Center and program policies of the Director of the Center in the fiscal years respecting which the report is prepared. The Director of the Center may prepare such additional reports as the Director determines appropriate. The Director of the Center shall provide the advisory council of the Center an opportunity for the submission of the written comments referred to in section 287c-2(g) of this title.

(July 1, 1944, ch. 373, title IV, § 486, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 869.)

Section Referred to in Other Sections

This section is referred to in section 287c-2 of this title.

Part F—Awards and Training

§ 288. National Research Service Awards

(a) Biomedical and behavioral research and research training; programs and institutions included; restriction; special consideration

(1) The Secretary shall—

(A) provide National Research Service Awards for—

(i) biomedical and behavioral research at the National Institutes of Health and the Alcohol, Drug Abuse, and Mental Health Administration in matters relating to the cause, diagnosis, prevention, and treatment of the diseases or other health problems to which the activities of the National Institutes of Health and Administration are directed;

(ii) training at the National Institutes of Health and at the Administration of individuals to undertake such research;

(iii) biomedical and behavioral research and health services research (including research in primary medical care) at public and nonprofit private entities; and

(iv) pre-doctoral and post-doctoral training at public and private institutions of individuals to undertake biomedical and behavioral research; and

(B) make grants to public and nonprofit private institutions to enable such institutions to make National Research Service Awards for research (and training to undertake biomedical and behavioral research) in the matters described in subparagraph (A)(i) to individuals selected by such institutions.

A reference in this subsection to the National Institutes of Health or the Alcohol, Drug Abuse, and Mental Health Administration shall be considered to include the institutes, agencies, divisions, and bureaus included in the National Institutes of Health or under the Administration, as the case may be.

(2) National Research Service Awards may not be used to support residency training of physicians and other health professionals.

(3) In awarding National Research Service Awards under this section, the Secretary shall take account of the Nation's overall need for biomedical research personnel by giving special consideration to physicians who agree to undertake a minimum of two years of biomedical research.

(b) Prerequisites for Award; review and approval by appropriate advisory councils; Award period; uses for Award; payments to non-Federal public or nonprofit private institutions

(1) No National Research Service Award may be made by the Secretary to any individual unless—

(A) the individual has submitted to the Secretary an application therefor and the Secretary has approved the application;

(B) the individual provides, in such form and manner as the Secretary shall by regulation prescribe, assurances satisfactory to the Secretary that the individual will meet the service requirement of subsection (c) of this section; and

(C) in the case of a National Research Service Award for a purpose described in subsection (a)(1)(A)(iii) of this section, the individual has been sponsored (in such manner as the Secretary may by regulation require) by the institution at which the research or training under the award will be conducted.

An application for an award shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe.

(2) The making of grants under subsection (a)(1)(B) of this section for National Research Service Awards shall be subject to review and approval by the appropriate advisory councils within the Department of Health and Human Services (A) whose activities relate to the research or training under the awards, or (B) for the entity at which such research or training will be conducted.

(3) No grant may be made under subsection (a)(1)(B) of this section unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe. Subject to the provisions of this section (other than paragraph (1)), National Research Service Awards made under a grant under subsection (a)(1)(B) of this section shall be made in accordance with such regulations as the Secretary shall prescribe.

(4) The period of any National Research Service Award made to any individual under subsection (a) of this section may not exceed—

(A) five years in the aggregate for pre-doctoral training; and

(B) three years in the aggregate for post-doctoral training;

unless the Secretary for good cause shown waives the application of such limit to such individual.

(5) National Research Service Awards shall provide for such stipends, tuition, fees, and allowances (including travel and subsistence expenses and dependency allowances), adjusted periodically to reflect increases in the cost of living, for the recipients of the awards as the Secretary may deem necessary. A National Research Service Award made to an individual for research or research training at a non-Federal public or nonprofit private institution shall also provide for payments to be made to the institution for the cost of support services (including the cost of faculty salaries, supplies, equipment, general research support, and related items) provided such individual by such institution. The amount of any such payments to any institution shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the institution for establishing and maintaining the quality of its biomedical and behavioral research and training programs.

(c) Health research or teaching; service period; recovery upon noncompliance with service requirement, formula; cancellation or waiver of obligation

(1) Each individual who is awarded a National Research Service Award (other than an individual who is a pre-baccalaureate student who is awarded a National Research Service Award for research training) shall, in accordance with paragraph (3), engage in health research or teaching or any combination thereof which is in accordance with the usual patterns of academic employment, for a period computed in accordance with paragraph (2).

(2) For each month for which an individual receives a National Research Service Award which is made for a period in excess of twelve months, such individual shall engage in one month of health research or teaching or any combination thereof which is in accordance with the usual patterns of academic employment.

(3) The requirement of paragraph (1) shall be complied with by any individual to whom it applies within such reasonable period of time, after the completion of such individual's award, as the Secretary shall by regulation prescribe. The Secretary shall by regulation prescribe the type of research and teaching in which an individual may engage to comply with such requirement and such other requirements respecting research and teaching as the Secretary considers appropriate.

(4)(A) If any individual to whom the requirement of paragraph (1) is applicable fails, within the period prescribed by paragraph (3), to comply with such requirements, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula—

$$A=\phi\left(\frac{t-s}{t}\right)$$

in which "A" is the amount the United States is entitled to recover; "ϕ" is the sum of the total amount paid under one or more National Research Service Awards to such individual; "t" is the total number of months in such individual's service obligation; and "s" is the number of months of such obligation served by such individual in accordance with paragraphs (1) and (2) of this subsection.

(B) Any amount which the United States is entitled to recover under subparagraph (A) shall, within the three-year period beginning on the date the United States becomes entitled to recover such amount, be paid to the United States. Until any amount due the United States under subparagraph (A) on account of any National Research Service Award is paid, there shall accrue to the United States interest on such amount at a rate fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date the United States becomes entitled to such amount.

(5)(A) Any obligation of an individual under paragraph (1) shall be canceled upon the death of such individual.

(B) The Secretary shall by regulation provide for the waiver or suspension of any such obligation applicable to any individual whenever compliance by such individual is impossible or would involve substantial hardship to such individual or would be against equity and good conscience.

(d) Authorization of appropriations; apportionment

There are authorized to be appropriated to make payments under National Research Service Awards and under grants for such awards $244,000,000 for fiscal year 1986, $260,000,000 for fiscal year 1987, and $275,000,000 for fiscal year 1988. Of the amounts appropriated under this subsection—

(1) not less than 15 percent shall be made available for payments under National Research Service Awards provided by the Secretary under subsection (a)(1)(A) of this section;

(2) not less than 50 percent shall be made available for grants under subsection (a)(1)(B) of this section for National Research Service Awards;

(3) one-half of one percent shall be made available for payments under National Research Service Awards which (A) are made to individuals affiliated with entities which have received grants or contracts under section 295g, 295g-4, or 295g-6 of this title, and (B) are for research in primary medical care; and one-half of one percent shall be made available for payments under National Research Service Awards made for health services research by the National Center for Health Services Research and Health Care Technology Assessment under section 242b(a)(3) of this title; and

(4) not more than 4 percent may be obligated for National Research Service Awards for periods of three months or less.

(July 1, 1944, ch. 373, title IV, § 487, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 869.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242, 254m, 284, 285a-3, 285b-4, 285c-2, 285d-2, 285e-2 of this title.

§ 288a. Visiting Scientist Awards

(a) The Secretary may make awards (hereafter in this section referred to as "Visiting Scientist Awards") to outstanding scientists who agree to serve as visiting scientists at institutions of postsecondary education which have significant enrollments of disadvantaged students. Visiting Scientist Awards shall be made by the Secretary to enable the faculty and students of such institutions to draw upon the special talents of scientists from other institutions for the purpose of receiving guidance, advice, and instruction with regard to research, teaching, and curriculum development in the biomedical and behavioral sciences and such other aspects of these sciences as the Secretary shall deem appropriate.

(b) The amount of each Visiting Scientist Award shall include such sum as shall be commensurate with the salary or remuneration which the individual receiving the award would have been entitled to receive from the institution with which the individual has, or had, a permanent or immediately prior affiliation. Eligibility for and terms of Visiting Scientist Awards shall be determined in accordance with regulations the Secretary shall prescribe.

(July 1, 1944, ch. 373, title IV, § 488, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 872.)

§ 288b. Studies respecting biomedical and behavioral research personnel

(a) Scope of undertaking

The Secretary shall, in accordance with subsection (b) of this section, arrange for the conduct of a continuing study to—

(1) establish (A) the Nation's overall need for biomedical and behavioral research personnel, (B) the subject areas in which such personnel are needed and the number of such personnel needed in each such area, and (C) the kinds and extent of training which should be provided such personnel;

(2) assess (A) current training programs available for the training of biomedical and behavioral research personnel which are conducted under this chapter, at or through national research institutes under the National Institutes of Health and institutes under the Alcohol, Drug Abuse, and Mental Health Administration, and (B) other current training programs available for the training of such personnel;

(3) identify the kinds of research positions available to and held by individuals completing such programs;

(4) determine, to the extent feasible, whether the programs referred to in clause (B) of paragraph (2) would be adequate to meet the needs established under paragraph (1) if the programs referred to in clause (A) of paragraph (2) were terminated; and

(5) determine what modifications in the programs referred to in paragraph (2) are required to meet the needs established under paragraph (1).

(b) Arrangement with National Academy of Sciences or other nonprofit private groups or associations

(1) The Secretary shall request the National Academy of Sciences to conduct the study required by subsection (a) of this section under an arrangement under which the actual expenses incurred by such Academy in conducting such study will be paid by the Secretary. If the National Academy of Sciences is willing to do so, the Secretary shall enter into such an arrangement with such Academy for the conduct of such study.

(2) If the National Academy of Sciences is unwilling to conduct such study under such an arrangement, then the Secretary shall enter into a similar arrangement with other appropriate nonprofit private groups or associations under which such groups or associations will conduct such study and prepare and submit the reports thereon as provided in subsection (c) of this section.

(3) The National Academy of Sciences or other group or association conducting the study required by subsection (a) of this section shall conduct such study in consultation with the Director of NIH.

(c) Report to Congressional committees

A report on the results of the study required under subsection (a) of this section shall be submitted by the Secretary to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate at least once every four years.

(July 1, 1944, ch. 373, title IV, § 489, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 872.)

PART G—GENERAL PROVISIONS

§ 289. Institutional review boards; ethics guidance program

(a) The Secretary shall by regulation require that each entity which applies for a grant, contract, or cooperative agreement under this chapter for any project or program which involves the conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant, contract, or cooperative agreement assurances satisfactory to the Secretary that it has established (in accordance with regulations which the Secretary shall prescribe) a board (to be known as an "Institutional Review Board") to review biomedical and behavioral research involving human subjects conducted at or supported by such entity in order to protect the rights of the human subjects of such research.

(b)(1) The Secretary shall establish a program within the Department of Health and Human Services under which requests for clarification and guidance with respect to ethical issues raised in connection with biomedical or behavioral research involving human subjects are responded to promptly and appropriately.

(2) The Secretary shall establish a process for the prompt and appropriate response to information provided to the Director of NIH respecting incidences of violations of the rights of human subjects of research for which funds have been made available under this chapter. The process shall include procedures for the receiving of reports of such information from recipients of funds under this chapter and taking appropriate action with respect to such violations.

(July 1, 1944, ch. 373, title IV, § 491, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 873.)

§ 289a. Peer review requirements

(a)(1) The Secretary, acting through the Director of NIH, shall by regulation require appropriate technical and scientific peer review of—

(A) applications made for grants and cooperative agreements under this chapter for biomedical and behavioral research; and

(B) applications made for biomedical and behavioral research and development contracts to be administered through the National Institutes of Health.

(2) Regulations promulgated under paragraph (1) shall require that the review of applications made for grants, contracts, and cooperative agreements required by the regulations be conducted—

(A) to the extent practical, in a manner consistent with the system for technical and scientific peer review applicable on November 20, 1985, to grants under this chapter for biomedical and behavioral research, and

(B) to the extent practical, by technical and scientific peer review groups performing such review on or before November 20, 1985, and shall authorize such review to be conducted by groups appointed under sections 282(b)(6) and 284(c)(3) of this title.

(b) The Director of NIH shall establish procedures for periodic technical and scientific peer review of research at the National Institutes of Health. Such procedures shall require that—

(1) the reviewing entity be provided a written description of the research to be reviewed, and

(2) the reviewing entity provide the advisory council of the national research institute involved with such description and the results of the review by the entity,

and shall authorize such review to be conducted by groups appointed under sections 282(b)(6) and 284(c)(3) of this title.

(July 1, 1944, ch. 373, title IV, § 492, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 874.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 282, 284, 284a, 289c of this title.

§ 289b. Protection against scientific fraud

(a) The Secretary shall by regulation require that each entity which applies for a grant, contract, or cooperative agreement under this chapter for any project or program which involves the conduct of biomedical or behavioral research submit in or with its application for such grant, contract, or cooperative agreement assurances satisfactory to the Secretary that such entity—

(1) has established (in accordance with regulations which the Secretary shall prescribe) an administrative process to review reports of scientific fraud in connection with biomedical and behavioral research conducted at or sponsored by such entity; and

(2) will report to the Secretary any investigation of alleged scientific fraud which appears substantial.

(b) The Director of NIH shall establish a process for the prompt and appropriate response to information provided the Director of NIH respecting scientific fraud in connection with projects for which funds have been made available under this chapter. The process shall include procedures for the receiving of reports of such information from recipients of funds under this chapter and taking appropriate action with respect to such fraud.

(July 1, 1944, ch. 373, title IV, § 493, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 874.)

§ 289c. Research on public health emergencies; report to Congressional committees

(a) If the Secretary determines, after consultation with the Director of NIH, the Commissioner of the Food and Drug Administration, or the Director of the Centers for Disease Control, that a disease or disorder constitutes a public health emergency, the Secretary, acting through the Director of NIH—

(1) shall expedite the review by advisory councils under section 284a of this title and by peer review groups under section 289a of this title of applications for grants for research on such disease or disorder or proposals for contracts for such research;

(2) shall exercise the authority in section 5 of title 41 respecting public exigencies to waive the advertising requirements of such section in the case of proposals for contracts for such research;

(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

(b) Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) of this section in such fiscal year.

(July 1, 1944, ch. 373, title IV, § 494, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 875.)

§ 289d. Animals in research

(a) Establishment of guidelines

The Secretary, acting through the Director of NIH, shall establish guidelines for the following:

(1) The proper care of animals to be used in biomedical and behavioral research.

(2) The proper treatment of animals while being used in such research. Guidelines under this paragraph shall require—

(A) the appropriate use of tranquilizers, analgesics, anesthetics, paralytics, and euthanasia for animals in such research; and

(B) appropriate pre-surgical and post-surgical veterinary medical and nursing care for animals in such research.

Such guidelines shall not be construed to prescribe methods of research.

(3) The organization and operation of animal care committees in accordance with subsection (b) of this section.

(b) Animal care committees; establishment; membership; functions

(1) Guidelines of the Secretary under subsection (a)(3) of this section shall require animal care committees at each entity which conducts biomedical and behavioral research with funds provided under this chapter (including the National Institutes of Health and the national research institutes) to assure compliance with the guidelines established under subsection (a) of this section.

(2) Each animal care committee shall be appointed by the chief executive officer of the entity for which the committee is established, shall be composed of not fewer than three members, and shall include at least one individ-

ual who has no association with such entity and at least one doctor of veterinary medicine.

(3) Each animal care committee of a research entity shall—

(A) review the care and treatment of animals in all animal study areas and facilities of the research entity at least semi-annually to evaluate compliance with applicable guidelines established under subsection (a) of this section for appropriate animal care and treatment;

(B) keep appropriate records of reviews conducted under subparagraph (A); and

(C) for each review conducted under subparagraph (A), file with the Director of NIH at least annually (i) a certification that the review has been conducted, and (ii) reports of any violations of guidelines established under subsection (a) of this section or assurances required under paragraph (1) which were observed in such review and which have continued after notice by the committee to the research entity involved of the violations.

Reports filed under subparagraph (C) shall include any minority views filed by members of the committee.

(c) Assurances required in application or contract proposal; reasons for use of animals; notice and comment requirements for promulgation of regulations

The Director of NIH shall require each applicant for a grant, contract, or cooperative agreement involving research on animals which is administered by the National Institutes of Health or any national research institute to include in its application or contract proposal, submitted after the expiration of the twelve-month period beginning on November 20, 1985—

(1) assurances satisfactory to the Director of NIH that—

(A) the applicant meets the requirements of the guidelines established under paragraphs (1) and (2) of subsection (a) of this section and has an animal care committee which meets the requirements of subsection (b) of this section; and

(B) scientists, animal technicians, and other personnel involved with animal care, treatment, and use by the applicant have available to them instruction or training in the humane practice of animal maintenance and experimentation, and the concept, availability, and use of research or testing methods that limit the use of animals or limit animal distress; and

(2) a statement of the reasons for the use of animals in the research to be conducted with funds provided under such grant or contract.

Notwithstanding subsection (a)(2) of section 553 of title 5, regulations under this subsection shall be promulgated in accordance with the notice and comment requirements of such section.

(d) Failure to meet guidelines; suspension or revocation of grant or contract

If the Director of NIH determines that—

(1) the conditions of animal care, treatment, or use in an entity which is receiving a grant, contract, or cooperative agreement involving research on animals under this subchapter do not meet applicable guidelines established under subsection (a) of this section;

(2) the entity has been notified by the Director of NIH of such determination and has been given a reasonable opportunity to take corrective action; and

(3) no action has been taken by the entity to correct such conditions;

the Director of NIH shall suspend or revoke such grant or contract under such conditions as the Director determines appropriate.

(e) Disclosure of trade secrets or privileged or confidential information

No guideline or regulation promulgated under subsection (a) or (c) of this section may require a research entity to disclose publicly trade secrets or commercial or financial information which is privileged or confidential.

(July 1, 1944, ch. 373, title IV, § 495, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 875.)

PLAN FOR RESEARCH INVOLVING ANIMALS

Section 4 of Pub. L. 99-158 provided that:

"(a) ESTABLISHMENT OF PLAN.—The Director of the National Institutes of Health shall establish a plan for—

"(1) research to be conducted by or through the National Institutes of Health and the national research institutes into methods of biomedical research and experimentation—

"(A) which do not require the use of animals;

"(B) which reduce the number of animals used in such research; or

"(C) which produce less pain and distress in such animals than methods currently in use;

"(2) establishing the validity and reliability of the methods described in subparagraph (A);

"(3) the development of such methods which have been found to be valid and reliable; and

"(4) the training of scientists in the use of such methods.

The plan required by this paragraph shall be prepared not later than October 1, 1986.

"(b) DISSEMINATION OF INFORMATION.—The Director of the National Institutes of Health shall take such actions as may be appropriate to convey to scientists and others involved with research or experimentation involving animals information respecting the methods found to be valid and reliable under subsection (a)(2).

"(c) INTERAGENCY COORDINATING COMMITTEE.—The Director of the National Institutes of Health shall establish within the National Institutes of Health an Interagency Coordinating Committee to assist the Director of the National Institutes of Health in the development of the plan required by subsection (a). The Director of each national research institute shall serve on the Committee."

§ 289e. Use of appropriations

Appropriations to carry out the purposes of this subchapter shall be available for the acquisition of land or the erection of buildings only if so specified. Such appropriations, unless otherwise expressly provided, may be expended in the District of Columbia for—

(1) personal services;

(2) stenographic recording and translating services;

(3) travel expenses (including the expenses of attendance at meetings when specifically authorized by the Secretary);

(4) rental;

(5) supplies and equipment;

(6) purchase and exchange of medical books, books of reference, directories, periodicals, newspapers, and press clippings;

(7) purchase, operation, and maintenance of passenger motor vehicles;

(8) printing and binding (in addition to that otherwise provided by law); and

(9) all other necessary expenses in carrying out this subchapter.

Such appropriations may be expended by contract if deemed necessary, without regard to section 5 of title 41.

(July 1, 1944, ch. 373, title IV, § 496, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 877.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 285a-3, 285b-4, 285e-2 of this title.

§ 289f. Gifts and donations; memorials

The Secretary may, in accordance with section 300aa of this title, accept conditional gifts for the National Institutes of Health or a national research institute or for the acquisition of grounds or for the erection, equipment, or maintenance of facilities for the National Institutes of Health or a national research institute. Donations of $50,000 or over for the National Institutes of Health or a national research institute for carrying out the purposes of this subchapter may be acknowledged by the establishment within the National Institutes of Health or a national research institute of suitable memorials to the donors.

(July 1, 1944, ch. 373, title IV, § 497, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 877.)

§ 289g. Fetal research

(a) Conduct or support by Secretary; restrictions

The Secretary may not conduct or support any research or experimentation, in the United States or in any other country, on a nonviable living human fetus ex utero or a living human fetus ex utero for whom viability has not been ascertained unless the research or experimentation—

(1) may enhance the well-being or meet the health needs of the fetus or enhance the probability of its survival to viability; or

(2) will pose no added risk of suffering, injury, or death to the fetus and the purpose of the research or experimentation is the development of important biomedical knowledge which cannot be obtained by other means.

(b) Risk standard for fetuses intended to be aborted and fetuses intended to be carried to term to be the same

In administering the regulations for the protection of human research subjects which—

(1) apply to research conducted or supported by the Secretary;

(2) involve living human fetuses in utero; and

(3) are published in section 46.208 of part 46 of title 45 of the Code of Federal Regulations;

or any successor to such regulations, the Secretary shall require that the risk standard (published in section 46.102(g) of such part 46 or any successor to such regulations) be the same for fetuses which are intended to be aborted and fetuses which are intended to be carried to term.

(c) Study of nature, advisability, and biomedical and ethical implications of waiver of risk standard; report; restriction on granting waiver; repeal of restriction

(1) The Biomedical Ethics Advisory Committee appointed under section 275 of this title shall conduct a study of the nature, advisability, and biomedical and ethical implications of exercising any waiver of the risk standard published in section 46.102(g) of such part 46 (or any successor to such regulations). The Committee shall complete the study and report its findings to the Biomedical Ethics Board established under section 275 of this title not later than the expiration of thirty months after November 20, 1985. The report shall include the recommendations, if any, of the Committee on the advisability of the authority for such a waiver and the circumstances under which such a waiver might be granted. The Biomedical Ethics Board shall transmit the report to the Secretary, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate.

(2) During the thirty-six-month period beginning on November 20, 1985, the Secretary may not grant (under section 46.211 of part 45 of title 46 of the Code of Federal Regulations or any successor to such section) a modification or waiver for fetal research.

(3) Effective October 31, 1988, paragraph (2) is repealed.

(July 1, 1944, ch. 373, title IV, § 498, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 877.)

§ 289h. Construction of subchapter

This subchapter shall not be construed as limiting (1) the functions or authority of the Secretary under section 241 of this title or of any officer or agency of the United States, relating to the study, prevention, diagnosis, and treatment of any disease for which a separate national research institute is established under this subchapter, or (2) the expenditure of any funds therefor.

(July 1, 1944, ch. 373, title IV, § 499, as added Nov. 20, 1985, Pub. L. 99-158, § 2, 99 Stat. 878.)

§ 290. National Institutes of Health Management Fund; establishment; advancements; availability; final adjustments of advances

For the purpose of facilitating the economical and efficient conduct of operations in the National Institutes of Health which are financed by two or more appropriations where the costs of operation are not readily susceptible of distribution as charges to such appropriations, there is established the National Institutes of Health Management Fund. Such amounts as the Director of the National Institutes of Health may determine to represent a reasonable distribution of estimated costs among the various appropriations involved may be advanced each year to this fund and shall be available for expenditure for such costs under such regulations as may be prescribed by said Director, including the operation of facilities for the sale of meals to employees and others at rates to be determined by said Director to be sufficient to cover the reasonable value of the meals served and the proceeds thereof shall be deposited to the credit of this fund: *Provided*, That funds advanced to this fund shall be available only in the fiscal year in which they are advanced: *Provided further*, That final adjustments of advances in accordance with actual costs shall be effected wherever practicable with the appropriations from which such funds are advanced.

(Pub. L. 85-67, title II, § 201, June 29, 1957, 71 Stat. 220; Pub. L. 87-290, title II, § 201, Sept. 22, 1961, 75 Stat. 603.)

CODIFICATION

Section was enacted as a part of the Department of Health, Education, and Welfare Appropriation Act, 1958, and not as a part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1961—Pub. L. 87-290 substituted "reasonable value of the meals served" for "cost of such operation".

§ 290a. Victims of fire

(a) Research on burns, burn injuries, and rehabilitation

The Secretary of Health and Human Services shall establish, within the National Institutes of Health and in cooperation with the Secretary of Commerce, an expanded program of research on burns, treatment of burn injuries, and rehabilitation of victims of fires. The National Institutes of Health shall—

(1) sponsor and encourage the establishment throughout the Nation of twenty-five additional burn centers, which shall comprise separate hospital facilities providing specialized burn treatment and including research and teaching programs and twenty-five additional burn units, which shall comprise specialized facilities in general hospitals used only for burn victims;

(2) provide training and continuing support of specialists to staff the new burn centers and burn units;

(3) sponsor and encourage the establishment of ninety burn programs in general hospitals which comprise staffs of burn injury specialists;

(4) provide special training in emergency care for burn victims;

(5) augment sponsorship of research on burns and burn treatment;

(6) administer and support a systematic program of research concerning smoke inhalation injuries; and

(7) sponsor and support other research and training programs in the treatment and rehabilitation of burn injury victims.

(b) Authorization of appropriations

For purposes of this section, there are authorized to be appropriated not to exceed $5,000,000 for the fiscal year ending June 30, 1975 and not to exceed $8,000,000 for the fiscal year ending June 30, 1976.

(Pub. L. 93-498, § 19, Oct. 29, 1974, 88 Stat. 1547; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

In subsec. (a), "Secretary of Commerce" was substituted for "Secretary" pursuant to section 4(6) of the Federal Fire Prevention and Control Act of 1974, Pub. L. 93-498, which is classified to section 2203(6) of Title 15, Commerce and Trade.

Section was enacted as part of the Federal Fire Prevention and Control Act of 1974 (which is classified principally to chapter 49 (§ 2201 et seq.) of Title 15), and not as a part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

"Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" in subsec. (a) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

SUBCHAPTER III-A—ADMINISTRATION AND COORDINATION OF THE NATIONAL INSTITUTE OF MENTAL HEALTH, THE NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM, AND THE NATIONAL INSTITUTE ON DRUG ABUSE

PART A—ADMINISTRATION AND INSTITUTES

§ 290aa. Alcohol, Drug Abuse, and Mental Health Administration

(a) Establishment; appointment of Administrator and Deputy Administrator; employment and functions of officers and employees

The Secretary shall establish, in the Department, the Alcohol, Drug Abuse, and Mental Health Administration (hereinafter in this section referred to as the "Administration"). The Administration shall be headed by an Administrator appointed by the President, by and with the advice and consent of the Senate. The Administrator, with the approval of the Secretary, may appoint a Deputy Administrator and may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the activities to be carried out through the Administration.

(b) Statement of purpose for supervision of functions of National Institutes of Mental Health, Alcohol Abuse and Alcoholism, and Drug Abuse

The Secretary, acting through the Administration, shall supervise the functions of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse in order to assure that (1) the programs carried out through each such Institute receive appropriate and equitable support, and (2) there is cooperation among the Institutes in the implementation of such programs.

(c) Alcohol, Drug Abuse, and Mental Health Advisory Board; establishment; functions; membership; term of office; compensation and expenses; staff personnel; chairman; meetings; annual report to Congressional committees

(1) There is established the Alcohol, Drug Abuse, and Mental Health Advisory Board (hereinafter in this subsection referred to as the "Board"). The Board shall—

(A) periodically assess the national needs for alcoholism, alcohol abuse, drug abuse, and mental health services and the extent to which those needs are being met by State, local, and private programs and programs receiving funds under this subchapter and part B of subchapter XVII of this chapter, and

(B) provide advice to the Secretary and the Administrator respecting activities carried out under this subchapter and part B of subchapter XVII of this chapter.

(2)(A) The Board shall consist of fifteen members appointed by the Secretary and such ex officio members from the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health as the Secretary may designate. Of the members appointed to the Board, at least six members shall represent State and private, nonprofit providers of prevention and treatment services for alcoholism, alcohol abuse, drug abuse, and mental illness, at least six members shall be individuals with expertise in public education and prevention services for alcoholism, alcohol abuse, drug abuse, and mental illness, and at least three members shall be appointed from members of the general public who are knowledgeable about alcoholism, alcohol abuse, drug abuse, and mental illness.

(B) The term of office of a member appointed to the Board is four years, except that of the members first appointed to the Board—

(i) five shall serve for terms of one year,

(ii) five shall serve for terms of two years,

(iii) five shall serve for terms of three years,

as designated by the Secretary at the time of appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of the member's term until the successor of the member has taken office.

(3)(A) Except as provided in subparagraph (B), members of the Board shall (i) be paid not more than the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Board, and (ii) while away from their homes or regular places of business and while serving in the business of the Board, be entitled to receive transportation expenses as prescribed by section 5703 of title 5.

(B) Members of the Board who are full-time officers or employees of the United States shall receive no additional pay, allowances, or benefits by reason of their service on the Board.

(4) The Board may appoint such staff personnel as the Board considers appropriate.

(5) The Secretary shall designate the chairman of the Board.

(6) The Board shall meet at least three times each calendar year.

(7) The Board shall report annually to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on its activities during the prior year and shall include in such report such recommendations for legislation and administrative action as it deems appropriate.

(d) Public distribution of reports on alcohol and drug abuse hazards

To educate the public with respect to the health hazards of alcoholism, alcohol abuse, and drug abuse, the Administrator shall take such actions as may be necessary to ensure the widespread dissemination of current publications of the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse relating to the most recent research findings with respect to such health hazards.

(e) Associate Administrator for Prevention; annual report on prevention activities

(1) There shall be in the administration an Associate Administrator for Prevention to whom the Administrator shall delegate the function of promoting the prevention research programs of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse and coordinating such programs between the institutes and between the institutes and other public and private entities.

(2) On or before January 1, 1984, and annually thereafter, the Administrator, acting through the Associate Administrator for Prevention, shall submit to the Congress a report describing the prevention activities (including preventive medicine and health promotion) undertaken by the administration, the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse. The report shall include a detailed statement of the expenditures made for the activities reported on and the personnel used in connection with such activities.

(f) Response to reports of fraud and violation of rights of human research subjects

The Administrator shall establish a process for the prompt and appropriate response to information provided the Administrator respecting (1) scientific fraud in connection with projects for which funds have been made available under this chapter, and (2) incidences of violations of the rights of human subjects of research for which funds have been made available under this subchapter. The process shall include procedures for the receiving of reports of such information from recipients of funds under this subchapter and taking appropriate action with respect to such fraud and violations.

(g) Training grants for identification and treatment of alcohol and drug abuse

The Secretary, acting through the Administrator, shall make grants to schools of the health professions and schools of social work to support the training of students in such schools in the identification and treatment of alcohol and drug abuse. Grants under this subsection shall be made from funds available under this subchapter and section 242a of this title.

(h) Experts and consultants; travel expenses; agreement to serve; recovery by United States; waiver

(1) The Administrator may obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the number of days or the period of service) the services of not more than 20 experts or consultants who have scientific or professional qualifications. Such experts and consultants shall be obtained for the Administration and for each of the research institutes under the Administration.

(2)(A) Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a)(1), 5724a(a)(3), and 5726(c) of title 5.

(B) Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1), unless and until the expert or consultant agrees in writing to complete the entire period of assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond the control of the expert or consultant that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a debt of the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

(July 1, 1944, ch. 373, title V, § 501, formerly Pub. L. 93-282, title II, § 201, May 14, 1974, 88 Stat. 134, as amended Pub. L. 94-371, § 8, July 26, 1976, 90 Stat. 1040; redesignated § 501 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(2), 97 Stat. 176; Oct. 19, 1984, Pub. L. 98-509, title II, § 201, title III, § 301(c)(1), 98 Stat. 2359, 2364.)

References in Text

The General Schedule, referred to in subsec. (c)(3)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

Codification

Section was formerly classified to section 3511 of this title prior to redesignation by Pub. L. 98-24.

Prior Provisions

A prior section 501 of act July 1, 1944, which was classified to section 219 of this title, was renumbered section 2101 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa of this title.

Amendments

1984—Pub. L. 98-509, § 301(c)(1), amended directory language of Pub. L. 98-24, § 2(b)(2). See 1983 Amendment note below.

Subsec. (c). Pub. L. 98-509, § 201(a), substituted provisions relating to the Alcohol, Drug Abuse, and Mental Health Advisory Board for provisions relating to the National Panel on Alcohol, Drug Abuse, and Mental Health.

Subsecs. (g), (h). Pub. L. 98-509, § 201(b), added subsecs. (g) and (h).

1983—Pub. L. 98-24, § 2(b)(2), as amended by Pub. L. 98-509, § 301(c)(1), redesignated section 3511 of this title as this section.

Subsec. (a). Pub. L. 98-24, § 2(b)(2)(A), struck out "of Health, Education, and Welfare" after "The Secretary" and "Department".

Subsec. (c). Pub. L. 98-24, § 2(b)(2)(A), (B), struck out "of Health, Education, and Welfare" after "The Secretary", and made a technical amendment to the reference to section 218 of this title to reflect the transfer of this section to the Public Health Service Act.

Subsec. (d). Pub. L. 98-24, § 2(b)(2)(C), substituted provisions directing the Administrator to distribute information on the hazards of alcoholism and the abuse of alcohol and drugs for provisions directing the Secretary, through the Administration, to evaluate and make recommendations regarding improved, coordinated activities, where appropriate, for public education and other prevention programs with respect to the abuse of alcohol and other substances.

Subsecs. (e), (f). Pub. L. 98-24, § 2(b)(2)(D), added subsecs. (e) and (f).

1976—Subsec. (d). Pub. L. 94-371 added subsec. (d).

Termination of Advisory Councils

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

Congressional Statement of Policy for Alcohol and Drug Abuse Amendments of 1983

Section 1(b) of Pub. L. 98-24 provided that: "It is the policy of the United States and the purpose of this Act [see Short Title of 1983 Amendment note set out under section 201 of this title] to provide leadership in the national effort to reduce the incidence of alcoholism and alcohol-related problems and drug abuse through—

"(1) a continued Federal commitment to research into the behavioral and biomedical etiology, the treatment, and the mental and physical health and social and economic consequences of alcohol abuse and alcoholism and drug abuse;

"(2) a commitment to—

"(A) extensive dissemination to States, units of local government, community organizations, and private groups of the most recent information and research findings with respect to alcohol abuse and alcoholism and drug abuse, including information with respect to the application of research findings; and

"(B) the accomplishment of such dissemination through up-to-date publications, demonstrations, educational programs, and other appropriate means;

"(3) the provision of technical assistance to research personnel; services personnel, and prevention personnel in the field of alcohol abuse and alcoholism and drug abuse;

"(4) the development and encouragement of prevention programs designed to combat the spread of alcoholism, alcohol abuse, drug abuse, and the abuse of other legal and illegal substances;

"(5) the development and encouragement of effective occupational prevention and treatment programs within Government and in cooperation with the private sector; and

"(6) the provision of a Federal response to alcohol abuse and alcoholism and drug abuse which encourages the greatest participation by the private sector, both financially and otherwise, and concentrates on carrying out functions relating to alcohol abuse and alcoholism and drug abuse which are truly national in scope."

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH REPORTS BY THE SECRETARY

Section 3 of Pub. L. 98-24 provided that:

"(a) The Secretary of Health and Human Services shall submit to the Congress, on or before January 15, 1984, a report describing the extent to which Federal and State programs, departments, and agencies are concerned and are dealing effectively with—

"(1) the problems of alcohol abuse and alcoholism,

"(2) the problems of drug abuse, and

"(3) mental illness.

"(b) The report required by subsection (a) shall include information with respect to the services provided for alcohol abuse, alcoholism, drug abuse, and mental health under part B of title XIX of the Public Health Service Act [42 U.S.C. 300x et seq.]. To obtain information respecting such services, the Secretary shall work with appropriate national organizations to ensure that State and local governments use compatible means of collecting data respecting such services so that uniform national data with respect to the provision of such services will be available to the States and to the Secretary.

"(c) In compiling data for the report required by subsection (a), the Secretary may not require any State to submit any information which is not required under section 1916(a) of the Public Health Service Act [42 U.S.C. 300x-5(a)]."

§ 290aa-1. National Institute on Alcohol Abuse and Alcoholism

(a) Establishment; functions of Institute; functions of Secretary regarding alcohol abuse and alcoholism prevention, treatment, and rehabilitation programs

There is established the National Institute on Alcohol Abuse and Alcoholism (hereafter in this section referred to as the "Institute") to administer the programs and authorities relating to alcohol abuse and alcoholism assigned to the Secretary by this chapter. The Secretary, acting through the Institute, shall, in carrying out the purposes of sections 241 and 242a of this title with respect to alcohol abuse and alcoholism, develop and conduct comprehensive health, education, training, research, and planning programs for the prevention and treatment of alcohol abuse and alcoholism and for the rehabilitation of alcohol abusers and alcoholics. The Secretary shall carry out through the Institute the administrative and financial management, policy development and planning, evaluation, and public information functions which are required for the implementation of such programs and authorities.

(b) Appointment of Director and employment and functions of officers and employees of Institute

(1) The Institute shall be under the direction of a Director who shall be appointed by the Secretary.

(2) The Director, with the approval of the Secretary, may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the programs to be carried out through the Institute.

(c) Administration of programs to encourage widest participation of professionals and paraprofessionals in certain related disciplines

The programs to be carried out through the Institute shall be administered so as to encourage the broadest possible participation of professionals and paraprofessionals in the fields of medicine, science, the social sciences, and other related disciplines.

(d) Underserved areas, program development; report to President and Congress

(1) The Director shall make special efforts to develop and coordinate prevention, treatment, research, and administrative policies and programs which focus on the needs of underserved populations.

(2) The Secretary shall include in the annual report to the President and the Congress required by section 4552(1)[1] of this title a description of the actions taken by the Director under paragraph (1).

(e) Preparation of television announcements concerning dangers of consumption of alcoholic beverages

The Secretary shall prepare for distribution announcements for television to educate the public concerning the dangers resulting from the consumption of alcoholic beverages and, to the extent feasible, use appropriate private organizations and business concerns in the preparation of such announcements.

(July 1, 1944, ch. 373, title V, § 502, formerly Pub. L. 91-616, title I, § 101, Dec. 31, 1970, 84 Stat. 1848, as amended Pub. L. 93-282, title II, § 203(a), May 14, 1974, 88 Stat. 135; Pub. L. 96-180, § 3, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97-35, title IX, § 966(a), Aug. 13, 1981, 95 Stat. 595; redesignated § 502 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(3), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98-509, title II, § 205(b)(2), 98 Stat. 2361.)

REFERENCES IN TEXT

Section 4552(1) of this title, referred to in subsec. (d)(2), was in the original "section 102(1)", meaning section 102(1) of Pub. L. 91-616, title I, Dec. 31, 1970, 84 Stat. 1848, which was classified to section 4552(1) of this title and was repealed by Pub. L. 98-24, § 2(c)(1), Apr. 26, 1983, 97 Stat. 182. See section 290aa-4 of this title.

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[1] See References in Text note below.

CODIFICATION

Section was formerly classified to section 4551 of this title prior to redesignation by Pub. L. 98-24.

PRIOR PROVISIONS

A prior section 502 of act July 1, 1944, which was classified to section 220 of this title, was renumbered section 2102 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-1 of this title.

AMENDMENTS

1984—Pub. L. 98-509 added subsec. (e).

1983—Pub. L. 98-24, § 2(b)(3), redesignated section 4551 of this title as this section.

Subsec. (a). Pub. L. 98-24, § 2(b)(3)(A), substituted "this section" for "this chapter", meaning chapter 60 of this title, substituted "relating to alcohol abuse and alcoholism assigned to the Secretary" for "assigned to the Secretary of Health and Human Services (hereafter in this chapter referred to as the 'Secretary')", and made a technical amendment to the reference to sections 241 and 242a of this title to reflect the transfer of this section to the Public Health Service Act.

1981—Subsec. (a). Pub. L. 97-35 substituted "Health and Human Services" for "Health, Education, and Welfare", and struck out reference to part C of the Community Mental Health Centers Act.

1980—Subsec. (d). Pub. L. 96-180 added subsec. (d).

1974—Subsec. (a). Pub. L. 93-282 deleted provisions for establishment of the Institute in the National Institute of Mental Health, inserted reference to section 242a of this title, and required the Secretary to carry out through the Institute the administrative and financial management, policy development and planning, evaluation, and public information functions required for implementation of prescribed programs and authorities.

Subsec. (b). Pub. L. 93-282 designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 93-282 added subsec. (c).

§ 290aa-2. National Institute on Drug Abuse

(a) Establishment; functions; drug abuse prevention, treatment, and rehabilitation programs

There is established the National Institute on Drug Abuse (hereinafter in this section referred to as the "Institute") to administer the programs and authorities relating to drug abuse assigned to the Secretary by this chapter. The Secretary, acting through the Institute, shall, in carrying out the purpose of sections 241, 242, and 242a of this title with respect to drug abuse, develop and conduct comprehensive health, education, training, research, and planning programs for the prevention and treatment of drug abuse and for the rehabilitation of drug abusers. The Secretary shall carry out through the Institute the administrative and financial management, policy development and planning, evaluation, and public information functions which are required for the implementation of such programs and authorities.

(b) Appointment of Director and employment and functions of officers and employees of Institute

(1) The Institute shall be under the direction of a Director who shall be appointed by the Secretary.

(2) The Director, with the approval of the Secretary, may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the programs and authorities to be carried out through the Institute.

(c) Participation of certain related disciplines in programs of Institute

The programs of the Institute shall be administered so as to encourage the broadest possible participation of professionals and paraprofessionals in the fields of medicine, science, the social sciences, and other related disciplines.

(d) Information center; uniform methodology and technology; statistics; preparation of television announcements concerning dangers of consumption of drugs

The Secretary shall—

(1) operate an information center for the collection, preparation, and dissemination of all information relating to drug abuse prevention functions, including information concerning State and local drug abuse treatment plans, and the availability of treatment resources, training and educational programs, statistics, research, and other pertinent data and information.

(2) investigate and publish information concerning uniform methodology and technology for determining the extent and kind of drug use by individuals and effects which individuals are likely to experience from such use;

(3) gather and publish statistics pertaining to drug abuse and promulgate regulations specifying uniform statistics to be furnished, records to be maintained, and reports to be submitted, on a voluntary basis by public and private entities and individuals respecting drug abuse; and

(4) prepare for distribution announcements for television to educate the public concerning the dangers resulting from the consumption of drugs and, to the extent feasible, use appropriate private organizations and business concerns in the preparation of such announcements.

(July 1, 1944, ch. 373, title V, § 503, formerly Pub. L. 92-255, title IV, § 406(a), title V, § 501, Mar. 21, 1972, 86 Stat. 78, 85, as amended Pub. L. 93-282, title II, § 204, May 14, 1974, 88 Stat. 136; Pub. L. 94-237, § 12(a), Mar. 19, 1976, 90 Stat. 247; Pub. L. 96-181, § 10, Jan. 2, 1980, 93 Stat. 1314; Pub. L. 97-35, title IX, §§ 968(a), 973(f), Aug. 13, 1981, 95 Stat. 595, 598; redesignated § 503 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(4), (5), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98-509, title II, §§ 202, 205(b)(1), 98 Stat. 2360, 2361.)

CODIFICATION

Prior to redesignation by Pub. L. 98-24, subsecs. (a) to (d) of this section were subsecs. (a) to (d) of section 501 of Pub. L. 92-255, which was classified to section 1191 of Title 21, Food and Drugs, and subsec. (e) of this section was subsec. (a) of section 406 of Pub. L. 92-255, which was classified to section 1173(a) of Title 21.

PRIOR PROVISIONS

A prior section 503 of act July 1, 1944, which was classified to section 221 of this title, was renumbered section 2103 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-2 of this title.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-509, § 202, redesignated subsec. (e) as (d) and struck out former subsec. (d) which directed the Director to make special efforts to develop and coordinate prevention, treatment, research, and administrative policies and programs focusing on the needs of underserved populations and to include in the annual report to the President and the Congress required by section 1172(b) of title 21 a description of the actions taken by the Director under subsec. (d).

Subsec. (d)(4). Pub. L. 98-509, § 205(b)(1), added par. (4). Notwithstanding directory language that amendment be made to subsec. (e), amendment was executed to subsec. (d) to reflect the probable intent of Congress and the intervening redesignation of subsec. (e) as (d) by section 202 of Pub. L. 98-509.

Subsec. (e). Pub. L. 98-509, § 202, redesignated subsec. (e) as (d).

1983—Pub. L. 98-24, § 2(b)(4), (5), redesignated sections 1191 and 1173(a) of Title 21, Food and Drugs, as subsecs. (a) to (d) and (e), respectively, of this section.

Subsec. (a). Pub. L. 98-24, § 2(b)(4)(A), substituted "this section" for "this subchapter", meaning subchapter V (§ 1191 et seq.) of chapter 16 of title 21, substituted "relating to drug abuse assigned to the Secretary by this chapter" for "of the Secretary of Health and Human Services (hereinafter in this subchapter referred to as the 'Secretary') with respect to drug abuse prevention functions", and made a technical amendment to the reference to sections 241, 242, and 242a of this title to reflect the transfer of this section to the Public Health Service Act.

Subsec. (b)(1). Pub. L. 98-24, § 2(b)(4)(B), struck out "(hereinafter in this subchapter referred to as the 'Director')" after "Director".

1981—Subsec. (a). Pub. L. 97-35, § 973(f), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (e)(4). Pub. L. 97-35, § 968(a), struck out par. (4) which related to review and publication functions of the Secretary.

1980—Subsec. (d). Pub. L. 96-181 added subsec. (d).

1976—Subsec. (a). Pub. L. 94-237, § 12(a)(1), substituted "subchapter" for "section" wherever appearing.

Subsec. (b)(1). Pub. L. 94-237, § 12(a)(2), inserted "(hereinafter in this subchapter referred to as the 'Director')" after "Director".

1974—Subsec. (a). Pub. L. 93-282 deleted provisions for establishment of the Institute effective Dec. 31, 1974, and for such establishment in the National Institue of Mental Health, inserted references to sections 242 and 242a of this title, and required the Secretary to carry out through the Institute the administrative and financial management, policy development and planning, evaluation, and public information functions required for implementation of prescribed programs and authorities.

Subsec. (b). Pub. L. 93-282 designated existing provisions as par. (1) and added par. (2).

§ 290aa-3. National Institute of Mental Health

(a) Establishment; functions of Institute; functions of Secretary regarding mental illness prevention, treatment, and rehabilitation program

There is established the National Institute of Mental Health (hereinafter in this part referred to as the "Institute") to administer the programs and authorities of the Secretary with respect to mental health. The Secretary, acting through the Institute, shall, in carrying out the purposes of sections 241 and 242a of this title with respect to mental illness, develop and conduct comprehensive health, education, training, research, and planning programs for the prevention and treatment of mental illness and for the rehabilitation of the mentally ill. The Secretary shall carry out through the Institute the administrative and financial management, policy development and planning, evaluation, and public information functions which are required for the implementation of such programs and authorities.

(b) Appointment of Director and employment and functions of officers and employees of Institute

(1) The Institute shall be under the direction of a Director who shall be appointed by the Secretary.

(2) The Director, with the approval of the Secretary, may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the programs and authorities to be carried out through the Institute.

(c) Administration of programs to encourage widest participation of professionals and paraprofessionals in certain related disciplines

The programs to be carried out through the Institute shall be administered so as to encourage the broadest possible participation of professionals and paraprofessionals in the fields of medicine, science, the social sciences, and other related disciplines.

(d) Administrative unit; designation, functions, etc.

The Director shall designate an administrative unit in the Institute to—

(1) design national goals and establish national priorities for—

(A) the prevention of mental illness, and

(B) the promotion of mental health,

(2) encourage and assist local entities and State agencies to achieve the goals and priorities described in paragraph (1), and

(3) develop and coordinate Federal prevention policies and programs and to assure increased focus on the prevention of mental illness and the promotion of mental health.

(e) Associate Director for Special Populations; designation, functions, etc.

(1) The Director of the National Institute of Mental Health shall designate an Associate Director for Special Populations.

(2) The Secretary, acting through the Associate Director for Special Populations, shall—

(A) develop and coordinate prevention, treatment, research, and administrative policies and programs to assure increased emphasis on the mental health needs of women and minority populations.[1]

(B) support programs and projects relating to the delivery of mental health services to women and minority populations, including demonstration programs and projects;

(C) develop a plan to increase the representation of women and minority populations in mental health service delivery and manpower programs;

(D) support programs of basic and applied social and behavioral research on the mental health problems of women and minority populations;

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[1] So in original. The period probably should be a semicolon.

(E) study the effects of discrimination on institutions and individuals, including majority institutions and individuals;

(F) develop systems to assist women and minority populations in adapting to, and coping with, the effects of discrimination;

(G) support and develop research, demonstration, and training programs designed to eliminate institutional discrimination; and

(H) provide increased emphasis on the concerns of women and minority populations in training programs, service delivery programs, and research endeavors of the Institute.

(f) Mental health services demonstration projects; grants; limitations; waiver; authorization of appropriations

(1) The Secretary, acting through the Director, may make grants to States, political subdivisions of States, and private nonprofit agencies for mental health services demonstration projects for the planning, coordination, and improvement of community services for chronically mentally ill individuals, seriously mentally disturbed children, and elderly individuals, and for the conduct of research concerning such services.

(2) The Secretary may make a grant under paragraph (1) for not more than three consecutive one-year periods, except that the Secretary may waive the limitation of this paragraph with respect to a particular grant if the Secretary determines that extenuating circumstances exist which merit such waiver.

(3) For purposes of paragraphs (1) and (2) there are authorized to be appropriated $20,000,000 for each of the fiscal years 1985, 1986, and 1987.

(g) State comprehensive mental health plans

The Secretary, acting through the Director, may make grants to States for the purpose of developing State comprehensive mental health plans referred to in section 300x-4(e) of this title.

(July 1, 1944, ch. 373, title V, § 504, formerly title IV, § 455, as added May 14, 1974, Pub. L. 93-282, title II, § 202, 88 Stat. 135, amended Oct. 7, 1980, Pub. L. 96-398, title III, § 325, title IV, § 401(a), title VIII, § 804(a), 94 Stat. 1596, 1597, 1608; Aug. 13, 1981, Pub. L. 97-35, title IX, § 902(g)(1), 95 Stat. 560; and renumbered Apr. 26, 1983, Pub. L. 98-24, § 2(b)(6), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98-509, title II, §§ 203, 204, 98 Stat. 2360, 2361; Oct. 7, 1985, Pub. L. 99-117, § 11(b), 99 Stat. 495.)

CODIFICATION

Section was formerly classified to section 289k-1 of this title prior to renumbering by Pub. L. 98-24.

PRIOR PROVISIONS

A prior section 504 of act July 1, 1944, which was classified to section 222 of this title, was renumbered section 2104 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-3 of this title.

AMENDMENTS

1985—Pub. L. 99-117, § 11(b)(2), directed that section catchline read "National Institute of Mental Health".

Subsec. (g). Pub. L. 99-117, § 11(b)(1), substituted "section 300x-4(e)" for "section 300x-3(e)".

1984—Subsec. (e)(1). Pub. L. 98-509, § 203(1), substituted "Special Populations" for "Minority Concerns".

Subsec. (e)(2). Pub. L. 98-509, § 203, substituted "Special Populations" for "Minority Concerns" in provisions preceding subpar. (A) and "women and minority" for "minority" in subpars. (A) to (D), (F), and (H).

Subsecs. (f), (g). Pub. L. 98-509, § 204, added subsecs. (f) and (g).

1981—Subsec. (a). Pub. L. 97-35 struck out references to the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (other than part C of title II) and the Mental Health Systems Act.

1980—Subsec. (a). Pub. L. 96-398, § 804(a), added reference to the Mental Health Systems Act.

Subsec. (d). Pub. L. 96-398, § 325, added subsec. (d).

Subsec. (e). Pub. L. 96-398, § 401(a), added subsec. (e).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as a note under section 300aa-14 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 401(b) of Pub. L. 96-398 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 7, 1980] or October 1, 1980, whichever occurs later."

REPEALS

The directory language of, but not the amendment made by, Pub. L. 96-398, title III, § 325, cited as a credit to this section, was repealed by section 902(e)(1) of Pub. L. 97-35, title IX, Aug. 13, 1981, 95 Stat. 560, effective Oct. 1, 1981.

§ 290aa-4. Reports: health consequences, current research, recommendations

(a) Alcoholism and alcohol abuse

The Secretary shall submit to Congress on or before January 15, 1984, and every three years thereafter a report—

(1) containing current information on the health consequences of using alcoholic beverages,

(2) containing a description of current research findings made with respect to alcohol abuse and alcoholism, and

(3) containing such recommendations for legislation and administrative action as the Secretary may deem appropriate.

(b) Drug abuse

The Secretary shall submit to Congress on or before January 15, 1984, and every three years thereafter a report—

(1) describing the health consequences and extent of drug abuse in the United States;

(2) describing current research findings made with respect to drug abuse, including current findings on the health effects of marihuana and the addictive property of tobacco; and

(3) containing such recommendations for legislation and administrative action as the Secretary may deem appropriate.

(July 1, 1944, ch. 373, title V, § 505, as added Apr. 26, 1983, Pub. L. 98-24, § 2(b)(7), 97 Stat. 178.)

PRIOR PROVISIONS

A prior section 505 of act July 1, 1944, which was classified to section 223 of this title, was renumbered section 2105 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-4 of this title.

REGULATIONS

Secretary of Health and Human Services to promulgate regulations, within 90 days of Oct. 19, 1984, for the administration of section 802(28) of Title 21, Food and Drugs, as amended by Pub. L. 98-509, title III, § 301(a), Oct. 19, 1984, 98 Stat. 2364, and to include in the first report submitted under subsec. (b) of this section after such period the findings of the Secretary with respect to the effect of the amendment by section 301(a) of Pub. L. 98-509, see section 301(b) of Pub. L. 98-509, set out as a note under section 802 of Title 21.

§ 290aa-5. Peer review

(a) Requirement for biomedical and behavioral research and development by the Institutes

The Secretary, after consultation with the Directors of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse shall by regulation require appropriate technical and scientific peer review of biomedical and behavioral research and development grants, cooperative agreements, and contracts to be administered through the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse.

(b) Consistency with existing peer review regulations

Regulations promulgated under subsection (a) of this section shall require that the review of grants, cooperative agreements, and contracts required by the regulations be conducted—

(1) in a manner consistent with the system for scientific peer review applicable on April 26, 1983, to grants, cooperative agreements, and contracts under this chapter for biomedical and behavioral research, and

(2) to the extent practical, by peer review groups performing such review on or before such date.

(c) Qualifications of review group members

The members of any peer review group established under such regulations shall be individuals who by virtue of their training or experience are eminently qualified to perform the review functions of the group and not more than one-fourth of the members of any peer review group established under such regulations shall be officers or employees of the United States.

(d) Procedures for review of research at the Institutes

The Administrator of the administration[3] shall establish procedures for periodic, technical, and scientific peer review of research at the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse. Such procedures shall require that—

(1) the reviewing entity be provided a written description of the research to be reviewed; and

(2) the reviewing entity provide the advisory council of the institute involved with such description and the results of the review by the entity.

(e) Amount of direct cost of grant, cooperative agreement, or contract as determining approval procedure

(1) If the direct cost of a grant, cooperative agreement, or contract (described in subsection (a) of this section) to be made does not exceed $50,000, the Secretary may make such grant, cooperative agreement, or contract only if such grant, cooperative agreement, or contract is recommended after technical and scientific peer review required by regulations under subsections (a) and (b) of this section.

(2) If the direct cost of a grant, cooperative agreement, or contract (described in subsection (a) of this section) to be made exceeds $50,000, the Secretary may make such grant, cooperative agreement, or contract only if such grant, cooperative agreement, or contract is recommended—

(A) after technical and scientific peer review required by regulations under subsections (a) and (b) of this section, and

(B) by the National Advisory Council on Alcohol Abuse and Alcoholism, the National Advisory Council on Drug Abuse, or the National Mental Health Advisory Council, as is appropriate.

(July 1, 1944, ch. 373, title V, § 506, as added Apr. 26, 1983, Pub. L. 98-24, § 2(b)(7), 97 Stat. 178, and amended Nov. 20, 1985, Pub. L. 99-158, § 3(c), 99 Stat. 879.)

PRIOR PROVISIONS

A prior section 506 of act July 1, 1944, which was classified to section 224 of this title, was renumbered section 2106 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-5 of this title.

AMENDMENTS

1985—Subsec. (e). Pub. L. 99-158 added subsec. (e).

PART B—RESEARCH

SUBPART 1—ALCOHOL ABUSE AND ALCOHOLISM

§ 290bb. Encouragement of research

(a) The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism (hereinafter in this subpart referred to as the "Institute"), shall carry out a program of research, investigations, experiments, and studies, directly and by grant or contract, into—

(1) the social, behavioral, and biomedical etiology,

(2) prevention,

(3) treatment,

(4) mental and physical health consequences,

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[3] So in original. Probably should be "Administration".

(5) social and economic consequences, and
(6) the impact on families,

of alcohol abuse and alcoholism.

(b) In carrying out the program described in subsection (a) of this section, the Secretary, acting through the Institute, is authorized to—

(1) collect and disseminate through publications and other appropriate means (including the development of curriculum materials), information as to, and the practical application of, the research and other activities under the program;

(2) make available research facilities of the Public Health Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(3) make grants to universities, hospitals, laboratories, and other public or nonprofit institutions, and to individuals for such research projects as are recommended by the National Advisory Council on Alcohol Abuse and Alcoholism, giving special consideration to projects relating to—

(A) the relationship between alcohol abuse and domestic violence,

(B) the effects of alcohol use during pregnancy,

(C) the impact of alcoholism and alcohol abuse on the family, the workplace, and systems for the delivery of health services,

(D) the relationship between the abuse of alcohol and other drugs,

(E) the effect on the incidence of alcohol abuse and alcoholism of social pressures, legal requirements respecting the use of alcoholic beverages, the cost of such beverages, and the economic status and education of users of such beverages,

(F) the interrelationship between alcohol use and other health problems,

(G) the comparison of the cost and effectiveness of various treatment methods for alcoholism and alcohol abuse and the effectiveness of prevention and intervention programs for alcoholism and alcohol abuse,

(H) alcoholism and alcohol abuse among women.[1]

(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(5) promote the coordination of research programs conducted by the Institute, and similar programs conducted by the National Institute of Drug Abuse and by other departments, agencies, organizations, and individuals, including all National Institutes of Health research activities which are or may be related to the problems of individuals suffering from alcoholism or alcohol abuse or those of their families or the impact of alcohol abuse on other health problems;

(6) conduct an intramural program of biomedical, behavioral, epidemiological, and social research, including research into the most effective means of treatment and service delivery, and including research involving human subjects, which is—

(A) located in an institution capable of providing all necessary medical care for such human subjects, including complete 24-hour medical diagnostic services by or under the supervision of physicians, acute and intensive medical care, including 24-hour emergency care, psychiatric care, and such other care as is determined to be necessary for individuals suffering from alcoholism and alcohol abuse; and

(B) associated with an accredited medical or research training institution;

(7) for purposes of study, admit and treat at institutions, hospitals, and stations of the Public Health Service, persons not otherwise eligible for such treatment;

(8) provide to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical and other scientific research methods to experiments, studies, and surveys in health and medical fields;

(9) enter into contracts under this subchapter without regard to section 3324(a) and (b) of title 31 and section 5 of title 41; and

(10) adopt, upon recommendation of the National Advisory Council on Alcohol Abuse and Alcoholism, such additional means as he deems necessary or appropriate to carry out the purposes of this section.

(July 1, 1944, ch. 373, title V, § 510, formerly Pub. L. 91-616, title V, § 501, as added Pub. L. 94-371, § 7, July 26, 1976, 90 Stat. 1038, and amended Pub. L. 95-622, title II, § 268(c), (d), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96-180, § 14, Jan. 2, 1980, 93 Stat. 1305; redesignated § 510 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(9), 97 Stat. 179; Oct. 19, 1984, Pub. L. 98-509, title II, §§ 205(a)(1), 206(c)(1), 98 Stat. 2361, 2362.)

CODIFICATION

In subsec. (b)(9), "section 3324(a) and (b) of title 31" was substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 4585 of this title prior to redesignation by Pub. L. 98-24.

PRIOR PROVISIONS

A prior section 510 of act July 1, 1944, which was classified to section 228 of this title, was renumbered section 2110 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-9 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-509, § 206(c)(1), struck out "demonstrations," after "investigations, experiments,".

Subsec. (b)(3)(H). Pub. L. 98-509, § 205(a)(1), added subpar. (H).

1983—Pub. L. 98-21, § 2(b)(9), redesignated section 4585 of this title as this section.

Subsec. (a). Pub. L. 98-24, § 2(b)(9)(A)(i), substituted "the National Institute on Alcohol Abuse and Alcoholism (hereinafter in this subpart referred to as the 'Institute')" for "the Institute".

Subsec. (b)(1). Pub. L. 98-24, § 2(b)(9)(A)(ii), substituted "disseminate through publications and other appropriate means (including the development of curriculum materials)" for "make available through publications and other appropriate means".

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[1] So in original. The period probably should be a semicolon.

Subsec. (b)(3). Pub. L. 98-24, § 2(b)(9)(A)(iii), substituted subpars. (A) to (G) for direction for such Council to give special consideration to projects relating to the relationship between alcohol abuse and domestic violence, the effects of alcohol use during pregnancy, the relationship between the abuse of alcohol and other drugs, and the effect on the incidence of alcohol abuse and alcoholism of social pressures, legal requirements respecting the use of alcoholic beverages, the cost of such beverages, and the economic status and education of users of such beverages.

Subsec. (b)(5). Pub. L. 98-24, § 2(b)(9)(A)(iv), added "or the impact of alcohol abuse on other health problems" after "families".

1980—Subsec. (a). Pub. L. 96-180, § 14(a), provided as to alcohol abuse and alcoholism provision in par. (1) for its social etiology, added par. (2) for its prevention, and redesignated former pars. (2) to (5) as (3) to (6), respectively.

Subsec. (b). Pub. L. 96-180, § 14(b), required in par. (3) the Council to give special consideration to relationship of alcohol use and abuse and domestic violence, pregnancy, etc.; extended in par. (5) coordination of research programs to programs conducted by the National Institute of Drug Abuse and similar programs of other departments; authorized in par. (6) intramural program of epidemiological and social research; and provided in par. (8) for technical advice and assistance on application of methods of scientific research.

1978—Subsec. (a). Pub. L. 95-622, § 268(c), in pars. (1) to (4) struck out "of" after "etiology", "treatment", "health consequences", and "economic consequences", respectively, added par. (5), and in provision following par. (5) substituted "of alcohol abuse" for "alcohol abuse".

Subsec. (b)(5). Pub. L. 95-622, § 268(d), inserted "or those of their families" after "individuals suffering from alcoholism or alcohol abuse".

§ 290bb-1. National Alcohol Research Centers; mandatory grant for research of effects of alcohol on elderly

(a) Designation; procedures applicable for approval of applications

The Secretary acting through the Institute may designate National Alcohol Research Centers for the purpose of interdisciplinary research relating to alcoholism and other biomedical, behavioral, and social issues related to alcoholism and alcohol abuse. No entity may be designated as a Center unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such manner and contain such information as the Secretary may reasonably require. The Secretary may not approve such an application unless—

(1) the application contains or is supported by reasonable assurances that—

(A) the applicant has the experience, or capability, to conduct, through biomedical, behavioral, social, and related disciplines, long-term research on alcoholism and other alcohol problems and to provide coordination of such research among such disciplines;

(B) the applicant has available to it sufficient facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application;

(C) the applicant has facilities and personnel to provide training in the prevention and treatment of alcoholism and other alcohol problems;

(D) the applicant has the capacity to train predoctoral and postdoctoral students for careers in research on alcoholism and other alcohol problems;

(E) the applicant has the capacity to conduct courses on alcohol problems and research on alcohol problems for undergraduate and graduate students, and for medical and osteopathic, nursing, social work, and other specialized graduate students; and

(F) the applicant has the capacity to conduct programs of continuing education in such medical, legal, and social service fields as the Secretary may require.

(2) the application contains a detailed five-year plan for research relating to alcoholism and other alcohol problems.

(b) Annual grants; amount; limitation on uses

The Secretary shall, under such conditions as the Secretary may reasonably require, make annual grants to Centers which have been designated under this section. No funds provided under a grant under this subsection may be used for the purchase or rental of any land or the rental, purchase, construction, preservation, or repair of any building. For the purposes of the preceding sentence, the term "construction" has the meaning given that term by section 292a(2) of this title. The Secretary shall include in the grants made under this section for fiscal years beginning after September 30, 1981, a grant to a designated Center for research on the effects of alcohol on the elderly.

(July 1, 1944, ch. 373, title V, § 511, formerly Pub. L. 91-616, title V, § 503, formerly § 504, as added Pub. L. 94-371, § 7, July 26, 1976, 90 Stat. 1039, and amended Pub. L. 95-622, title I, § 110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96-180, § 16, Jan. 2, 1980, 93 Stat. 1305; renumbered § 503 of Pub. L. 91-616 and amended Pub. L. 97-35, title IX, § 965(b), (c), Aug. 13, 1981, 95 Stat. 594; redesignated § 511 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(9), 97 Stat. 179.)

CODIFICATION

Section was formerly classified to section 4587 of this title prior to redesignation by Pub. L. 98-24.

PRIOR PROVISIONS

A prior section 511 of act July 1, 1944, which was classified to section 229 of this title, was renumbered section 2111 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-10 of this title.

AMENDMENTS

1983—Pub. L. 98-24, § 2(b)(9), redesignated section 4587 of this title as this section.

Subsec. (a). Pub. L. 98-24, § 2(b)(9)(B)(i), struck out direction that, insofar as practicable, the Secretary approve applications under this subsection in a manner resulting in an equitable geographic distribution of Centers.

Subsec. (b). Pub. L. 98-24, § 2(b)(9)(B)(ii), (iii), struck out provision that no annual grant to any Center might exceed $1,500,000, and made a technical amendment to the reference to section 292a of this title to reflect the transfer of this section to the Public Health Service Act.

Subsec. (c). Pub. L. 98-24, § 2(b)(9)(B)(iv), struck out subsec. (c) which had authorized $6,000,000 for each of fiscal years ending Sept. 30, 1977, 1978, and 1979, $8,000,000 for the fiscal year ending Sept. 30, 1980, and $9,000,000 for the fiscal year ending Sept. 30, 1981.

1981—Pub. L. 97-35 transferred text of section 4588 of this title to this section and, as so transferred, in subsec. (b) added provisions relating to grants made for fiscal years beginning after Sept. 30, 1981. Former text transferred to section 4588 of this title.

1980—Subsec. (a). Pub. L. 96-180, § 16(a), substituted: in first sentence "biomedical, behavioral, and social issues related to alcoholism and alcohol abuse" for "alcohol problems"; in par. (1)(B) "facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application" for "laboratory facilities and reference services (including reference services that will afford access to scientific alcohol literature)"; and in par. (1)(E) "medical and osteopathic, nursing, social work, and other specialized graduate students; and" for "medical and osteopathic students and physicians;", and added par. (1)(F).

Subsec. (b). Pub. L. 96-180, § 16(b), increased annual grant limitation to $1,500,000 from $1,000,000.

Subsec. (c). Pub. L. 96-180, § 16(c), authorized appropriation of $8,000,000 and $9,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

1978—Subsec. (a). Pub. L. 95-622 added provision following par. (2) relating to approval of applications under this subsection by the Secretary in a manner which results in equitable geographic distribution of Centers.

Section Referred to in Other Sections

This section is referred to in section 290bb-2 of this title.

§ 290bb-1a. Alcohol abuse and alcoholism demonstration projects

(a) Grant authority of Secretary through Director; projects assisted

The Secretary, through the Director, may make grants to public and nonprofit private entities to support projects—

(1) for the development and demonstration of methods for—

(A) the prevention of alcohol abuse, alcoholism, and other problems relating to the consumption of alcoholic beverages; and

(B) the treatment and rehabilitation of individuals suffering from alcohol abuse, alcoholism, or other problems relating to the consumption of alcoholic beverages; and

(2)(A) which emphasize the development and demonstration of new and improved methods of treatment, screening, early detection, referral, and diagnosis of individuals with a risk of developing alcohol abuse, alcoholism, or other problems relating to the consumption of alcoholic beverages;

(B) which emphasize the development and demonstration of new and improved methods of dissemination of knowledge concerning projects supported under this section and methods developed or demonstrated under this section; and

(C) which emphasize the development and demonstration of new and improved methods for the dissemination to the general public of information on the importance of early detection and prevention of alcohol abuse, alcoholism, and other problems relating to the consumption of alcoholic beverages.

(b) Projects dealing with alcohol and drug abuse

A grant may be made under subsection (a) of this section for a project which meets the requirements of subsection (a) of this section and also deals with drug abuse.

(c) Time limit on receipt of grants

No entity may receive grants under subsection (a) of this section for more than three years.

(July 1, 1944, ch. 373, title V, § 512, as added Oct. 19, 1984, Pub. L. 98-509, title II, § 206(a), 98 Stat. 2361.)

Prior Provisions

A prior section 512 of act July 1, 1944, was redesignated section 513 by section 206(a) of Pub. L. 98-509, and is classified to section 290bb-2 of this title.

Another prior section 512 of act July 1, 1944, which was classified to section 229a of this title, was renumbered section 2112 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-11 of this title.

§ 290bb-2. Authorization of appropriations

There are authorized to be appropriated to carry out this subpart $33,484,000 for fiscal year 1983, $45,790,000 for fiscal year 1984, $52,000,000 for fiscal year 1985, and $61,000,000 for fiscal year 1986. Of the funds appropriated under this section for any fiscal year, not more than 35 per centum may be obligated for grants under section 290bb-1 of this title.

(July 1, 1944, ch. 373, title V, § 513, formerly § 512, formerly Pub. L. 91-616, title V, § 504, formerly § 503, as added Pub. L. 94-371, § 7, July 26, 1976, 90 Stat. 1039, and amended Pub. L. 96-180, § 15, Jan. 2, 1980, 93 Stat. 1305; renumbered § 504 of Pub. L. 91-616 and amended Pub. L. 97-35, title IX, § 965(a), (c), Aug. 13, 1981, 95 Stat. 594; Pub. L. 97-414, § 9(e), Jan. 4, 1983, 96 Stat. 2064; redesignated § 512 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(9), 97 Stat. 179; renumbered § 513 and amended Oct. 19, 1984, Pub. L. 98-509, title II, §§ 206(a), 207(a), 98 Stat. 2361, 2362.)

Codification

Section was formerly classified to section 4588 of this title prior to redesignation by Pub. L. 98-24.

Prior Provisions

A prior section 513 of act July 1, 1944, which was classified to section 229b of this title, was renumbered section 2113 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-12 of this title.

Amendments

1984—Pub. L. 98-509, § 207(a), added provisions authorizing appropriations of $52,000,000 for fiscal year 1985, and $61,000,000 for fiscal year 1986.

1983—Pub. L. 98-24, § 2(b)(9), redesignated section 4588 of this title as this section.

Pub. L. 98-24, § 2(b)(9)(C), amended section generally, striking out authorizations of $20,000,000 for fiscal year 1977, $24,000,000 for fiscal year 1978, $28,000,000 for fiscal year 1979, $28,000,000 for fiscal year 1980, $28,000,000 for fiscal year 1981, and $25,000,000 for fiscal year 1982, adding provisions relating to fiscal years 1983 and 1984, and substituting provisions that, of the funds appropriated under this section for any fiscal year, not more than 35 per centum may be obligated for grants under section 290bb-1 of this title, for provision that, of the funds appropriated for any fiscal year beginning after Sept. 30, 1981, not more than 35 per centum might be obligated for grants under section 4587 of this title.

Pub. L. 97-414 amended directory language of Pub. L. 97-35, § 965(a), to strike out provisions inserting "(a)" before "There are authorized".

1981—Pub. L. 97-35 transferred text of section 4587 of this title to this section and, as so transferred, inserted "(a)" before "There are authorized", added provisions respecting appropriations for fiscal year ending Sept. 30, 1982, and obligation of funds, and substituted reference to this subchapter [section 4581 et seq. of this title], for reference to sections 4585 and 4586 of this title. Former text transferred to section 4587 of this title.

1980—Pub. L. 96-180 authorized appropriation of $28,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

SUBPART 2—DRUG ABUSE RESEARCH

§ 290cc. Encouragement of research

(a) Duty of Director; clinical research facilities

The Director of the National Institute on Drug Abuse shall encourage and promote (by grants, contracts, or otherwise) expanded research programs, investigations, experiments, and studies, into—

(1) the creation, development, and testing of synthetic analgesics, antitussives, and other drugs which are—

(A) nonaddictive; or

(B) less addictive than opium or its derivatives, to replace opium and its derivatives in medical use;

(2) the creation, development, and testing of long-lasting, nonaddictive blocking or antagonistic drugs or other pharmacological substances for treatment of heroin addiction;

(3) the creation, development, and testing of detoxification agents which, when administered, will ease the physical effects of withdrawal from heroin addiction;

(4) the social, behavioral, and biomedical etiology, mental and physical health consequences, and social and economic consequences of drug abuse and drug dependence; and

(5) drug abuse prevention, treatment, and rehabilitation.

In carrying out this subsection the Director is authorized to establish, or provide for the establishment of, clinical research facilities. In making grants and contracts to carry out paragraphs (4) and (5), the Director shall give special consideration to projects relating to drug abuse among women.

(b) Dissemination of information; grant and contract authority

In carrying out the activities described in subsection (a) of this section, the Secretary, acting through the Institute, may—

(1) collect and disseminate through publications and other appropriate means, including the development of curriculum materials, information as to, and the practical application of, the research and other activities under this section,

(2) make grants or enter into contracts with individuals and public and nonprofit entities for the purpose of determining the causes of drug abuse in a particular area, and

(3) make grants to and enter into contracts with individuals and public and private nonprofit entities for research respecting improved drug maintenance and detoxification techniques and programs.

(July 1, 1944, ch. 373, title V, § 515, formerly Pub. L. 92-255, title V, § 503, as added Pub. L. 94-237, § 13(a), Mar. 19, 1976, 90 Stat. 248, and amended Pub. L. 95-461, § 2(c), Oct. 14, 1978, 92 Stat. 1268; Pub. L. 96-181, § 12, Jan. 2, 1980, 93 Stat. 1315; Pub. L. 97-35, title IX, § 972(a), (b), Aug. 13, 1981, 95 Stat. 597; redesignated § 515 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(11), 97 Stat. 180; Oct. 19, 1984, Pub. L. 98-509, title II, §§ 205(a)(2), 206(c)(2), 207(b), 98 Stat. 2361-2363.)

Codification

Section was formerly classified to section 1193 of Title 21, Food and Drugs, prior to redesignation by Pub. L. 98-24.

Prior Provisions

A prior section 515 of act July 1, 1944, which was classified to section 229d of this title, was renumbered section 2115 of act July 1, 1944, by Pub. L. 98-24 and transferred to section 300aa-14 of this title.

Amendments

1984—Subsec. (a). Pub. L. 98-509, §§ 205(a)(2), 206(c)(2), struck out "demonstrations," after "investigations, experiments," and added provision that in making grants and contracts to carry out pars. (4) and (5), the Director shall give special consideration to projects relating to drug abuse among women.

Subsec. (c). Pub. L. 98-509, § 207(b), struck out subsec. (c) which authorized appropriations for purposes of this section. See section 290cc-2 of this title.

1983—Pub. L. 98-24, § 2(b)(11), redesignated section 1193 of Title 21, Food and Drugs, as this section.

Subsec. (a). Pub. L. 98-24, § 2(b)(11)(A), substituted "The Director of the National Institute on Drug Abuse" for "The Director".

Subsec. (b). Pub. L. 98-24, § 2(b)(11)(B), amended subsec. (b) generally, substituting "In carrying out the activities described in subsection (a), the Secretary, acting through the Institute, may—" for "The Director may—", adding par. (1), and redesignating former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (c). Pub. L. 98-24, § 2(b)(11)(C), struck out provision authorizing $45,000,000 for fiscal year 1982 and added provisions relating to fiscal years 1983 and 1984.

1981—Pub. L. 97-35 designated existing provisions as subsec. (a), added cl. (5) in subsec. (a) as so designated, and added subsecs. (b) and (c).

1980—Pub. L. 96-181 struck out designation (a) preceding "The Director shall", substituted "investigations, experiments, demonstrations, and studies into" for "to create, develop, and test", inserted "the creation, development, and testing of" in pars. (1), (2), and (3), added par. (4), and struck out subsec. (b), which contained authorization of appropriations up to the fiscal year ending Sept. 30, 1979.

1978—Subsec. (b). Pub. L. 95-461 added provision authorizing appropriations for the fiscal year ending Sept. 30, 1979.

Report to Congressional Committees

Section 13 of Pub. L. 96-181 provided that within sixty days of Jan. 2, 1980, the Director of the National Institute on Drug Abuse report to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on the number of grants and contracts made or entered into by the Director before Jan. 2, 1980, for research which was not completed before July 1, 1979, the identity of the persons who received such grants and contracts, the amount of funds authorized to be paid under each grant and contract and the amount of funds expended by the recipient of each such grant and contract by Jan. 2, 1980, the purpose of the research project funded under each such grant and contract, and the progress made in each such research project by Jan. 2, 1980.

§ 290cc-1. Drug abuse demonstration projects

(a) Authority of Secretary through National Institute on Drug Abuse; projects assisted

The Secretary, through the National Institute on Drug Abuse, may make grants to and enter into contracts with individuals and public and nonprofit private entities to support projects—

(1) for the development and demonstration of methods for—

(A) the prevention of drug abuse and other problems relating to drug abuse, and

(B) the treatment and rehabilitation of individuals suffering from drug abuse and other problems relating to the misuse of drugs; and

(2)(A) which emphasize the development and demonstration of new and improved methods of screening and early detection, referral, and diagnosis of individuals with a risk of drug abuse,

(B) which develop and evaluate new and improved techniques of prevention and treatment services for use in States and local communities, and

(C) which emphasize the development and demonstration of new and improved methods for the dissemination of research findings and knowledge of effective strategies of early detection, prevention, and treatment of drug abuse.

(b) Projects dealing with drug and alcohol abuse

A grant or contract may be made under subsection (a) of this section for a project which meets the requirements of subsection (a) of this section and also deals with alcohol abuse and alcoholism.

(c) Time limit on receipt of grants

No entity may receive grants under subsection (a) of this section for more than three years.

(July 1, 1944, ch. 373, title V, § 516, as added Oct. 19, 1984, Pub. L. 98-509, title II, § 206(b), 98 Stat. 2362.)

§ 290cc-2. Authorization of appropriations

There are authorized to carry out this subpart $68,000,000 for fiscal year 1985 and $74,000,000 for fiscal year 1986.

(July 1, 1944, ch. 373, title V, § 517, as added Oct. 19, 1984, Pub. L. 98-509, title II, § 207(b), 98 Stat. 2363.)

PART C—MISCELLANEOUS PROVISIONS RELATING TO ALCOHOL ABUSE AND ALCOHOLISM AND DRUG ABUSE

SUBPART 1—PROVISIONS RELATING TO ALCOHOL ABUSE AND ALCOHOLISM

§ 290dd. Technical assistance

(a) On the request of any State, the Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall, to the extent feasible, make available technical assistance for—

(1) developing and improving systems for data collection;

(2) program management, accountability, and evaluation;

(3) certification, accreditation, or licensure of treatment facilities and personnel;

(4) monitoring compliance by hospitals and other facilities with the requirements of section 290dd-2 of this title; and

(5) eliminating exclusions in health insurance coverage offered in the State which are based on alcoholism or alcohol abuse.

(b) Insofar as practicable, technical assistance provided under this section shall be provided in a manner which will improve coordination between activities supported under this subchapter.

(July 1, 1944, ch. 373, title V, § 520, formerly Pub. L. 91-616, title III, § 301, Dec. 31, 1970, 84 Stat. 1849, as amended Pub. L. 92-554, Oct. 25, 1972, 86 Stat. 1167; Pub. L. 93-282, title I, § 105(a), May 14, 1974, 88 Stat. 127; Pub. L. 94-371, § 3(a), July 26, 1976, 90 Stat. 1035; Pub. L. 96-180, § 7, Jan. 2, 1980, 93 Stat. 1303; Pub. L. 97-35, title IX, § 962(a), Aug. 13, 1981, 95 Stat. 592; redesignated § 520 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(13), 97 Stat. 181; Oct. 19, 1984, Pub. L. 98-509, title III, § 301(c)(2), 98 Stat. 2364.)

CODIFICATION

Section was formerly classified to section 4571 of this title prior to redesignation by Pub. L. 98-24.

AMENDMENTS

1984—Pub. L. 98-509 amended directory language of Pub. L. 98-24, § 2(b)(13). See 1983 Amendment note below.

1983—Pub. L. 98-24, § 2(b)(13), as amended by Pub. L. 98-509 redesignated section 4571 of this title as this section.

Subsec. (a). Pub. L. 98-24, § 2(b)(13)(A)(i), substituted "the National Institute on Alcohol Abuse and Alcoholism" for "the Institute".

Subsec. (a)(4). Pub. L. 98-24, § 2(b)(13)(A)(ii), substituted "section 290dd-2 of this title" for "section 4581 of this title".

Subsec. (b). Pub. L. 98-24, § 2(b)(13)(A)(iii), substituted "this subchapter" for references to this chapter, meaning chapter 60 (§ 4541 et seq.) of this title, and the Drug Abuse Prevention, Treatment, and Rehabilitation Act [21 U.S.C. 1101 et seq.].

1981—Pub. L. 97-35 restructured provisions and, as so restructured, substituted provisions relating to technical assistance for enumerated activities, and improvement of coordination with Drug Abuse Prevention, Treatment, and Rehabilitation Act, for provisions authorizing appropriations through the fiscal year ending Sept. 30, 1981, for covered activities.

1980—Pub. L. 96-180 authorized appropriation of $60,000,000 and $65,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

1976—Pub. L. 94-371 struck out "and" after "1975" and added provisions authorizing $70,000,000 to be appropriated for the fiscal year ending Sept. 30, 1977, $77,000,000 to be appropriated for the fiscal year ending Sept. 30, 1978, and $85,000,000 to be appropriated for the fiscal year ending Sept. 30, 1979.

1974—Pub. L. 93-282 authorized appropriation of $80,000,000 for fiscal years ending June 30, 1975 and June 30, 1976.

1972—Pub. L. 92-554 substituted "for each of the next two fiscal years" for "for the fiscal year ending June 30, 1973".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x-1a, 300x-4 of this title.

§ 290dd-1. Programs for government and other employees

(a) Development and maintenance by Office of Personnel Management

The Office of Personnel Management shall be responsible for developing and maintaining, in cooperation with the Secretary and with other Federal agencies and departments, and in accordance with the provisions of subpart F of part III of title 5, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among Federal civilian employees, consistent with the purposes of this chapter. Such agencies and departments are encouraged to extend, to the extent feasible, these programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such policies and services shall make optimal use of existing governmental facilities, services, and skills.

(b) Programs in State and local governments and private industry; model programs; cooperative agreements

(1) The Secretary, acting through the Institute, shall be responsible for fostering and encouraging similar alcohol abuse and alcoholism prevention, treatment, and rehabilitation programs and services in State and local governments and in private industry. To the extent feasible, such programs and services should be designed such that they apply to the families of employees and to employees who have family members who are alcoholics.

(2)(A) Consistent with such responsibility, the Secretary, acting through the Institute, shall develop a variety of model programs suitable for replication on a cost-effective basis in different types of business concerns and State and local governmental entities.

(B) The Secretary, acting through the Institute, shall disseminate information and materials relative to such model programs to the State agencies responsible for the administration of alcohol abuse prevention, treatment, and rehabilitation activities, and shall, to the extent feasible, provide technical assistance to such agencies as requested.

(3) Model programs developed under paragraph (2) shall, in the case of business concerns and governmental entities which employ individuals represented by labor organizations, be designed for implementation through cooperative agreements between the concerns and entities and the organizations.

(4) To the extent feasible, model programs developed under paragraph (2) shall be capable of coordination with model programs developed pursuant to section 290ee-1 of this title.

(c) Prior alcohol abuse no bar to Federal employment; exceptions

(1) No person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the ground of prior alcohol abuse or prior alcoholism.

(2) This subsection shall not apply to employment (A) in the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, or any other department or agency of the Federal Government designated for purposes of national security by the President, or (B) in any position in any department or agency of the Federal Government, not referred to in clause (A), which position is determined pursuant to regulations prescribed by the head of such agency or department to be a sensitive position.

(d) Dismissal for incapacity unaffected

This section shall not be construed to prohibit the dismissal from employment of a Federal civilian employee who cannot properly function in his employment.

(July 1, 1944, ch. 373, title V, § 521, formerly Pub. L. 91-616, title II, § 201, Dec. 31, 1970, 84 Stat. 1849, as amended Pub. L. 96-180, § 6(a), (b)(1), (2)(B), Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97-35, title IX, §§ 961, 966(d), (e), Aug. 13, 1981, 95 Stat. 592, 595; redesignated § 521 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(13), 97 Stat. 181; Oct. 19, 1984, Pub. L. 98-509, title III, § 301(c)(2), 98 Stat. 2364.)

CODIFICATION

Amendment by section 966(e) of Pub. L. 97-35 purporting to substitute "Health and Human Services" for "Health, Education, and Welfare" in subsec. (e) and section 2(b)(13)(B)(iii) of Pub. L. 98-24 purporting to strike out subsec. (e) could not be executed because section did not contain a subsec. (e).

Section was formerly classified to section 4561 of this title prior to redesignation by Pub. L. 98-24.

AMENDMENTS

1984—Pub. L. 98-509 amended the directory language of Pub. L. 98-24, § 2(b)(13). See 1983 Amendment note below.

1983—Pub. L. 98-24, § 2(b)(13), as amended by Pub. L. 98-509, redesignated section 4561 of this title as this section.

Subsec. (b)(4). Pub. L. 98-24, § 2(b)(13)(B)(i), substituted "section 290ee-1 of this title" for "section 1180(b) of title 21".

Subsec. (d). Pub. L. 98-24, § 2(b)(13)(B)(ii), substituted "this section" for "this subchapter", meaning subchapter II (§ 4561 et seq.) of chapter 60 of this title.

1981—Subsec. (b). Pub. L. 97-35, §§ 961, 966(d), made changes in nomenclature, and substituted provisions relating to responsible State administrative agencies, for provisions relating to single State agencies designated pursuant to section 4573 of this title.

1980—Pub. L. 96-180, § 6(b)(2)(A), amended section catchline.

Subsec. (a). Pub. L. 96-180, § 6(a), substituted "Office of Personnel Management" for "Civil Service Commission" and inserted provisions that require compliance with provisions of subpart F of part III of title 5 and encourage agencies and departments to extend the programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics.

Subsec. (b). Pub. L. 96-180, § 6(b)(1), designated existing provisions as par. (1), made the Secretary responsible for encouragement of programs and services, required the programs and services to be designed for application to families of employees and to employees who have family members who are alcoholics, and added pars. (2) to (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290ee-1 of this title.

§ 290dd-2. Admission of alcohol abusers and alcoholics to general hospitals and outpatient facilities

(a) Discrimination prohibition against private or public hospitals and outpatient facilities receiving any Federal support

Alcohol abusers and alcoholics who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their alcohol abuse or alcoholism, by any private or public general hospital, or outpatient facility (as defined in section 300s-3(6)[1] of this title) which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency.

(b) Regulations of Secretary: enforcement procedures, suspension or revocation of Federal support

(1) The Secretary shall issue regulations not later than December 31, 1976 for the enforcement of the policy of subsection (a) of this section with respect to the admission and treatment of alcohol abusers and alcoholics in hospitals or outpatient facilities which receive support of any kind from any program administered by the Secretary. Such regulations shall include procedures for determining (after opportunity for a hearing if requested) if a violation of subsection (a) of this section has occurred, notification of failure to comply with such subsection, and opportunity for a violator to comply with such subsection. If the Secretary determines that a hospital or outpatient facility subject to such regulations has violated subsection (a) of this section and such violation continues after an opportunity has been afforded for compliance, the Secretary may suspend or revoke, after opportunity for a hearing, all or part of any support of any kind received by such hospital or outpatient facility from any program administered by the Secretary. The Secretary may consult with the officials responsible for the administration of any other Federal program from which such hospital or outpatient facility receives support of any kind, with respect to the suspension or revocation of such other Federal support for such hospital or outpatient facility.

(2) Superseded. Pub. L. 94-581, title I, § 111(c)(1), Oct. 21, 1976, 90 Stat. 2852.

(July 1, 1944, ch. 373, title V, § 522, formerly Pub. L. 91-616, title III, § 321, Dec. 31, 1970, 84 Stat. 1852, as amended Pub. L. 93-282, title I, § 121(a), May 14, 1974, 88 Stat. 130; Pub. L. 94-371, § 11(a), (b), July 26, 1976, 90 Stat. 1041; Pub. L. 94-581, title I, § 111(c)(1), Oct. 21, 1976, 90 Stat. 2852; redesignated § 522 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(13), 97 Stat. 181.)

REFERENCES IN TEXT

Paragraph (6) of section 300s-3 of this title, referred to in subsec. (a), was redesignated as par. (4) by Pub. L. 96-79, title II, § 203(e)(1), Oct. 4, 1979, 93 Stat. 635.

CODIFICATION

Section was formerly classified to section 4581 of this title prior to redesignation by Pub. L. 98-24.

AMENDMENTS

1983—Pub. L. 98-24, § 2(b)(13), redesignated section 4581 of this title as this section.

Subsec. (a). Pub. L. 98-24, § 2(b)(13)(C), made a technical amendment to the reference to section 300s-3 of this title.

1976—Subsec. (a). Pub. L. 94-371, § 11(a), inserted ", or outpatient facility (as defined in section 300s-3(6) of this title)" after "hospital".

Subsec. (b)(1). Pub. L. 94-371, § 11(b), inserted "and outpatient facilities" after "hospitals", and "or outpatient facility" after "hospital" wherever appearing, and substituted "shall issue regulations not later than December 31, 1976" for "is authorized to make regulations".

Subsec. (b)(2). Pub. L. 94-581 provided that subsec. (b)(2), which directed the Administrator of Veteran's Affairs, through the Chief Medical Director, to prescribe regulations making applicable the regulations prescribed by the Secretary under subsec. (b)(1) to the provision of hospital care, nursing home care, domiciliary care, and medical services under title 38 to veterans suffering from alcohol abuse or alcoholism and to consult with the Secretary in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribed, was superseded by section 4131 et seq. of Title 38, Veterans' Benefits.

1974—Subsec. (a). Pub. L. 93-282, in revising text, prohibited discrimination because of alcohol abuse, substituted provisions respecting eligibility for admission and treatment based on suffering from medical conditions for former provision based on medical need and ineligibility, because of discrimination, for support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency for former requirement for treatment by a general hospital which received Federal funds, and deleted prohibition against receiving Federal financial assistance for violation of section and for termination of Federal assistance on failure to comply, now incorporated in regulation authorization of subsec. (b) of this section.

Subsec. (b). Pub. L. 93-282 substituted provisions respecting issuance of regulations by the Secretary concerning enforcement procedures and suspension or revocation of Federal support and by the Administrator concerning applicable regulations for veterans, and for coordination of the respective regulations for former provisions respecting judicial review.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of Title 38, Veterans' Benefits.

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[1] See References in Text note below.

REPORT OF ADMINISTRATOR OF VETERANS' AFFAIRS TO CONGRESSIONAL COMMITTEES; PUBLICATION IN FEDERAL REGISTER

Section 121(b) of Pub. L. 93-282, which directed the Administrator of Veterans' Affairs to submit to the appropriate committees of the House of Representatives and the Senate a full report (1) on the regulations (including guidelines, policies, and procedures thereunder) he had prescribed pursuant to section 321(b)(2) of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [former subsec. (b)(2) of this section], (2) explaining the bases for any inconsistency between such regulations and regulations of the Secretary under section 321(b)(1) of such Act [subsec. (b)(1) of this section], (3) on the extent, substance, and results of his consultations with the Secretary respecting the prescribing and implementation of the Administrator's regulations, and (4) containing such recommendations for legislation and administrative actions as he determined were necessary and desirable, with the Administrator to submit the report not later than sixty days after the effective date of the regulations prescribed by the Secretary under such section 321(b)(1) [subsec. (b)(1) of this section], and to publish such report in the Federal Register, was characterized by section 111(c)(5) of Pub. L. 94-581 as having been superseded by section 4134 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290dd of this title.

§ 290dd-3. Confidentiality of patient records

(a) Disclosure authorization

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent

(1) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Prohibition against use of record in making criminal charges or investigation of patient

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Continuing prohibition against disclosure irrespective of status as patient

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) Armed Forces and Veterans' Administration; interchange of records

The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

(f) Penalty for first and subsequent offenses

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(g) Regulations of Secretary; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders

Except as provided in subsection (h) of this section,[1] the Secretary shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(July 1, 1944, ch. 373, title V, § 523, formerly Pub. L. 91-616, title III, § 333, Dec. 31, 1970, 84 Stat. 1853, as amended Pub. L. 93-282, title I, § 122(a), May 14, 1974, 88 Stat. 131; Pub. L. 94-581, title I, § 111(c)(4), Oct. 21, 1976, 90 Stat.

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[1] See References in Text note below.

2852; redesignated § 523 of act July 1, 1944, Apr. 26, 1983, Pub. L. 98-24, § 2(b)(13), 97 Stat. 181.)

REFERENCES IN TEXT

Subsection (h) of this section, referred to in subsec. (g), was superseded by Pub. L. 94-581, title I, § 111(c)(4), Oct. 21, 1976, 90 Stat. 2852. See 1976 Amendment note below.

CODIFICATION

Section was formerly classified to section 4582 of this title prior to its renumbering by Pub. L. 98-24.

AMENDMENTS

1983—Pub. L. 98-24, § 2(b)(13), redesignated section 4582 of this title as this section.

1976—Subsec. (h). Pub. L. 94-581 provided that subsec. (h), which directed the Administrator of Veterans' Affairs, through the Chief Medical Director, to prescribe regulations making applicable the regulations prescribed by the Secretary under subsection (g) of this section to records maintained in connection with the provision of hospital care, nursing home care, domiciliary care, and medical services under title 38 to veterans suffering from alcohol abuse or alcoholism and to consult with the Secretary in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribed, was superseded by section 4131 et seq. of title 38.

1974—Subsecs. (a) to (h). Pub. L. 93-282 substituted subsecs. (a) to (h) for former provisions empowering the Secretary to authorize persons engaged in research on, or treatment with respect to alcohol abuse and alcoholism to protect the privacy of individuals who were the subject of such research or treatment by withholding from all persons not connected with the conduct of such research or treatment the names or other identifying characteristics of such individuals and prohibiting compulsory identification of such individuals in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding by any persons so authorized to protect the privacy of such individuals.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of Title 38, Veterans' Benefits.

REPORT OF ADMINISTRATOR OF VETERANS' AFFAIRS TO CONGRESSIONAL COMMITTEES; PUBLICATION IN FEDERAL REGISTER

Section 122(c) of Pub. L. 93-282, which directed the Administrator of Veterans' Affairs to submit to the appropriate committees of the House of Representatives and the Senate a full report (1) on the regulations (including guidelines, policies, and procedures thereunder) he had prescribed pursuant to section 333(h) of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [former subsec. (h) of this section], (2) explaining the basis for any inconsistency between such regulations and regulations of the Secretary under section 333(g) of such Act [subsec. (g) of this section], (3) on the extent, substance, and results of his consultations with the Secretary respecting the prescribing and implementation of the Administrator's regulations, and (4) containing such recommendations for legislation and administrative actions as he determined were necessary and desirable, with the Administrator to submit the report not later than sixty days after the effective date of the regulations prescribed by the Secretary under such section 333(g) [subsec. (g) of this section], and to publish such report in the Federal Register, was characterized by section 111(c)(8) of Pub. L. 94-581 as having been superseded by section 4134 of Title 38, Veterans' Benefits.

SUBPART 2—PROVISIONS RELATING TO DRUG ABUSE

§ 290ee. Technical assistance to State and local agencies

(a) Coordination of prevention functions; central clearinghouse for information and assistance

The Director of the National Institute on Drug Abuse shall—

(1) coordinate or assure coordination of Federal drug abuse prevention functions with corresponding functions of State and local governments; and

(2) provide for a central clearinghouse for Federal, State, and local governments, public and private agencies, and individuals seeking drug abuse information and assistance from the Federal Government.

(b) Technical assistance to State and local agencies; local programs for analysis and resolutions; conferences, expenses; model legislation; uniform procedures, criteria and forms

In carrying out his functions under this section, the Director may—

(1) provide technical assistance—including advice and consultation relating to local programs, technical and professional assistance, and, where deemed necessary, use of task forces of public officials or other persons assigned to work with State and local governments—to analyze and identify State and local drug abuse problems and assist in the development of plans and programs to meet the problems so identified;

(2) convene conferences of State, local, and Federal officials, and such other persons as the Director shall designate and the Director is authorized to pay reasonable expenses of individuals incurred in connection with their participation in such conferences; and

(3) draft and make available to State and local governments model legislation with respect to State and local drug abuse programs and activities, and provide for uniform forms for, procedures for the submission of, and criteria for the consideration of applications of State and local governments and individuals for grants and contracts for drug abuse prevention, control, and treatment programs.

(c) Task forces

In implementation of his authority under subsection (b)(1) of this section, the Director may—

(1) take such action as may be necessary to request the assignment, with or without reimbursement, of any individual employed by any Federal department or agency and engaged in any Federal drug abuse prevention function or drug traffic prevention function to serve as a member of any such task force; except that no such person shall be so assigned during any one fiscal year for more than an aggregate of ninety days without the express approval of the head of the Federal department or agency with respect to which he was so employed prior to such assignment;

(2) assign any person employed by the Institute to serve as a member of any such task

force or to coordinate management of such task forces; and

(3) enter into contracts or other agreements with any person or organization to serve on or work with such task forces.

(d) Technical assistance

On the request of any State, the Secretary shall, to the extent feasible, make available technical assistance for the purposes of developing and improving systems for data collection; program management, accountability, and evaluation; certification, accreditation, or licensure of treatment facilities and personnel; monitoring compliance with the requirements of section 290ee-2 of this title by hospitals and other facilities; and eliminating exclusions in health insurance coverage offered in the State which are based on drug abuse or drug dependence. Insofar as practicable, such technical assistance shall be provided in such a manner as to improve coordination between activities funded under this subchapter.

(July 1, 1944, ch. 373, title V, § 524, formerly Pub. L. 92-255, title V, § 502, as added Pub. L. 94-237, § 12(b)(1), Mar. 19, 1976, 90 Stat. 247, and amended Pub. L. 95-461, § 5, Oct. 14, 1978, 92 Stat. 1269; Pub. L. 96-181, § 11, Jan. 2, 1980, 93 Stat. 1315; redesignated § 524 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(15), 97 Stat. 181.)

CODIFICATION

Section was formerly classified to section 1192 of Title 21, Food and Drugs, prior to its renumbering by Pub. L. 98-24.

AMENDMENTS

1983—Pub. L. 98-24, § 2(15), redesignated section 1192 of Title 21, Food and Drugs, as this section.

Subsec. (a). Pub. L. 98-24, § 2(b)(15)(A), substituted "The Director of the National Institute on Drug Abuse" for "The Director".

Subsec. (b)(2). Pub. L. 98-24, § 2(b)(15)(B), struck out ", to promote the purposes of this chapter," after "shall designate".

Subsec. (d). Pub. L. 98-24, § 2(b)(15)(C), (D), substituted "section 290ee-2 of this title" for reference to section 1174 of title 21, and substituted "this subchapter" for references to this chapter, meaning chapter 16 (§ 1101 et seq.) of title 21, and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4541 et seq.].

1980—Subsec. (d). Pub. L. 96-181 added subsec. (d).

1978—Subsec. (b)(3). Pub. L. 95-461 substituted provision relating to drug abuse prevention, control, and treatment programs for provision relating to drug abuse control and treatment programs.

§ 290ee-1. Drug abuse among government and other employees

(a) Responsibility of Office of Personnel Management for policies and services; use of existing governmental facilities

The Office of Personnel Management shall be responsible for developing and maintaining, in cooperation with the President, with the Secretary (acting through the National Institute on Drug Abuse), and with other Federal agencies and departments and in accordance with the provisions of subpart F of part III of title 5, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among Federal civilian employees. Such agencies and departments are encouraged to extend, to the extent feasible, these programs and services to the families of employees and to employees who have family members who are drug abusers. Such policies and services shall make optimal use of existing governmental facilities, services, and skills.

(b) Similar programs and services in non-Federal government and private industry

(1) The Secretary, acting through the National Institute on Drug Abuse, shall be responsible for fostering and encouraging similar drug abuse prevention, treatment, and rehabilitation programs and services in State and local governments and in private industry.

(2)(A) Consistent with such responsibility, the Secretary, acting through the National Institute on Drug Abuse, shall develop a variety of model programs suitable for replication on a cost-effective basis in different types of business concerns and State and local governmental entities.

(B) The Secretary, acting through the Institute, shall disseminate information and materials relative to such model programs to the State agencies responsible for the administration of drug abuse prevention activities, and, shall to the extent feasible, provide technical assistance to such agencies as requested.

(3) Model programs developed under paragraph (2) shall, in the case of business concerns and governmental entities which employ individuals represented by labor organizations, be designed for implementation through cooperative agreements between the concerns and entities and the organizations.

(4) To the extent feasible, model programs developed under paragraph (2) shall be capable of coordination with model programs developed pursuant to section 290dd-1 of this title.

(c) Disqualification solely on ground of prior drug abuse prohibited; certain agencies, national security employment, and sensitive positions excepted from restriction

(1) No person may be denied or deprived of Federal civilian employment or a Federal profession or other license or right solely on the ground of prior drug abuse.

(2) This subsection shall not apply to employment (A) in the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, or any other department or agency of the Federal Government designated for purposes of national security by the President, or (B) in any position in any department or agency of the Federal Government, not referred to in clause (A), which position is determined pursuant to regulations prescribed by the head of such department or agency to be a sensitive position.

(d) Dismissal for functional disability

This section shall not be construed to prohibit the dismissal from employment of a Federal civilian employee who cannot properly function in his employment.

(July 1, 1944, ch. 373, title V, § 525, formerly Pub. L. 92-255, title IV, § 413, Mar. 21, 1972, 86

Stat. 84, as amended Pub. L. 96-181, § 8(a), (b)(1), Jan. 2, 1980, 93 Stat. 1313, 1314; Pub. L. 97-35, title IX, § 973(e), Aug. 13, 1981, 95 Stat. 598; redesignated § 525 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(16)(A), 97 Stat. 182.)

CODIFICATION

Section was formerly classified to section 1180 of Title 21, Food and Drugs, prior to its renumbering by Pub. L. 98-24.

AMENDMENTS

1983—Pub. L. 98-24, § 2(b)(16)(A), redesignated section 1180 of Title 21, Food and Drugs, as this section.

Subsec. (b)(4). Pub. L. 98-24, § 2(b)(16)(A)(iii), substituted "section 290dd-1 of this title" for "section 4561(b) of this title".

1981—Subsec. (b)(2)(B). Pub. L. 97-35 substituted provisions respecting State agencies responsible for administering activities for provisions respecting single State agencies designated pursuant to section 1176(e)(1) of title 21.

1980—Subsec. (a). Pub. L. 96-181, § 8(a), substituted "Office of Personnel Management" for "Civil Service Commission", "President, with the Secretary (acting through the National Institute on Drug Abuse)," for "Director", and "agencies and departments in accordance with the provisions of subpart F of part III of title 5, appropriate" for "agencies and departments, appropriate", and added provision that the agencies and departments are encouraged to extend the programs and services to families of employees and to employees who have family members who are drug abusers.

Subsec. (b). Pub. L. 96-181, § 8(b)(1), designated existing provisions as par. (1) and in par. (1) as so designated, transferred the responsibility of fostering and encouraging similar drug abuse prevention, treatment and rehabilitation programs and services in non-Federal government and private industry from the Director to the Secretary, and added pars. (2) to (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290dd-1 of this title.

§ 290ee-2. Admission of drug abusers to private and public hospitals

(a) Discrimination prohibited

Drug abusers who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their drug abuse or drug dependence, by any private or public general hospital which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency.

(b) Regulations; suspension or revocation of Federal support

(1) The Secretary is authorized to make regulations for the enforcement of the policy of subsection (a) of this section with respect to the admission and treatment of drug abusers in hospitals which receive support of any kind from any program administered by the Secretary. Such regulations shall include procedures for determining (after opportunity for a hearing if requested) if a violation of subsection (a) of this section has occurred, notification of failure to comply with such subsection, and opportunity for a violator to comply with such subsection. If the Secretary determines that a hospital subject to such regulations has violated subsection (a) of this section and such violation continues after an opportunity has been afforded for compliance, the Secretary may suspend or revoke, after opportunity for a hearing, all or part of any support of any kind received by such hospital from any program administered by the Secretary. The Secretary may consult with the officials responsible for the administration of any other Federal program from which such hospital receives support of any kind, with respect to the suspension or revocation of such other Federal support for such hospital.

(2) Superseded. Pub. L. 94-581, title I, § 111(c)(2), Oct. 21, 1976, 90 Stat. 2852.

(July 1, 1944, ch. 373, title V, § 526, formerly Pub. L. 92-255, title IV, § 407, Mar. 21, 1972, 86 Stat. 78, as amended Pub. L. 94-237, § 6(a), Mar. 19, 1976, 90 Stat. 244; Pub. L. 94-581, title I, § 111(c)(2), Oct. 21, 1976, 90 Stat. 2852; redesignated § 526 of act July 1, 1944, Apr. 26, 1983, Pub. L. 98-24, § 2(b)(16)(B), 97 Stat. 182.)

CODIFICATION

Section was formerly classified to section 1174 of Title 21, Food and Drugs, prior to its renumbering by Pub. L. 98-24.

AMENDMENTS

1983—Pub. L. 98-24, § 2(b)(16)(B), redesignated section 1174 of Title 21, Food and Drugs, as this section, and revised section catchline.

1976—Subsec. (a). Pub. L. 94-237 struck out "emergency" after "suffering from" and substituted "discriminated against in" for "refused".

Subsec. (b). Pub. L. 94-581 provided that par. (2), which directed the Administrator of Veterans' Affairs, through the Chief Medical Director to prescribe regulations making applicable the regulations prescribed by the Secretary under subsec. (b)(1) to the provision of hospital care, nursing home care, domiciliary care, and medical services under title 38 to veterans suffering from drug abuse or drug dependence and to consult with the Secretary in order to achieve the maximum possible coordination, of the regulations, and the implementation thereof, which they each prescribed, was superseded by section 4131 et seq. of title 38.

Pub. L. 94-237 redesignated existing provisions as par. (1), in par. (1), as so redesignated, added provision relating to the administration and treatment of drug abusers in hospitals which receive support of any kind from any program administered by the Secretary, and added par. (2).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of Title 38, Veterans' Benefits.

REPORT OF ADMINISTRATOR OF VETERANS' AFFAIRS TO CONGRESSIONAL COMMITTEES; PUBLICATION IN FEDERAL REGISTER

Section 6(b) of Pub. L. 94-237, which directed the Administrator of Veterans' Affairs to submit to the appropriate committees of the House of Representatives and the Senate a full report (1) on the regulations (including guidelines, policies, and procedures thereunder) he had prescribed pursuant to section 407(b)(2) of the Act [former subsec. (b)(2) of this section], (2) explaining the basis for any inconsistency between such regulations and regulations of the Secretary under section 407(b)(1) of the Act [subsec. (b)(1) of this section], (3) on the extent, substance, and results of his consultations with the Secretary respecting the prescribing and implementation of the Administrator's regulations, and (4) containing such recommendations for legislation and administrative actions as he determined were necessary and desirable, with the Administrator to submit the report not later than sixty days after the effective date of the regulations prescribed by the Secretary under such section 407(b)(1) and to publish such report in the Federal Register, was characterized by section 111(c)(6) of Pub. L. 94-581 as having been superseded by section 4134 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290ee of this title.

§ 290ee-3. Confidentiality of patient records

(a) Disclosure authorization

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent

(1) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Prohibition against use of record in making criminal charges or investigation of patient

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Continuing prohibition against disclosure irrespective of status as patient

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) Armed Forces and Veterans' Administration; interchange of records

The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

(f) Penalty for first and subsequent offenses

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(g) Regulations; interagency consultations; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders

Except as provided in subsection (h) of this section, the Secretary, after consultation with the Administrator of Veterans' Affairs and the heads of other Federal departments and agencies substantially affected thereby, shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(July 1, 1944, ch. 373, title V, § 527, formerly Pub. L. 92-255, title IV, § 408, Mar. 21, 1972, 86 Stat. 79, as amended Pub. L. 93-282, title III, § 303(a), (b), May 14, 1974, 88 Stat. 137, 138; Pub. L. 94-237, § 4(c)(5)(A), Mar. 19, 1976, 90 Stat. 244; Pub. L. 94-581, title I, § 111(c)(3), Oct. 21, 1976, 90 Stat. 2852; Pub. L. 97-35, title IX, § 973(d), Aug. 13, 1981, 95 Stat. 598; redesignated § 527 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98-24, § 2(b)(16)(B), 97 Stat. 182.)

CODIFICATION

Section was formerly classified to section 1175 of Title 21, Food and Drugs, prior to its renumbering by Pub. L. 98-24.

AMENDMENTS

1983—Pub. L. 98-24, § 2(b)(16)(B), redesignated section 1175 of Title 21, Food and Drugs, as this section.

Subsec. (g). Pub. L. 98-24, § 2(b)(16)(B)(ii)(III), struck out "of Health and Human Services" before ", after consultation".

1981—Subsec. (g). Pub. L. 97-35 substituted "Health and Human Services" for "Health, Education, and Welfare".

1976—Subsec. (g). Pub. L. 94-237 substituted "Office of Drug Abuse Policy" for "Special Action Office for Drug Abuse Prevention" in subsec. (g) as originally enacted by section 303(a) of Pub. L. 93-282 and in section 303(b)(1) of Pub. L. 93-282 which amended subsec. (g) of this section as originally enacted. See 1974 Amendment note below. This substitution involves the text of subsec. (g) prior to the substitution of "Secretary of Health, Education, and Welfare" for "Director of the Special Action Office for Drug Abuse Prevention" and, therefore, entails no change in text.

Subsec. (h). Pub. L. 94-581 provided that subsec. (h), which directed the Administrator of Veterans' Affairs, through the Chief Medical Director, to prescribe regulations making applicable the regulations established by the Secretary under subsection (g) of this section to records maintained in connection with the provision of hospital care, nursing home care, domiciliary care, and medical services under title 38 to veterans suffering from drug abuse and to consult with the Secretary in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribed, was superseded by section 4131 et seq. of title 38.

1974—Subsec. (a). Pub. L. 93-282, § 303(a), substituted "drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed" for "drug abuse prevention function authorized or assisted under any provision of this Act or any Act amended by this Act shall be confidential and may be disclosed".

Subsec. (b)(1). Pub. L. 93-282, § 303(a), substituted provision for disclosure of content of a subsec. (a) record in accordance with prior written consent of the patient to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsec. (g) of this section for former provision for such disclosure with the patient's written consent to medical personnel for the purpose of diagnosis or treatment of the patient, and to governmental personnel for the purpose of obtaining benefits to which the patient was entitled.

Subsec. (b)(2). Pub. L. 93-282, § 303(a), substituted "Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent" for "If the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, does not give his written consent" and in cl. (B) substituted "management audits, financial audits," for "management or financial audits,".

Subsecs. (c), (d). Pub. L. 93-282, § 303(a), reenacted provisions without any change.

Subsec. (e). Pub. L. 93-282, § 303(a), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 93-282, § 303(a), redesignated former subsec. (e) as (f), deleted introductory text "Except as authorized under subsection (b) of this section," and substituted "Any person who violates any provision of this section or any regulation issued pursuant to this section" for "any person who discloses the contents of any record referred to in subsection (a) of this section".

Subsec. (g). Pub. L. 93-282, § 303(a), added subsec. (g).

Pub. L. 93-282, § 303(b)(1), (2)(A), substituted in first sentence "Secretary of Health, Education, and Welfare" for "Director of the Special Action Office for Drug Abuse Prevention", in second sentence "Secretary" for "Director", and introductory text "Except as provided in subsection (h) of this section, the" for "The", effective June 30, 1975.

Subsec. (h). Pub. L. 93-282, § 303(b)(2)(B), added subsec. (h), effective June 30, 1975.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 303(b)(1), (2) of Pub. L. 93-282 provided that amendment of subsec. (g) by section 303(b)(1), (2)(A) and enactment of subsec. (h) by section 303(b)(2)(B) of Pub. L. 93-282 shall be effective on the date specified in section 1104 of Title 21, Food and Drugs, namely, June 30, 1975.

REPORT OF ADMINISTRATOR OF VETERANS' AFFAIRS TO CONGRESSIONAL COMMITTEES; PUBLICATION IN FEDERAL REGISTER

Section 303(c) of Pub. L. 93-282, which directed the Administrator of Veterans' Affairs to submit to the appropriate committees of the House of Representatives and the Senate a full report (1) on the regulations (including guidelines, policies, and procedures thereunder) he had prescribed pursuant to section 408(h) of the Drug Abuse Office and Treatment Act of 1972 [former subsec. (h) of this section as added by section 303(b)(2)(B) of Pub. L. 93-282], (2) explaining the bases for any inconsistency between such regulations and the regulations of the Secretary of Health, Education, and Welfare under section 408(g) of that Act [subsec. (g) of this section as added and amended by section 303(b)(1), (2)(A) of Pub. L. 93-282], (3) on the extent, substance, and results of his consultations with the Secretary respecting the prescribing and implementation of the Administrator's regulations, and (4) containing such recommendations for legislation and administrative actions as he determined were necessary and desirable, with the Administrator to submit the report not later than sixty days after the effective date of the regulations prescribed by the Secretary, was characterized by section 111(c)(7) of Pub. L. 94-581 as having been superseded by section 4134 of Title 38, Veterans' Benefits.

REGULATIONS ISSUED PRIOR TO JUNE 30, 1975, EFFECTIVE UNTIL REVOKED OR AMENDED

Section 303(d) of Pub. L. 93-282, as amended by section 4(c)(5)(B) of Pub. L. 94-237, provided that: "Any regulation under or with respect to section 408 of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1175) [this section] issued by the Director of the Office of Drug Abuse Policy prior to the date specified in section 104 of that Act (21 U.S.C. 1104) [June 30, 1975], whether before or after the enactment of this Act [May 14, 1974], shall remain in effect until revoked or amended by the Director or the Secretary of Health, Education, and Welfare [now Health and Human Services], as the case may be."

SUBCHAPTER IV—CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 293a, 300q-2, 300s-6, 1395x, 2005b, 2005d of this title; title 40 App. sections 202, 214.

PART A—GRANTS AND LOANS FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

§ 291c. General regulations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 291d, 291e, 291l, 291j-3 of this title.

§ 291i. Recovery of expenditures under certain conditions

(a) Persons liable

If any facility with respect to which funds have been paid under section 291f of this title shall, at any time within 20 years after the completion of construction or modernization—

(1) be sold or transferred to any entity (A) which is not qualified to file an application under section 291e of this title, or (B) which is not approved as a transferee by the State agency designated pursuant to section 291d of this title, or its successor, or

(2) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility,

the United States shall be entitled to recover, whether from the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount determined under subsection (c) of this section.

(b) Notice to Secretary

The transferor of a facility which is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which is changed as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change not later than the expiration of 10 days from the date on which such sale, transfer, or change occurs.

(c) Amount of recovery; interest; interest period

(1) Except as provided in paragraph (2), the amount the United States shall be entitled to recover under subsection (a) of this section is an amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district for which the facility involved is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the construction or modernization of such project or projects.

(2)(A) After the expiration of—

(i) 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which is sold or transferred or the use of which changes after July 18, 1984, or

(ii) thirty days after July 18, 1984, or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984.[1]

the amount which the United States is entitled to recover under paragraph (1) with respect to a facility shall be the amount prescribed by paragraph (1) plus interest, during the period described in subparagraph (B), at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly ninety-day Treasury bill auction rate.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984, thirty days after such date or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section,

(ii) in the case of a facility with respect to which notice is provided in accordance with subsection (b) of this section, upon the expiration of 180 days after the receipt of such notice, or

(iii) in the case of a facility with respect to which such notice is not provided as prescribed by subsection (b) of this section, on the date of the sale, transfer, or change of use for which such notice was to be provided,

and ending on the date the amount the United States is entitled to under paragraph (1) is collected.

(d) Waiver

(1) The Secretary may waive the recovery rights of the United States under subsection (a)(1) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that the entity to which the facility was sold or transferred—

(A) has established an irrevocable trust—

(i) in an amount equal to the greater of twice the cost of the remaining obligation of the facility under clause (2) of section 291c(e) of this title or the amount, determined under subsection (c) of this section, that the United States is entitled to recover, and

(ii) which will only be used by the entity to provide the care required by clause (2) of section 291c(e) of this title; and

(B) will meet the obligation of the facility under clause (1) of section 291c(e) of this title.

(2) The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that there is good cause for waiving such rights with respect to such facility.

(e) Lien

The right of recovery of the United States under subsection (a) of this section shall not constitute a lien on any facility with respect to which funds have been paid under section 291f of this title.

(As amended July 18, 1984, Pub. L. 98–369, div. B, title III, § 2381(a), 98 Stat. 1112.)

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[1] So in original. The period probably should be a comma.

AMENDMENTS

1984—Pub. L. 98-369 amended section generally. Prior to amendment, section read as follows: "If any facility with respect to which funds have been paid under section 291f of this title shall, at any time within twenty years after the completion of construction—

"(a) be sold or transferred to any person, agency, or organization (1) which is not qualified to file an application under section 291e of this title, or (2) which is not approved as a transferee by the State agency designated pursuant to section 291d of this title, or its successor, or

"(b) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility, unless the Surgeon General determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from this obligation,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction or modernization under such project or projects. Such right of recovery shall not constitute a lien upon said facility prior to judgment."

REGULATIONS AND PERSONNEL

Section 2381(c) of Pub. L. 98-369 provided that: "Not later than the expiration of the one-hundred-and-eighty-day period beginning on the date of the enactment of this section [July 18, 1984], the Secretary shall have in effect regulations and personnel to place in effect the amendments made by this section [amending sections 291i and 300s-1a of this title]."

§ 291j. Loans

REFERENCES IN TEXT

Section 291i of this title, referred to in subsec. (c)(3), was amended generally by Pub. L. 98-369, div. B, title III, § 2381(a), July 18, 1984, 98 Stat. 1112, and, as so amended, the provisions contained in former cls. (a) and (b) of section 291i are covered by section 291i(a)(1) and (2).

SUBCHAPTER V—HEALTH RESEARCH AND TEACHING FACILITIES AND TRAINING OF PROFESSIONAL HEALTH PERSONNEL

PART A—GENERAL PROVISIONS

§ 292a. Definitions

For purposes of this subchapter—

[See main edition for text of (1) to (3)]

(4) The terms "school of medicine", "school of dentistry", "school of osteopathy", "school of pharmacy", "school of optometry", "school of podiatry", "school of veterinary medicine", "school of public health", and "school of chiropractic" mean an accredited public or nonprofit private school in a State that provides training leading, respectively, to a degree of doctor of medicine, a degree of doctor of dentistry or an equivalent degree, a degree of doctor of osteopathy, a degree of bachelor of science in pharmacy or an equivalent degree, a degree of doctor of optometry or an equivalent degree, a degree of doctor of podiatry or an equivalent degree, a degree of doctor of veterinary medicine or an equivalent degree, a graduate degree in public health or an equivalent degree, and a degree of doctor of chiropractic or an equivalent degree, and including advanced training related to such training provided by any such school. The term "graduate program in health administration" means an accredited graduate program in a public or nonprofit private institution in a State that provides training leading to a graduate degree in health administration or an equivalent degree.

(5) The term "accredited", when applied to a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, or chiropractic, a graduate program in health administration, or a graduate program in clinical psychology, means a school or program that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, except that a new school or program that, by reason of an insufficient period of operation, is not, at the time of application for a grant or contract under this subchapter, eligible for accreditation by such a recognized body or bodies, shall be deemed accredited for purposes of this subchapter, if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school or program will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of the first entering class in such school or program.

[See main edition for text of (6) and (7)]

(8)(A) The term "program for the training of physician assistants" means an educational program which (i) has as its objective the education of individuals who will, upon completion of their studies in the program, be qualified to provide primary health care under the supervision of a physician, and (ii) meets regulations prescribed by the Secretary in accordance with subparagraph (B).

(B) After consultation with appropriate organizations, the Secretary shall, not later than October 1, 1986, prescribe regulations for programs for the training of physician assistants. Such regulations shall, as a minimum, require that such a program—

(i) extend for at least one academic year and consist of—

(I) supervised clinical practice, and

(II) at least four months (in the aggregate) of classroom instruction,

directed toward preparing students to deliver health care;

(ii) have an enrollment of not less than eight students; and

(iii) train students in primary care, disease prevention, health promotion, geriatric medicine, and home health care.

[See main edition for text of (9)]

(10) The term "school of allied health" means a public or nonprofit private college, junior college, college, or university—

(A) which provides, or can provide, programs of education to enable individuals to become allied health professionals or to provide additional training for allied health professionals;

(B) which provides training for not less than a total of twenty persons in the allied health curricula;

(C) which includes or is affiliated with a teaching hospital; and

(D) which is accredited by a recognized body or bodies approved for such purposes by the Secretary of Education, or which provides to the Secretary satisfactory assurance by such accrediting body or bodies that reasonable progress is being made toward accreditation.

[*See main edition for text of* (*11*) *and* (*12*)]

(13) The term "allied health professional" means an individual—

(A) who has received a certificate, an associate's degree, a bachelor's degree, a masters' degree, a doctoral degree, or postbaccalaureate training, in a science relating to health care;

(B) who shares in the responsibility for the delivery of health care services or related services, including—

(i) services relating to the identification, evaluation, and prevention of diseases and disorders;

(ii) dietary and nutrition services;

(iii) health promotion services;

(iv) rehabilitation services; or

(v) health systems management services; and

(C) who has not received a degree of doctor of medicine, a degree of doctor of osteopathy, a degree of doctor of dentistry or an equivalent degree, a degree of doctor of veterinary medicine or an equivalent degree, a degree of doctor of optometry or an equivalent degree, a degree of doctor of podiatry or an equivalent degree, a degree of bachelor of science in pharmacy or an equivalent degree, a degree of doctor of pharmacy or an equivalent degree, a graduate degree in public health or an equivalent degree, a degree of doctor of chiropractic or an equivalent degree, a graduate degree in health administration or an equivalent degree, or a doctoral degree in clinical psychology or an equivalent degree.

(14) The term "graduate program in clinical psychology" means an accredited graduate program in a public or nonprofit private institution in a State which provides training leading to a doctoral degree in clinical psychology or an equivalent degree.

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, §§ 201(a), (b), 202, 203, 204(a), (b), 99 Stat. 525-527.)

AMENDMENTS

1985—Par. (4). Pub. L. 99-129, § 201(a), inserted reference to term "school of chiropractic" and added provision defining such term as a school which provides training leading to a degree of doctor of chiropractic or an equivalent degree.

Par. (5). Pub. L. 99-129, § 204(b), added a graduate program in clinical psychology to list of programs to which term "accredited" may be applied.

Pub. L. 99-129, § 201(b), added chiropractic to list of schools to which term "accredited" may be applied.

Par. (8). Pub. L. 99-129, § 202, amended par. (8) generally. Prior to amendment, par. (8) read as follows:

"(A) The term 'program for the training of physician assistants' means an educational program which (i) has as its objective the education of individuals who will, upon completion of their studies in the program, be qualified to effectively provide health care under the supervision of a physician and (ii) meets regulations prescribed by the Secretary in accordance with subparagraph (B).

"(B) After consultation with appropriate professional organizations, the Secretary shall (within 180 days after October 12, 1976) prescribe regulations for programs for the training of physician assistants. Such regulations shall, as a minimum, require that such a program—

"(i) extend for at least one academic year and consist of (I) supervised clinical practice, and (II) at least four months (in the aggregate) of classroom instruction, directed toward preparing students to deliver health care; and

"(ii) have an enrollment of not less than eight students."

Par. 10. Pub. L. 99-129, § 203(a), inserted "college," before "junior college," and substituted "to enable individuals to become allied health professionals or to provide additional training for allied health professionals" for "in a discipline of allied health leading to a baccalaureate or associate degree (or an equivalent degree of either) or to a more advanced degree".

Par. (13). Pub. L. 99-129, § 203(b), added par. (13).

Par. (14). Pub. L. 99-129, § 204(a), added par. (14).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 290bb-1, 294j, 294q-3, 295g-3, 295g-8, 300u-5 of this title; title 20 section 1132e-1.

§ 292b. National Advisory Council on Education for Health Professions

(a) Establishment; composition; selection of members

There is established in the Public Health Service a National Advisory Council on Health Professions Education (hereafter in this section referred to as the "Council"), consisting of the Secretary (or his delegate), who shall be Chairman of the Council, and twenty members appointed by the Secretary (without regard to the provisions of title 5 relating to appointments in the competitive service) from persons who because of their education, experience, or training are particularly qualified to advise the Secretary with respect to the programs of assistance authorized by parts B, C, D, E, F, and G of this subchapter. Of the appointed members of the Council—

(1) twelve shall be representatives of the health professions schools assisted under programs authorized under this subchapter, including—

(A) one representative of each of schools of veterinary medicine, optometry, pharmacy, podiatry, public health, and allied health, and graduate programs in health administration; and

(B) at least six persons experienced in university administration, at least one of whom shall be a representative of a school described in subparagraph (A);

(2) two shall be full-time students enrolled in health professions schools; and

(3) six shall be members of the general public.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 205(a), 99 Stat. 527.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (a), which was classified to section 295 et seq. of this title, was repealed by Pub. L. 99-129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-129 amended last sentence generally, which prior to amendment read as follows: "Of the appointed members of the Council (1) twelve shall be representatives of the health professions schools assisted under programs authorized by this subchapter, including at least six persons experienced in university administration and at least four representatives of schools of veterinary medicine, optometry, pharmacy, podiatry, and public health, and entities which may receive a grant under section 295h of this title".

§ 292c. Repealed. Pub. L. 99-129, title II, § 220(a), Oct. 22, 1985, 99 Stat. 543

Section, acts July 1, 1944, ch. 373, title VII, § 703, formerly § 799, as added Nov. 2, 1970, Pub. L. 91-519, title II, § 206, 84 Stat. 1354, amended Nov. 18, 1971, Pub. L. 92-157, title I, § 109, 85 Stat. 461, and renumbered and amended Oct. 12, 1976, Pub. L. 94-484, title II, §§ 201(c), 203, 90 Stat. 2247, 2248; Aug. 13, 1981, Pub. L. 97-35, title XXVII, § 2717, 95 Stat. 914, related to advance funding for grants and contracts.

§ 292h. Health professions data

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Repealed. Pub. L. 99-129, title II, § 220(b), 99 Stat. 543

[*See main edition for text of* (*d*) *to* (*g*)]

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 220(b), 99 Stat. 543.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-129 struck out subsec. (c) which required schools, programs, and training centers receiving funds under this subchapter or subchapter VI of this chapter to submit an annual report to the Secretary.

ANALYSIS OF FINANCIAL DISINCENTIVES TO CAREER CHOICES IN HEALTH PROFESSIONS

Section 221 of Pub. L. 99-129 provided that: "By October 1, 1986, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report which contains—

"(1) an analysis of any financial disincentive to graduates of health professions schools which affects the specialty of practice chosen by such graduates or the decision of such graduates to practice their profession in an area which lacks an adequate number of health care professionals; and

"(2) recommendations for legislation and administrative action to correct any disincentives which are identified pursuant to clause (1) and which are contrary to the achievement of national health goals, including recommendations concerning the appropriateness of providing financial assistance to mitigate such disincentives."

STUDY OF THE ROLE OF ALLIED HEALTH PERSONNEL IN HEALTH CARE DELIVERY

Section 223 of Pub. L. 99-129 provided that:

"(a)(1) The Secretary of Health and Human Services shall arrange for the conduct of a study concerning the role of allied health personnel in health care delivery. The Secretary shall request the National Academy of Sciences to conduct the study under an arrangement under which the actual expenses incurred by the Academy in conducting such study will be paid by the Secretary and the Academy will prepare the report required by subsection (c). If the National Academy of Sciences is willing to do so, the Secretary shall enter into such an arrangement with the Academy for the conduct of the study.

"(2) If the National Academy of Sciences is unwilling to conduct the study required by paragraph (1) under the type of arrangement described in such paragraph, the Secretary shall enter into a similar arrangement with one or more appropriate nonprofit private entities.

"(b) The study required by subsection (a) shall—

"(1) assess the role of allied health personnel in health care delivery;

"(2) identify projected needs, availability, and requirements of various types of health care delivery systems for each type of allied health personnel;

"(3) investigate current practices under which each type of allied health personnel obtain licenses, credentials, and accreditation;

"(4) assess changes in programs and curricula for the education of allied personnel and in the delivery of services by such personnel which are necessary to meet the needs and requirements identified pursuant to paragraph (2); and

"(5) assess the role of the Federal, State, and local governments, educational institutions, and health care facilities in meeting the needs and requirements identified pursuant to paragraph (2).

"(c) By October 1, 1987, the Secretary of Health and Human Services shall transmit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives, and make available to the public, a report—

"(1) describing the study conducted under this section;

"(2) containing a statement of the data obtained under such study; and

"(3) specifying such recommendations for legislation and administrative action as the Secretary considers appropriate."

STUDY OF THE SUPPLY OF, AND REQUIREMENTS FOR, HEALTH PROFESSIONALS

Section 224 of Pub. L. 99-129 provided that:

"(a) The Secretary of Health and Human Services shall conduct or enter into contracts for the conduct of analytic and descriptive studies of chiropractors, clinical psychologists, veterinarians, optometrists, pharmacists, podiatrists, public health professionals, and health administrators. The studies shall include evaluations and projections of the supply of, and requirements for, each such profession by specialty and geographic location. The Secretary shall include in the report submitted on October 1, 1987, under section 708(d)(1) of the Public Health Service Act [42 U.S.C. 292h(d)(1)] the results of the studies conducted under this subsection.

"(b) The authority of the Secretary of Health and Human Services to enter into contracts under subsection (a) shall be effective for any fiscal year only to the extent or in such amounts as are provided in advance by appropriation Acts."

§ 292j. Payment under grants

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Technical assistance

Funds appropriated under this subchapter may be used by the Secretary to provide technical assistance in relation to any of the authorities under this subchapter.

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 206, 99 Stat. 527.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-129 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The Secretary may provide technical assistance for the purpose of carrying out any program or purpose under this subchapter."

§ 292k. Differential tuition and fees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254*l*, 294z of this title.

PART B—GRANTS AND LOAN GUARANTEES AND INTEREST SUBSIDIES FOR CONSTRUCTION OF TEACHING FACILITIES FOR MEDICAL, DENTAL, AND OTHER HEALTH PERSONNEL

§ 293a. Applications

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 292a, 294m, 294z of this title.

§ 293b. Amount of grant

REFERENCES IN TEXT

Part J of subchapter II of this chapter, referred to in subsec. (d), which related to medical libraries, was classified to section 280b et seq. of this title, and was repealed by Pub. L. 99-158, § 3(b), Nov. 20, 1985, 99 Stat. 879. See part D (§ 286 et seq.) of subchapter II of this chapter.

§ 293c. Recovery

(a) Base amount plus interest

If at any time within twenty years (or within such shorter period as the Secretary may prescribe by regulation for an interim facility) after the completion of construction of a facility with respect to which funds have been paid under section 293(a) of this title—

(1)(A) in case of a facility which was an affiliated hospital or outpatient facility with respect to which funds have been paid under section 293(a)(1) of this title, the owner of the facility ceases to be a public or other nonprofit agency that would have been qualified to file an application under section 291e of this title,

(B) in case of a facility which was not an affiliated hospital or outpatient facility but was a facility with respect to which funds have been paid under paragraph (1) or (3) of section 293(a) of this title, the owner of the facility ceases to be a public or nonprofit school, or

(C) in case of a facility which was a facility with respect to which funds have been paid under section 293(a)(2) of this title, the owner of the facility ceases to be a public or nonprofit entity,

(2) the facility ceases to be used for the teaching or training purposes (or other purposes permitted under section 293b of this title) for which it was constructed, or

(3) the facility is used for sectarian instruction or as a place for religious worship,

the United States shall be entitled to recover from the owner of the facility the base amount prescribed by subsection (c)(1) of this section plus the interest (if any) prescribed by subsection (c)(2) of this section.

(b) Notice of cessation or change of use

The owner of a facility which ceases to be a public or nonprofit agency, school, or entity as described in subparagraph (A), (B), or (C) of subsection (a)(1) of this section, as the case may be, or the owner of a facility the use of which changes as described in paragraph (2) or (3) of subsection (a) of this section, shall provide the Secretary written notice of such cessation or change of use within 10 days after the date on which such cessation or change of use occurs or within 30 days after October 22, 1985, whichever is later.

(c) Determination of base amount and interest; period of recovery

(1) The base amount that the United States is entitled to recover under subsection (a) of this section is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of the facility as the amount of the Federal participation bore to the cost of construction.

(2)(A) The interest that the United States is entitled to recover under subsection (a) of this section is the interest for the period (if any) described in subparagraph (B) at a rate (determined by the Secretary) based on the average of the bond equivalent rates of ninety-one-day Treasury bills auctioned during that period.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) if notice is provided as prescribed by subsection (b) of this section, 191 days after the date on which the owner of the facility ceases to be a public or nonprofit agency, school, or entity as described in subparagraph (A), (B), or (C) of subsection (a)(1) of this section, as the case may be, or 191 days after the date on which the use of the facility changes as described in paragraph (2) or (3) of subsection (a) of this section, or

(ii) if notice is not provided as prescribed by subsection (b) of this section, 11 days after the date on which such cessation or change of use occurs,

and ending on the date the amount the United States is entitled to recover is collected.

(d) Waiver of recovery rights

The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility (under such conditions as the Secretary may establish by regulation) if the Secretary determines that there is good cause for waiving such rights.

(e) Pre-judgment lien

The right of recovery of the United States under subsection (a) of this section shall not, prior to judgment, constitute a lien on any facility.

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 207(a), 99 Stat. 527.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-129 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

"If, within twenty years (or in the case of interim facilities, within such shorter period as the Secretary shall by regulation prescribe) after completion of any construction for which funds have been under a grant under paragraph (1) or (3) of section 293(a) of this title—

"(1) the applicant or other owner of the facility shall cease to be a public or nonprofit school or, in case the facility was an affiliated hospital or outpatient facility, the applicant or other owner of the facility ceases to be a public or other nonprofit agency qualified to file an application under section 291e of this title, or

"(2) the facility shall cease to be used for the teaching purposes (and the other purposes permitted under section 293b of this title) for which it was constructed, unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so, or

"(3) the facility is used for sectarian instruction or as a place for religious worship,

the United States shall be entitled to recover from the applicant or other owner of the facility the amount bearing the same ratio to the then value (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated) of the facility, as the amount of the Federal participation bore to the cost of construction of such facility."

Subsec. (b). Pub. L. 99-129 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"If, within 20 years after completion of any construction for which funds have been paid under a grant under section 293(a)(2) of this title—

"(1) the applicant or other owner of the facility shall cease to be a public or nonprofit entity;

"(2) the facility shall cease to be used for the training purposes for which such funds were provided, unless the Secretary determines, in accordance with regulations which he shall promulgate, that there is a significant public purpose and good cause for releasing the applicant or other owner from the obligation to do so; or

"(3) the facility is used for sectarian instruction or as a place for religious worship,

the United States shall be entitled to recover from the applicant or other owner of the facility the amount bearing the same ratio to the then value (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated) of the facility, as the amount of the Federal participation bore to the cost of construction of such facility."

Subsecs. (c) to (e). Pub. L. 99-129, in amending section generally, added subsecs. (c) to (e).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 207(b) of Pub.L. 99-129 provided that: "In the case of any facility that was or is constructed on or before the date of enactment of this Act [Oct. 22, 1985] or within 180 days after the date of enactment of this Act, the period described in clause (i) or (ii), as the case may be, of section 723(c)(2)(B) of the Public Health Service Act [subsec. (c)(2)(B) of this section] (as amended by subsection (a) of this section) shall begin no earlier than 181 days after the date of enactment of this Act."

OTHER LEGAL RIGHTS OF UNITED STATES NOT ADVERSELY AFFECTED BY 1985 AMENDMENT

Section 207(c) of Pub. L. 99-129 provided that: "The amendment made by subsection (a) of this section [amending this section] shall not adversely affect other legal rights of the United States."

PART C—STUDENT ASSISTANCE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 292b of this title; title 10 section 2172; title 26 section 6103.

SUBPART I—FEDERAL PROGRAM OF INSURED LOANS TO GRADUATE STUDENTS IN HEALTH PROFESSIONS SCHOOLS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in title 26 section 6103.

§ 294a. Federal loan insurance program

(a) Scope and duration

The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 294j of this title) to borrowers covered by Federal loan insurance under this subpart shall not exceed $500,000,000 for the fiscal year ending September 30, 1978; $510,000,000 for the fiscal year ending September 30, 1979; $520,000,000 for the fiscal year ending September 30, 1980, and for the next fiscal year; and $200,000,000 for the fiscal year ending September 30, 1982; $225,000,000 for the fiscal year ending September 30, 1983; $250,000,000 for the fiscal year ending September 30, 1984; $250,000,000 for the fiscal year ending September 30, 1985; $275,000,000 for the fiscal year ending September 30, 1986; $290,000,000 for the fiscal year ending September 30, 1987; and $305,000,000 for the fiscal year ending September 30, 1988. If the total amount of new loans made and installments paid pursuant to lines of credit in any fiscal year is less than the ceiling established for such year, the difference between the loans made and installments paid and the ceiling shall be carried over to the next fiscal year and added to the ceiling applicable to that fiscal year. Thereafter, Federal loan insurance pursuant to this subpart may be granted only for loans made (or for loan installments paid pursuant to lines of credit) to enable students, who have obtained prior loans insured under this subpart, to continue or complete their educational program or to obtain a loan under section 294d(a)(1)(B) of this title to pay interest on such prior loans; but no insurance may be granted for any loan made or installment paid after September 30, 1991.

[See main edition for text of (b) and (c)]

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 101, title II, § 208(h), 99 Stat. 523, 532.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-129, § 101(a), added authorization of appropriations for fiscal years ending Sept. 30, 1985, 1986, 1987, and 1988.

Pub. L. 99-129, § 208(h), added provision that if the total amount of new loans made and installments paid pursuant to lines of credit in any fiscal year is less than the ceiling established for such year, the difference between the loans made and installments paid and the ceiling shall be carried over to the next fiscal year and added to the ceiling applicable to that fiscal year.

Pub. L. 99-129, § 101(b), which directed the substitution of "1991," for "1987,", was executed by substituting "1991." for "1987." as the probable intent of Congress in view of the absence of a comma after "1987".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 101(a) of Pub. L. 99-129 effective Oct. 1, 1985, and amendment by section 208(h) of Pub. L. 99-129 effective Oct. 1, 1983, see section 228(b)(1), (3) of Pub. L. 99-129, set out as a note under section 254*l* of this title.

§ 294b. Limitations on individually insured loans and loan insurance

(a) The total of the loans made to a student in any academic year or its equivalent (as determined by the Secretary) which may be covered by Federal loan insurance under this subpart may not exceed $20,000 in the case of a student enrolled in a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, or podiatry, and $12,500 in the case of a student enrolled in a school of pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or clinical psychology. The aggregate insured unpaid principal amount for all such insured loans made to any borrower shall not at any time exceed $80,000 in the case of a borrower who is or was a student enrolled in a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, or podiatry, and $50,000 in the case of a borrower who is or was a student enrolled in a school of pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or clinical psychology. The annual insurable limit per student shall not be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any year in excess of the annual limit.

[*See main edition for text of* (*b*)]

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 208(g)(1), 99 Stat. 531.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-129 inserted "allied health," after "public health," in two places.

§ 294d. Borrowers

(a) Eligibility; terms of insured student loans

A loan by an eligible lender shall be insurable by the Secretary under the provisions of this subpart only if—

(1) made to—

(A) a student who—

(i)(I) has been accepted for enrollment at an eligible institution, or (II) in the case of a student attending an eligible institution, is in good standing at that institution, as determined by the institution;

(ii) is or will be a full-time student (as defined in section 295f(c)(2) of this title (as such section was in effect on September 30, 1985)) at the eligible institution;

(iii) has agreed that all funds received under such loan shall be used solely for tuition [1] other reasonable educational expenses, including fees, books, and laboratory expenses, and reasonable living expenses, incurred by such students;

(iv) if required under section 453 of the Appendix to title 50 to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section; and

(v) in the case of a pharmacy student, has satisfactorily completed three years of training; or

(B) an individual who—

(i) has previously had a loan insured under this subpart when the individual was a full-time student at an eligible institution;

(ii) is in a period during which, pursuant to paragraph (2), the principal amount of such previous loan need not be paid;

(iii) has agreed that all funds received under the proposed loan shall be used solely for repayment of interest due on previous loans made under this subpart; and

(iv) if required under section 453 of the Appendix to title 50 to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section; and

(2) evidenced by a note or other written agreement which—

[*See main edition for text of* (*A*)]

(B) provides for repayment of the principal amount of the loan in installments over a period of not less than 10 years (unless sooner repaid) nor more than 25 years beginning not earlier than 9 months nor later than 12 months after the later of—

(i) the date on which—

(I) the borrower ceases to be a participant in an accredited internship or residency program of not more than four years in duration;

(II) the borrower completes the fourth year of an accredited internship or residency program of more than four years in duration; or

(III) the borrower, if not a participant in a program described in subclause (I) or (II), ceases to carry, at an eligible institution, the normal full-time academic workload as determined by the institution; or

(ii) the date on which a borrower who is a graduate of an eligible institution ceases to be a participant in a fellowship training program not in excess of two years or a participant in a full-time educational activity not in excess of two years, which—

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[1] So in original. Probably should be followed by a comma.

(I) is directly related to the health profession for which the borrower prepared at an eligible institution, as determined by the Secretary; and

(II) may be engaged in by the borrower during such a two-year period which begins within twelve months after the completion of the borrower's participation in a program described in subclause (I) or (II) of clause (i) or prior to the completion of the borrower's participation in such program,

except as provided in subparagraph (C), except that the period of the loan may not exceed 33 years from the date of execution of the note or written agreement evidencing it, and except that the note or other written instrument may contain such provisions relating to repayment in the event of default in the payment of interest or in the payment of the costs of insurance premiums, or other default by the borrower, as may be authorized by regulations of the Secretary in effect at the time the loan is made;

(C) provides that periodic installments of principal and interest need not be paid, but interest shall accrue, during any period (i) during which the borrower is pursuing a full-time course of study at an eligible institution (or at an institution defined by section 1085(b)(1) of title 20), (ii) not in excess of four years during which the borrower is a participant in an accredited internship or residency program (including any period in such a program described in subclause (I) or subclause (II) of subparagraph (B)(i)), (iii) not in excess of three years, during which the borrower is a member of the Armed Forces of the United States, (iv) not in excess of three years during which the borrower is in service as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.], (v) not in excess of three years during which the borrower is a member of the National Health Service Corps, (vi) not in excess of three years during which the borrower is in service as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4951 et seq.], or (vii) any period not in excess of two years which is described in subparagraph (B)(ii), and any such period shall not be included in determining the 25-year period provided in clause (B) above;

[*See main edition for text of* (*D*) *and* (*E*)]

(F) entitles the borrower to accelerate without penalty repayment of the whole or any part of the loan;

(G) provides that the check for the proceeds of the loan shall be made payable jointly to the borrower and the eligible institution in which the borrower is enrolled; and

(H) contains such other terms and conditions consistent with the provisions of this subpart and with the regulations issued by the Secretary pursuant to this subpart, as may be agreed upon by the parties to such loan, including, if agreed upon, a provision requiring the borrower to pay to the lender, in addition to principal and interest, amounts equal to the insurance premiums payable by the lender to the Secretary with respect to such loan.

(b) Maximum rate of interest

No maximum rate of interest prescribed and defined by the Secretary for the purpose of paragraph (2)(D) of subsection (a) of this section may exceed the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the previous quarter plus 3 percentage points, rounded to the next higher one-eighth of 1 percent.

(c) Minimum payment

The total of the payments by a borrower during any year of any repayment period with respect to the aggregate amount of all loans to that borrower which are insured under this subpart shall not be less than the annual interest on the outstanding principal, except as provided in subsection (a)(2)(C) of this section, unless the borrower, in the written agreement described in subsection (a)(2) of this section, agrees to make payments during any year or any repayment period in a lesser amount.

[*See main edition for text of* (*d*)]

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, §§ 208(a), (b)(1), (2), (c)(1), (d), (i), 211(a)(2), 99 Stat. 529-532, 539.)

AMENDMENTS

1985—Subsec. (a)(1)(A)(ii). Pub. L. 99-129, § 211(a)(2), substituted "(as defined in section 295f(c)(2) of this title (as such section was in effect on September 30, 1985))" for "(as defined in section 295f(c)(2) of this title)".

Subsec. (a)(1)(A)(iv), (v). Pub. L. 99-129, § 208(a)(1), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (a)(1)(B)(iv). Pub. L. 99-129, § 208(a)(2), added cl. (iv).

Subsec. (a)(2)(B). Pub. L. 99-129, § 208(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "provides for repayment of the principal amount of the loan in installments over a period of not less than 10 years (unless sooner repaid) nor more than 25 years beginning not earlier than 9 months nor later than 12 months after the date on which the borrower ceases to be a participant in an accredited internship or residency program or (if he was not a participant in such a program) ceases to carry, at an eligible institution, the normal full-time academic workload as determined by the institution, except (i) as provided in clause (C) below, (ii) that the period of the loan may not exceed 33 years from the date of execution of the note or written agreement evidencing it, and (iii) that the note or other written instrument may contain such provisions relating to repayment in the event of default in the payment of interest or in the payment of the cost of insurance premiums, or other default by the borrower, as may be authorized by regulations of the Secretary in effect at the time the loan is made;".

Subsec. (a)(2)(C)(ii). Pub. L. 99-129, § 208(b)(2)(A), inserted "(including any period in such a program described in subclause (I) or subclause (II) of subparagraph (B)(i))".

Subsec. (a)(2)(C)(vi). Pub. L. 99-129, § 208(b)(2)(B), struck out "or the 33-year period" after "the 25-year period".

Subsec. (a)(2)(C)(vii). Pub. L. 99-129, § 208(b)(2)(C), (D), added cl. (vii).

Subsec. (a)(2)(G), (H). Pub. L. 99-129, § 208(i), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (b). Pub. L. 99-129, § 208(c)(1), substituted "3" for "3½".

Subsec. (c). Pub. L. 99-129, § 208(d)(1), substituted "subsection (a)(2)(C) of this section" for "section 731(a)(2)(C)".

Pub. L. 99-129, § 208(d)(2), inserted ", unless the borrower, in the written agreement described in subsection (a)(2) of this section, agrees to make payments during any year or any repayment period in a lesser amount".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 208(b)(3) of Pub. L. 99-129 provided that:

"(A) The provisions of clause (i) of section 731(a)(2)(B) of the Public Health Service Act [subsec. (a)(2)(B)(i) of this section] (as amended by paragraph (1) of this subsection) and the provisions of clauses (ii) and (vi) of section 731(a)(2)(C) of such Act (as amended by subparagraphs (A) and (B) of paragraph (2)) shall not apply to any individual who, prior to the date of enactment of this Act [Oct. 22, 1985], received a loan insured under subpart I of part C of title VII of such Act [this subpart].

"(B) The provisions of clause (ii) of section 731(a)(2)(B) of the Public Health Service Act and clause (vii) of section 731(a)(2)(C) of such Act (as added by the amendments made by paragraphs (1) and (2)(D) of this subsection, respectively) shall apply to any loan insured under subpart I of part C of title VII of such Act after the date of enactment of this Act."

Section 208(c)(2) of Pub. L. 99-129 provided that: "The amendment made by paragraph (1) of this subsection [amending subsec. (b) of this section] shall apply to any loan insured under subpart I of part C of title VII of the Public Health Service Act [this subpart] after the date of enactment of this Act [Oct. 22, 1985]."

REGULATIONS

Section 208(b)(4) of Pub. L. 99-129 provided that: "Within 90 days after the date of enactment of this Act [Oct. 22, 1985], the Secretary of Health and Human Services shall promulgate regulations to carry out clause (ii) of section 731(a)(2)(B) of the Public Health Service Act [42 U.S.C. 294d(a)(2)(B)(ii)] and clause (vii) of section 731(a)(2)(C) of such Act (as added by the amendments made by paragraphs (1) and (2)(D) of this subsection, respectively). Such regulations shall—

"(A) prescribe criteria for the determination of the types of fellowship training programs and full-time educational activities which will be permitted under such clauses; and

"(B) establish procedures for a borrower to apply to the Secretary for a determination concerning whether a particular fellowship training program or full-time educational activity will be permitted under such clauses."

§ 294e. Certificate of loan insurance

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Premium charge for insurance payable in advance; premium not payable or refundable after default; notice; request for payment; premium increases

(1) The Secretary shall, pursuant to regulations, charge for insurance on each loan under this subpart a premium in an amount not to exceed 8 percent of the unpaid principal amount of such loan (excluding interest added to principal), payable in advance at the time the loan is made and in such manner as may be prescribed by the Secretary. Such regulations may provide that such premium shall not be payable, or if paid shall be refundable, with respect to any period after default in the payment of principal or interest or after the borrower has died or become totally and permanently disabled, if (A) notice of such default or other event has been duly given, and (B) requests for payment of the loss insured against has been made or the Secretary has made such payment on his own motion pursuant to section 294f(a) of this title.

(2) The Secretary may not increase the percentage on the principal balance of loans charged pursuant to paragraph (1) for insurance premiums, unless the Secretary has, prior to any such increase—

(A) requested a qualified public accounting firm to evaluate whether an increase in such percentage is necessary to ensure the solvency of the student loan fund established by section 294g of this title, and to determine the amount of such an increase, if necessary; and

(B) such accounting firm has recommended such an increase and has determined the amount of such increase necessary to ensure the solvency of such fund.

The Secretary may not increase such percentage in excess of the maximum percentage permitted by paragraph (1) or increase such percentage by an amount in excess of the amount of the increase determined by a qualified accounting firm pursuant to this paragraph.

[*See main edition for text of* (*d*) *to* (*f*)]

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 208(e), 99 Stat. 531.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-129 designated existing provisions of subsec. (c) as par. (1), substituted "8 percent" for "2 percent per year" and "payable in advance at the time the loan is made" for "payable in advance, at such times", redesignated cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-129 effective nine months after Oct. 22, 1985, see section 228(b)(2) of Pub. L. 99-129, set out as a note under section 254*l* of this title.

§ 294g. Student loan insurance fund; establishment

(a) There is hereby established a student loan insurance fund (hereinafter in this section referred to as the "fund") which shall be available without fiscal year limitation to the Secretary for making payments in connection with the collection or default of loans insured by him under this subpart. All amounts received by the Secretary as premium charges for insurance and as receipts, earnings, or proceeds derived from any claim or other assets acquired by the Secretary in connection with his operations under this subpart, and any other moneys, property, or assets derived by the Secretary from his operations in connection with this section, shall be deposited in the fund. All payments in connection with the default of loans insured by the Secretary under this subpart shall be paid from the fund. Moneys in the fund not needed for current operations under this section may be invested in b[illegible] or other obligations guaranteed as to princi[illegible] and interest by the United States.

(b) If at any time the moneys in the fund are insufficient to make payments in connection with the collection or default of any loan insured by the Secretary under this subpart, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, but only in such amounts as may be specified from time to time in appropriation Acts. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from such fund.

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 208(f), 99 Stat. 531.)

AMENDMENTS

1985—Pub. L. 99-129 inserted "collection or" before "default" in subsecs. (a) and (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 294e, 294k of this title.

§ 294j. Definitions

As used in this subpart:

(1) The term "eligible institution" means, with respect to a fiscal year, a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or clinical psychology.

(2) The term "eligible lender" means an eligible institution, an agency or instrumentality of a State, a financial or credit institution (including an insurance company) which is subject to examination and supervision by an agency of the United States or of any State, or a pension fund approved by the Secretary for this purpose.

(3) The term "line of credit" means an arrangement or agreement between the lender and the borrower whereby a loan is paid out by the lender to the borrower in annual installments, or whereby the lender agrees to make, in addition to the initial loan, additional loans in subsequent years.

(4) The term "school of allied health" means a program in a school of allied health (as defined in section 292a(10) of this title) which leads to a masters' degree or a doctoral degree.

(5) Redesignated (3)

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, §§ 201(c), 204(c), 208(g)(2), 99 Stat. 525, 527, 531.)

AMENDMENTS

1985—Par. (1). Pub. L. 99-129, § 208(g)(2)(A), inserted ", allied health," after "public health".

Par. (2). Pub. L. 99-129, §§ 201(c), 204(c), redesignated par. (4) as (2). Former par. (2), which defined "school of chiropractic", was struck out. See section 292a(4) of this title.

Par. (3). Pub. L. 99-129, §§ 201(c), 204(c), redesignated par. (5) as (3). Former par. (3), which defined "graduate program in clinical psychology", was struck out. See section 292a(14) of this title.

Par. (4). Pub. L. 99-129, § 208(g)(2)(B), added par. (4). Former par. (4) redesignated (2).

Par. (5). Pub. L. 99-129, §§ 201(c), 204(c), redesignated par. (5) as (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 294a of this title; title 26 section 6103.

SUBPART II—STUDENT LOANS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in title 26 section 6103.

§ 294m. Loan agreements for establishment of student loan funds

[*See main edition for text of* (*a*)]

(b) Terms and conditions

Each agreement entered into under this section shall—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) provide that loans may be made from such fund only to students pursuing a full-time course of study at the school leading to a degree of doctor of medicine, doctor of dentistry or an equivalent degree, doctor of osteopathy, bachelor of science in pharmacy or an equivalent degree, doctor of pharmacy or an equivalent degree, doctor of podiatry or an equivalent degree, doctor of optometry or an equivalent degree, or doctor of veterinary medicine or an equivalent degree;

[*See main edition for text of* (*5*) *and* (*6*)]

(c) Measurement of failure by school to collect loans

(1) Any standard established by the Secretary by regulation for the collection by schools of medicine, osteopathy, dentistry, pharmacy, podiatry, optometry, or veterinary medicine of loans made pursuant to loan agreements under this subpart shall provide that the failure of

any such school to collect such loans shall be measured in accordance with this subsection.

(2) The measurement of a school's failure to collect loans made under this subpart shall be the ratio (stated as a percentage) that the defaulted principal amount outstanding of such school bears to the matured loans of such school.

(3) For purposes of this subsection—

(A) the term "default" means the failure of a borrower of a loan made under this subpart to—

(i) make an installment payment when due; or

(ii) comply with any other term of the promissory note for such loan,

except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy or if the school reasonably concludes from written contacts with the borrower that the borrower intends to repay the loan;

(B) the term "defaulted principal amount outstanding" means the total amount borrowed from the loan fund of a school that has reached the repayment stage (minus any principal amount repaid or cancelled) on loans—

(i) repayable monthly and in default for at least 120 days; and

(ii) repayable less frequently than monthly and in default for at least 180 days;

(C) the term "grace period" means the period of one year beginning on the date on which the borrower ceases to pursue a full-time course of study at a school of medicine, osteopathy, dentistry, pharmacy, podiatry, optometry, or veterinary medicine; and

(D) the term "matured loans" means the total principal amount of all loans made by a school under this subpart minus the total principal amount of loans made by such school to students who are—

(i) enrolled in a full-time course of study at such school; or

(ii) in their grace period.

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 209(a)(1), (j)(1), 99 Stat. 532, 536.)

AMENDMENTS

1985—Subsec. (b)(4). Pub. L. 99-129, § 209(a)(1), inserted "doctor of pharmacy or an equivalent degree," before "doctor of podiatry".

Subsec. (c). Pub. L. 99-129, § 209(j)(1), added subsec. (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 209(j)(1) of Pub. L. 99-129 effective June 30, 1984, see section 228(b)(5) of Pub. L. 99-129, set out as a note under section 254*l* of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 294n, 294o, 294p, 294q-1 of this title.

§ 294n. Loan provisions

[*See main edition for text of* (*a*)]

(b) School determination of terms and conditions; needy students eligible

Any such loans shall be made on such terms and conditions as the school may determine, but may be made only to a student (1) who is in need of the amount thereof to pursue a full-time course of study at the school leading to a degree of doctor of medicine, doctor of dentistry or an equivalent degree, doctor of osteopathy, bachelor of science in pharmacy or an equivalent degree, doctor of pharmacy or an equivalent degree, doctor of podiatry or an equivalent degree, doctor of optometry or an equivalent degree, or doctor of veterinary medicine or an equivalent degree, (2) who, if pursuing a full-time course of study at the school leading to a degree of doctor of medicine or doctor of osteopathy, is of exceptional financial need (as defined by regulations of the Secretary), and (3) who, if required under section 453 of the Appendix to title 50 to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section.

(c) Ten-year repayment schedule; exclusions

Such loans shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the ten-year period which begins one year after the student ceases to pursue a full-time course of study at a school of medicine, osteopathy, dentistry, pharmacy, podiatry, optometry,[1] veterinary medicine, excluding from such ten-year period—

(1) all periods—

(A) not in excess of three years of active duty performed by the borrower as a member of a uniformed service;

(B) not in excess of three years during which the borrower serves as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.]; and

(C) during which the borrower participates in advanced professional training, including internships and residencies; and

(2) a period—

(A) not in excess of two years during which a borrower who is a full-time student in such a school leaves the school, with the intent to return to such school as a full-time student, in order to engage in a full-time educational activity which is directly related to the health profession for which the borrower is preparing, as determined by the Secretary; or

(B) not in excess of two years during which a borrower who is a graduate of such a school is a participant in a fellowship training program or a full-time educational activity which—

(i) is directly related to the health profession for which such borrower prepared at such school, as determined by the Secretary; and

(ii) may be engaged in by the borrower during such a two-year period which begins within twelve months after the completion of the borrower's participation in advanced professional training described in paragraph (1)(C) or prior to the completion of such borrower's participation in such training.

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[1] So in original. Probably should be "optometry, or".

[*See main edition for text of* (*d*) *and* (*e*)]

(f) Payment of principal and interest for practice in physician, etc., shortage areas; limitation; liability for reimbursement; election of loan cancellation under amended or original provisions

(1) In the case of any individual—

(A) who has received a degree of doctor of medicine, doctor of osteopathy, doctor of dentistry or an equivalent degree, doctor of veterinary medicine or an equivalent degree, doctor of optometry or an equivalent degree, bachelor of science in pharmacy or an equivalent degree, doctor of pharmacy or an equivalent degree, or doctor of podiatry or an equivalent degree;

[*See main edition for text of* (*B*) *and* (*C*)]

the Secretary shall make payments in accordance with paragraph (2), for and on behalf of that individual, on the principal of and interest on any loan of his described in subparagraph (B) of this paragraph which is outstanding on the date he begins the practice specified in the agreement described in subparagraph (C) of this paragraph.

[*See main edition for text of* (*2*) *to* (*5*);
(*g*) *and* (*h*)]

(i) Insurance against cancellation of liability

Subject to regulations of the Secretary, a school may assess a charge with respect to loans made under this subpart to cover the costs of insuring against cancellation of liability under subsection (d) of this section.

(j) Penalty for late payment

Subject to regulations of the Secretary and in accordance with this section, a school shall assess a charge with respect to a loan made under this subpart for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment of the loan under subsection (c) of this section or cancellation of part or all of the loan under subsection (f) of this section, for any failure to file timely and satisfactory evidence of such entitlement. No such charge may be made if the payment of such installment or the filing of such evidence is made within 60 days after the date on which such installment or filing is due. The amount of any such charge may not exceed an amount equal to 6 percent of the amount of such installment. The school may elect to add the amount of any such charge to the principal amount of the loan as of the first day after the day on which such installment or evidence was due, or to make the amount of the charge payable to the school not later than the due date of the next installment after receipt by the borrower of notice of the assessment of the charge.

[*See main edition for text of* (*k*) *to* (*l*)]

(m) Referral of defaulted loans to Secretary for collection

The Secretary is authorized to attempt to collect any loan which was made under this subpart, which is in default, and which was referred to the Secretary by a school with which the Secretary has an agreement under this subpart, on behalf of that school under such terms and conditions as the Secretary may prescribe (including reimbursement from the school's student loan fund for expenses the Secretary may reasonably incur in attempting collection), but only if the school has complied with such requirements as the Secretary may specify by regulation with respect to the collection of loans under this subpart. A loan so referred shall be treated as a debt subject to section 5514 of title 5. Amounts collected shall be deposited in the school's student loan fund. Whenever the Secretary desires the institution of a civil action regarding any such loan, the Secretary shall refer the matter to the Attorney General for appropriate action.

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 209(a)(2), (3), (b), (c)(1), (d)–(f), 99 Stat. 532, 534.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (c)(1)(B), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-129, § 209(a)(2), (b), added "(1) who is" after "student" and "doctor of pharmacy or an equivalent degree," before "doctor of podiatry", and added cls. (2) and (3).

Subsec. (c). Pub. L. 99-129, § 209(c)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Such loans shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the ten-year period which begins one year after the student ceases to pursue a full-time course of study at a school of medicine, osteopathy, dentistry, pharmacy, podiatry, optometry, or veterinary medicine excluding from such ten-year period all periods (up to three years) of (1) active duty performed by the borrower as a member of a uniformed service, or (2) service as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.]; and periods of advanced professional training including internships and residencies)."

Subsec. (f)(1)(A). Pub. L. 99-129, § 209(a)(3), inserted "doctor of pharmacy or an equivalent degree," before "or doctor of podiatry".

Subsec. (l). Pub. L. 99-129, § 209(d) amended subsec. (l) generally. Prior to amendment, subsec. (l) read as follows: "Where all or any part of a loan, or interest, is canceled under this section, the Secretary shall pay to the school an amount equal to the school's proportionate share of the canceled portion, as determined by the Secretary."

Subsec. (j). Pub. L. 99-129, § 209(e), added "and in accordance with this section" after "Secretary" and substituted "shall assess" for "may assess" and "No such charge may be made if the payment of such installment or the filing of such evidence is made within 60 days after the date on which such installment or filing is due. The amount of any such charge may not exceed an amount equal to 6 percent of the amount of such installment" for "The amount of any such charge may not exceed $1 for the first month or part of a month by which such installment or evidence is late and $2 for ech such month or part of a month thereafter".

Subsec. (m). Pub. L. 99-129, § 209(f), added subsec. (m).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 209(c)(2), (3), of Pub. L. 99-129 provided that:

"(2) The provisions of section 741(c)(2)(A) of the Public Health Service Act [subsec. (c)(2)(A) of this section] (as added by the amendment made by paragraph (1) of this subsection) shall apply to—

"(A) any individual who received a loan under subpart II of part C of title VII of the Public Health Service Act [this subpart] and to whom the provisions of such section (if such provisions had been in effect) would have applied between June 17, 1982, and July 7, 1983; and

"(B) any individual who, after the date of enactment of this Act [Oct. 22, 1985], is a full-time student in a school referred to in such section and who (prior to, on, or after the date of enactment of this Act), receives a loan under such subpart to assist such student in such student's studies in such school.

"(3) The provisions of section 741(c)(2)(B) of the Public Health Service Act [subsec. (c)(2)(B) of this section] (as added by the amendment made by paragraph (1) of this subsection) shall apply to any loan made under subpart II of part C of title VII of such Act after the date of enactment of this Act."

REGULATIONS

Section 209(c)(4) of Pub. L. 99-129 provided that: "Within 90 days after the date of enactment of this Act [Oct. 22, 1985], the Secretary of Health and Human Services shall promulgate regulations to carry out section 741(c)(2) of the Public Health Service Act [42 U.S.C. 294n(c)(2)] (as added by the amendment made by paragraph (1) of this subsection) with respect to any loan made under subpart II of part C of title VII of such Act [this subpart] on or after the date of enactment of this Act. Such regulations shall—

"(A) with respect to the provisions of subparagraph (A) of such section—

"(i) prescribe criteria for the determination of the types of full-time educational activities which will be permitted under such subparagraph;

"(ii) require the school in which the borrower was enrolled as a full-time student to determine, prior to the borrower's leaving such school, whether an educational activity in which the student proposes to engage qualifies for purposes of such subparagraph and such regulations; and

"(B) with respect to the provisions of subparagraph (B) of such section—

"(i) prescribe criteria for the determination of the types of fellowship training programs and full-time educational activities which will be permitted under such subparagraph; and

"(ii) establish procedures for a borrower to apply to the Secretary for a determination concerning whether a particular fellowship training program or full-time educational activity will be permitted under such subparagraph."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254d, 294m, 294q-1, 3505d of this title.

§ 294o. Authorization of appropriations

[See main edition for text of (a)]

(b) Time for applications for capital contributions; reduction of allotments; reallotments; allotment of excess funds; payments in installments to prevent accumulations

[See main edition for text of (1) to (4)]

(5) Any funds from a student loan fund established under this subpart which are returned to the Secretary in any fiscal year shall be available for allotment under this subpart, in such fiscal year and the fiscal year succeeding such fiscal year, to schools which, during the period beginning on July 1, 1972, and ending on September 30, 1985, established student loan funds with Federal capital contributions under this subpart.

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 209(g), 99 Stat. 534.)

AMENDMENTS

1985—Subsec. (b)(5). Pub. L. 99-129 added par. (5).

§ 294p. Distribution of assets from loan funds

(a) After September 30, 1991, and not later than December 31, 1991, there shall be a capital distribution of the balance of the loan fund established under an agreement pursuant to section 294m(b) of this title by each school as follows:

(1) The Secretary shall first be paid an amount which bears the same ratio to such balance in such fund at the close of September 30, 1991, as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 294m(b)(2)(A) of this title bears to the total amount in such fund derived from such Federal capital contributions and from funds deposited therein pursuant to section 294m(b)(2)(B) of this title.

(2) The remainder of such balance shall be paid to the school.

(b) After December 31, 1991, each school with which the Secretary has made an agreement under this subpart shall pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school after September 30, 1991, in payment of principal or interest on loans made from the loan fund established pursuant to such agreement as was determined for the Secretary under subsection (a) of this section.

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 209(i), 99 Stat. 536.)

AMENDMENTS

1985—Pub. L. 99-129 substituted "1991" for "1987" wherever appearing.

§ 294q-1. Student loan information by institutions

(a) Designated information provided to student

With respect to loans made by a school under this subpart after June 30, 1986, each school, in order to carry out the provisions of sections 294m and 294n of this title, shall, at any time such school makes such a loan to a student under this subpart, provide thorough and adequate loan information on loans made under this subpart to the student. The loan information required to be provided to the student by this subsection shall include—

(1) the yearly and cumulative maximum amounts that may be borrowed by the student;

(2) the terms under which repayment of the loan will begin;

(3) the maximum number of years in which the loan must be repaid;

(4) the interest rate that will be paid by the borrower and the minimum amount of the required monthly payment;

(5) the amount of any other fees charged to the borrower by the lender;

(6) any options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan;

(7) a definition of default on the loan and a specification of the consequences which will result to the borrower if the borrower defaults, including a description of any arrangements which may be made with credit bureau organizations;

(8) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(9) a description of the actions that may be taken by the Federal Government to collect the loan, including a description of the type of information concerning the borrower that the Federal Government may disclose to (A) officers, employees, or agents of the Department of Health and Human Services, (B) officers, employees, or agents of schools with which the Secretary has an agreement under this subpart, or (C) any other person involved in the collection of a loan under this subpart.

(b) Pre-graduation statement

Each school shall, immediately prior to the graduation from such school of a student who receives a loan under this subpart after June 30, 1986, provide such student with a statement specifying—

(1) each amount borrowed by the student under this subpart;

(2) the total amount borrowed by the student under this subpart; and

(3) a schedule for the repayment of the amounts borrowed under this subpart, including the number, amount, and frequency of payments to be made.

(July 1, 1944, ch. 373, title VII, § 745, as added Oct. 22, 1985, Pub. L. 99-129, title II, § 209(h)(2), 99 Stat. 535.)

§ 294q-2. Procedures for appeal of terminations

In any case in which the Secretary intends to terminate an agreement with a school under this subpart, the Secretary shall provide the school with a written notice specifying such intention and stating that the school may request a formal hearing with respect to such termination. If the school requests such a hearing within 30 days after the receipt of such notice, the Secretary shall provide such school with a hearing conducted by an administrative law judge.

(July 1, 1944, ch. 373, title VII, § 746, as added Oct. 22, 1985, Pub. L. 99-129, title II, § 209(h)(2), 99 Stat. 536.)

EFFECTIVE DATE

Section effective June 30, 1984, see section 228(b)(4) of Pub. L. 99-129, set out as an Effective Date of 1985 Amendment note under section 254*l* of this title.

§ 294q-3. Definition

For purposes of this subpart, the term "school of pharmacy" means a public or nonprofit private school in a State that provides training leading to a degree of bachelor of science in pharmacy or an equivalent degree or a degree of doctor of pharmacy or an equivalent degree and which is accredited in the manner described in section 292a(5) of this title.

(July 1, 1944, ch. 373, title VII, § 747, formerly § 745, as added and renumbered § 747, Oct. 22, 1985, Pub. L. 99-129, title II, § 209(a)(4), (h)(1), 99 Stat. 532, 535.)

SUBPART V—OTHER SCHOLARSHIPS

§ 294z. Scholarships for first year students of exceptional financial need

[See main edition for text of (a)]

(b) Scholarships to full-time students in first year of study; "first year of study" defined

[See main edition for text of (1)]

(2) A scholarship provided to a student for a school year under a grant under subsection (a) of this section shall consist of—

(A) payment to, or (in accordance with paragraph (4)) on behalf of, the student of the amount (except as provided in section 292k of this title) of—

(i) the tuition of the student in such school year; and

(ii) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the student in such school year; and

(B) payment to the student of a stipend of $400 per month (adjusted in accordance with paragraph (5)) for each of the 12 consecutive months beginning with the first month of such school year.

(3) Notwithstanding paragraph (2), the total scholarship award to a student for each year shall not exceed the cost of attendance for that year at the educational institution attended by the student (as determined by such educational institution).

(4) The Secretary may contract with an educational institution in which is enrolled a student who has received a scholarship with a grant under subsection (a) of this section for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (2)(A). Payment to such an educational institution may be made without regard to section 3324 of title 31.

(5) The amount of the monthly stipend, specified in paragraph (2)(B) and as previously ad-

justed (if at all) in accordance with this paragraph, shall be increased by the Secretary for each school year by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (as set forth in the report transmitted to the Congress under section 5305 of title 5) of the adjustment (if such adjustment is an increase) in the rates of pay under the General Schedule made effective in the fiscal year in which such school year ends.

(6) For purposes of this section, the term "first year of study" means, with respect to a student of a school other than a school of pharmacy, the student's first year of postbaccalaureate study at such school.

[*See main edition for text of* (c)]

(d) Authorization of appropriations

For the purpose of making grants under this section, there is authorized to be appropriated $16,000,000 for the fiscal year ending September 30, 1978, $17,000,000 for the fiscal year ending September 30, 1979, $18,000,000 for the fiscal year ending September 30, 1980, $6,000,000 for the fiscal year ending September 30, 1982, $6,500,000 for the fiscal year ending September 30, 1983, $7,000,000 for the fiscal year ending September 30, 1984, $7,000,000 for the fiscal year ending September 30, 1986, $7,000,000 for the fiscal year ending September 30, 1987, and $7,000,000 for the fiscal year ending September 30, 1988.

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 102, title II, § 210(a), 99 Stat. 523, 537.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(5), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1985—Subsec. (b)(2). Pub. L. 99-129, § 210(a), added par. (2) and struck out former par. (2) which provided that a scholarship awarded to a student for a school year under a grant made under subsec. (a) of this section shall be the scholarship described in section 254*l*(g) of this title.

Subsec. (b)(3) to (6). Pub. L. 99-129, § 210(a), added pars. (3) to (5) and redesignated former par. (3) as (6).

Subsec. (d). Pub. L. 99-129, § 102, added authorization of appropriations for the fiscal years ending Sept. 30, 1986, 1987, and 1988.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254*l*, 295g-7 of this title.

PART D—GRANTS FOR FAMILY MEDICINE, TRAINING, TRAINEESHIPS, AND FELLOWSHIPS AND COMPUTER TECHNOLOGY HEALTH CARE DEMONSTRATION PROGRAMS

§§ 295 to 295e-5. Repealed. Pub. L. 99-129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544

Section 295, acts July 1, 1944, ch. 373, title VII, § 761, as added Dec. 25, 1970, Pub. L. 91-696, § 101, 84 Stat. 2080-1, and amended Oct. 17, 1979, Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, provided the Congressional declaration of purpose for this part.

Section 295a, act July 1, 1944, ch. 373, title VII, § 762, as added Dec. 25, 1970, Pub. L. 91-696, § 101, 84 Stat. 2080-2, authorized appropriations for this part.

Section 295b, act July 1, 1944, ch. 373, title VII, § 763, as added Dec. 25, 1970, Pub. L. 91-696, § 101, 84 Stat. 2080-2, authorized the Secretary to make grants and to set limitations and conditions on grants, required applications for grants, limited use of grant funds, set forth method of payment of grants, and provided for protection of financial interests of the United States.

Section 295c, acts July 1, 1944, ch. 373, title VII, § 764, as added Dec. 25, 1970, Pub. L. 91-696, § 101, 84 Stat. 2080-2, and amended Oct. 17, 1979, Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, established requirements of eligibility for grants.

Section 295d, acts July 1, 1944, ch. 373, title VII, § 765, as added Dec. 25, 1970, Pub. L. 91-696, § 101, 84 Stat. 2080-3, and amended Oct. 17, 1979, Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, related to requisites for approval of grants, establishment of separate medical school departments of family medicine, establishment of special hospital programs of family medicine, and supplementation of non-Federal funds.

Section 295d-1, act July 1, 1944, ch. 373, title VII, § 766, as added Dec. 25, 1970, Pub. L. 91-696, § 101, 84 Stat. 2080-4, related to establishment and funding of planning and developmental grants.

Section 295d-2, act July 1, 1944, ch. 373, title VII, § 767, as added Dec. 25, 1970, Pub. L. 91-696, § 101, 84 Stat. 2080-4, established the Advisory Council on Family Medicine and provided for its composition, the term and compensation of its members, and its duties and functions.

Section 295e, act July 1, 1944, ch. 373, title VII, § 768, as added Dec. 25, 1970, Pub. L. 91-696, § 101, 84 Stat. 2080-5, set forth definitions for this part.

Section 295e-1, acts July 1, 1944, ch. 373, title VII, § 767, as added Nov. 18, 1971, Pub. L. 92-157, title I, § 107(b), 85 Stat. 457, and amended Oct. 12, 1976, Pub. L. 94-484, title I, § 101(g), 90 Stat. 2244, authorized appropriations for grants to public or nonprofit private hospitals for training, traineeships, and fellowships in family medicine.

Section 295e-2, acts July 1, 1944, ch. 373, title VII, § 768, as added Nov. 18, 1971, Pub. L. 92-157, title I, § 107(b), 85 Stat. 458, and amended Oct. 12, 1976, Pub. L. 94-484, title I, § 101(h), 90 Stat. 2244, established grants for postgraduate training programs for physicians and dentists and authorized appropriations for those grants.

Section 295e-3, acts July 1, 1944, ch. 373, title VII, § 769, as added Nov. 18, 1971, Pub. L. 92-157, title I, § 107(b), 85 Stat. 459, and amended Oct. 12, 1976, Pub. L. 94-484, title I, § 101(i), 90 Stat. 2245, authorized the Secretary to make grants for training, traineeships, and fellowships for health professions teaching personnel and authorized appropriations for those grants.

Section 295e-4, acts July 1, 1944, ch. 373, title VII, § 769A, as added Nov. 18, 1971, Pub. L. 92-157, title I, § 107(b), 85 Stat. 459, and amended Oct. 12, 1976, Pub. L. 94-484, title I, § 101(j), 90 Stat. 2245, authorized appropriations for grants for computer technology health care demonstration programs.

Section 295e-5, act July 1, 1944, ch. 373, title VII, § 769B, as added Nov. 18, 1971, Pub. L. 92-157, title I, § 107(b), 85 Stat. 460, required applications for grants and approval of grants by the Secretary and set forth payment limitations.

PART E—GRANTS TO IMPROVE QUALITY OF SCHOOLS OF PUBLIC HEALTH

AMENDMENTS

1985—Pub. L. 99-129, title II, § 211(d), Oct. 22, 1985, 99 Stat. 539, in part E heading substituted "Schools of Public Health" for "Schools of Medicine, Osteopathy, Dentistry, Public Health, Veterinary Medicine, Optometry, Pharmacy, and Podiatry".

§ 295f. Capitation grants for schools of public health

(a) Method of computation

(1) The Secretary shall make annual grants to schools of public health for the support of the education programs of such schools. The amount of the annual grant to each such school with an approved application shall be computed for each fiscal year in accordance with paragraphs (2) and (3).

(2) Each school of public health shall receive for the fiscal year ending September 30, 1986, and for each of the next two fiscal years, an amount equal to the product of—

(A) $1,400, and

(B) the sum of (i) the number of full-time students enrolled in degree programs in such school in the school year beginning in such fiscal year, and (ii) the number of full-time equivalents of part-time students enrolled in degree programs in such school, determined pursuant to paragraph (3), for such school for such school year.

(3) For purposes of paragraph (2), the number of full-time equivalents of part-time students for a school of public health for any school year is a number equal to—

(A) the total number of credit hours of instruction in such year for which part-time students of such school, who are pursuing a course of study leading to a graduate degree in public health or an equivalent degree, have enrolled, divided by

(B) the greater of (i) the number of credit hours of instruction which a full-time student of such school was required to take in such year, or (ii) 9,

rounded to the next highest whole number.

(b) Ratio of grant funds

Notwithstanding subsection (a) of this section, if the aggregate of the amounts of the grants to be made in accordance with such subsection for any fiscal year to schools of public health with approved applications exceeds the total of the amounts appropriated for such grants for such schools under subsection (e) of this section, the amount of a school's grant for such fiscal year shall be an amount which bears the same ratio to the amount determined for the school under subsection (a) of this section as the total of the amounts appropriated for that year under subsection (e) of this section for grants to schools of public health bears to the amount required to make grants in accordance with subsection (a) of this section to each of the schools of public health with approved applications.

(c) Student enrollment criteria

(1) For purposes of this section, regulations of the Secretary shall include provisions relating to the determination of the number of students enrolled in a school or in a particular year-class in a school on the basis of estimates, on the basis of the number of students who in an earlier year were enrolled in a school or in a particular year-class, or on such other basis as the Secretary deems appropriate for making such determination, and shall include methods of making such determination when a school or a year-class was not in existence in an earlier year at a school.

(2) For purposes of this section, the term "full-time students" (whether such term is used by itself or in connection with a particular year-class) means students pursuing a full-time course of study leading to a graduate degree in public health or equivalent degree.

(d) New public health schools

In the case of a new school of public health which applies for a grant under this section in the fiscal year preceding the fiscal year in which it will admit its first class, the enrollment for purposes of subsection (a) of this section shall be the number of full-time students which the Secretary determines, on the basis of assurances provided by the school, will be enrolled in the school, in the fiscal year after the fiscal year in which the grant is made.

(e) Authorization of appropriations

For payments under this section, there are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1986, $5,125,000 for the fiscal year ending September 30, 1987, and $5,250,000 for the fiscal year ending September 30, 1988.

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 211(a)(1), 99 Stat. 537.)

AMENDMENTS

1985—Pub. L. 99-129 amended section generally, substituting provisions relating to annual grants for schools of public health for provisions which related to annual grants for schools of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy, and podiatry.

§ 295f-1. Eligibility for capitation grants

(a) Requisite assurances in grant applications

(1) The Secretary shall not make a grant under section 295f of this title to any school of public health in a fiscal year beginning after September 30, 1985, unless the application for the grant contains, or is supported by, assurances satisfactory to the Secretary that—

(A) the enrollment of full-time equivalent students enrolled in degree programs in the school in the school year beginning in the fiscal year in which the grant applied for is to be made will not be less than the enrollment of such students in degree programs in the school in the school year beginning in the fiscal year ending September 30, 1983; and

(B) the applicant will expend in carrying out its functions as a school of public health during the fiscal year for which such grant is sought, an amount of funds (other than funds for construction as determined by the Secretary) from non-Federal sources which is at least as great as the amount of funds expended by such applicant for such purpose (excluding expenditures of a nonrecurring nature) in the fiscal year preceding the fiscal year for which such grant is sought.

(2) For purposes of subsection (a)(1)(A) of this section, the number of full-time equivalent students enrolled in a degree program in a school in a school year is equal to the sum cal-

culated under section 295f(a)(2)(B) of this title for that school year.

(b) Waiver

The Secretary may waive (in whole or in part) application to a school of public health of the requirement of subsection (a)(1)(A) of this section if the Secretary determines, after receiving the written recommendation of the appropriate accreditation body or bodies (approved for such purpose by the Commissioner of Education) that compliance by such school with such requirement will prevent it from maintaining its accreditation.

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 211(b), 99 Stat. 539.)

AMENDMENTS

1985—Pub. L. 99-129 amended section generally, reducing its coverage to include only grants to schools of public health from the former language which covered schools of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, podiatry, and pharmacy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 295f-2 of this title.

§ 295f-2. Applications for capitation grants

[*See main edition for text of* (*a*)]

(b) Eligibility conditions

To be eligible for a grant under section 295f of this title the applicant must (1) be a public or other nonprofit school of public health, and (2) be accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, except that the requirement of this clause shall be deemed to be satisfied if (A) in the case of a school which by reason of no, or an insufficient, period of operation is not, at the time of application for a grant under this part, eligible for such accreditation, the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of students who are in their first year of instruction at such school during the fiscal year in which the Secretary makes a final determination as to approval of the application, or (B) in the case of any other school, the Secretary of Education finds after such consultation and after consultation with the Secretary that there is reasonable ground to expect that, with the aid of a grant (or grants) under those sections, having regard for the purposes of the grant for which application is made, such school will meet such accreditation standards within a reasonable time.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended Oct. 22, 1985, Pub. L. 99-129, title II, § 211(c), 99 Stat. 539.)

AMENDMENTS

1985—Pub. L. 99-129, § 211(c)(2), substituted "Applications for capitation grants" for "Applications for capitation, start-up, special project, and financial distress grants" in section catchline.

Subsec. (b). Pub. L. 99-129, § 211(c)(1), struck out "or subsection (a) or (b) of section 295g-8 of this title" after "To be eligible for a grant under section 295f of this title", substituted "school of public health" for "school of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy, or podiatry", and substituted "Secretary of Education" for "Commissioner of Education" and "Commissioner".

PART F—GRANTS AND CONTRACTS FOR PROGRAMS AND PROJECTS

§ 295g. Project grants for establishment of departments of family medicine

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Family medicine

In making grants under subsection (a) of this section, the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

(d) Authorization of appropriations

There are authorized to be appropriated $10,000,000 for the fiscal year ending September 30, 1978, $15,000,000 for the fiscal year ending September 30, 1979, $20,000,000 for the fiscal year ending September 30, 1980, $10,000,000 for the fiscal year ending September 30, 1982, $10,500,000 for the fiscal year ending September 30, 1983, $11,000,000 for the fiscal year ending September 30, 1984, $7,000,000 for the fiscal year ending September 30, 1986, $7,000,000 for the fiscal year ending September 30, 1987, and $7,000,000 for the fiscal year ending September 30, 1988, for payments under grants under subsection (a) of this section.

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 103, title II, § 212, 99 Stat. 523, 540.)

AMENDMENTS

1985—Subsecs. (c), (d). Pub. L. 99-129 added subsec. (c), redesignated former subsec. (c) as (d), and added authorization of appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 288 of this title.

§ 295g-1. Area health education centers

(a) Authority of Secretary; contracts with schools for enumerated programs

[*See main edition for text of* (*1*)]

(2)(A) The Secretary shall enter into contracts with schools of medicine and osteopathy—

(i) which have previously received Federal financial assistance for an area health education center program under section 802 of the Health Professionals Educational Assistance Act of 1976 in fiscal year 1979 or under paragraph (1), or

(ii) which are receiving assistance under paragraph (1), to carry out projects described in subparagraph (B) through area health education centers for which Federal financial assistance was provided under paragraph (1) and which are no longer eligible to receive such assistance.

(B) Projects for which assistance may be provided under subparagraph (A) are—

(i) projects to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system;

(ii) projects to encourage the regionalization of educational responsibilities of the health professions schools; and

(iii) projects designed to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps scholarship program to effectively provide health services in health manpower shortage areas.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Area served by the center; activities of the center

[*See main edition for text of* (*1*)]

(2) Each area health education center shall—

[*See main edition for text of* (*A*) *to* (*E*)]

(F) conduct interdisciplinary training and practice involving physicians and other health personnel including, where practicable, physician assistants and nurse practitioners;

[*See main edition for text of* (*G*) *and* (*H*)]

Any area health education center which is participating in an area health education center program in which another center has a medical residency training program described in subparagraph (C) need not provide for or conduct such a medical residency training program.

[*See main edition for text of* (*e*) *and* (*f*)]

(g) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this section $20,000,000 for the fiscal year ending September 30, 1978, $30,000,000 for the fiscal year ending September 30, 1979, $40,000,000 for the fiscal year ending September 30, 1980, $21,000,000 for the fiscal year ending September 30, 1982, $22,500,000 for the fiscal year ending September 30, 1983, $24,000,000 for the fiscal year ending September 30, 1984, $18,000,000 for the fiscal year ending September 30, 1986, $18,000,000 for the fiscal year ending September 30, 1987, and $18,000,000 for the fiscal year ending September 30, 1988. The Secretary shall obligate not more than 10 percent of the amount appropriated under this subsection for any fiscal year for contracts under subsection (a)(2) of this section.

(As amended Aug. 15, 1985, Pub. L. 99–91, § 7, 99 Stat. 392; Oct. 22, 1985, Pub. L. 99–129, title I, § 104, title II, § 213, 99 Stat. 523, 540.)

REFERENCES IN TEXT

Section 802 of the Health Professions Educational Assistance Act of 1976, referred to in subsecs. (a)(2)(A)(i) and (e), is section 802 of Pub. L. 94–484, title VIII, Oct. 12, 1976, 90 Stat. 2322, which is set out as a note below.

AMENDMENTS

1985—Subsec. (a)(2). Pub. L. 99–129, § 213(a), substituted subpar. (A) and provisions of subpar. (B) preceding cl. (i) for "The Secretary shall enter into contracts with schools of medicine and osteopathy, which have previously received Federal financial assistance for an area health education center program under section 802 of the Health Professions Educational Assistance Act of 1976 in fiscal year 1979, or under this section to carry out—" and redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively.

Pub.L. 99–91, temporarily amended par. (2) in a manner identical to that of Pub. L. 99–129, § 213(a), above. See Effective and Termination Dates of 1985 Amendments note below.

Subsec. (d)(2)(F). Pub. L. 99–129, § 213(c), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "encourage the utilization of nurse practitioners and physician assistants within the area served by the center and the recruitment of individuals for training in such professions at the participating medical or osteopathic schools;".

Subsec. (g). Pub. L. 99–129, §§ 104, 213(b), added authorization of appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988 and substituted "shall obligate" for "may obligate".

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENTS

Amendment by section 213(a) of Pub. L. 99–129 effective Oct. 1, 1985, see section 228(b)(6) of Pub. L. 99–129, set out as an Effective Date of 1985 Amendment note under section 254*l* of this title.

Amendment by Pub. L. 99–91 effective Oct. 1, 1984, and ceases to be effective after Sept. 30, 1985, see section 8(b) of Pub. L. 99–91, set out as a note under section 360aa of Title 21, Food and Drugs.

§ 295g–2. Repealed. Pub. L. 99–129, title II, § 220(d), Oct. 22, 1985, 99 Stat. 544

Section, acts July 1, 1944, ch. 373, title VII, § 782, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2314, and amended Nov. 9, 1978, Pub. L. 95–623, § 12(e), 92 Stat. 3457, authorized the Secretary to make grants to schools of medicine and osteopathy for programs to train United States citizens formerly enrolled in medical schools in foreign countries, authorized appropriations for those grants, and set forth reporting requirements.

§ 295g–3. Programs for physicians assistants

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Authorization of appropriations

For payments under grants and contracts under this section, there is authorized to be appropriated $25,000,000 for the fiscal year ending September 30, 1978, $30,000,000 for the fiscal year ending September 30, 1979, $35,000,000 for the fiscal year ending September 30, 1980, $5,000,000 for the fiscal year ending September 30, 1982, $5,500,000 for the fiscal year ending September 30, 1983, $6,000,000 for the fiscal year ending September 30, 1984, $4,800,000 for the fiscal year ending September 30, 1986, $4,800,000 for the fiscal year ending September 30, 1987, and $4,800,000 for the fiscal year ending September 30, 1988.

(As amended Oct. 22, 1985, Pub. L. 99–129, title I, § 105, 99 Stat. 524.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-129 added authorization of appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988.

§ 295g-4. Grants and contracts for training, traineeships and fellowships in general internal medicine and general pediatrics

[*See main edition for text of* (*a*)]

(b) General internal medicine and general pediatrics

In making grants and entering into contracts under subsection (a) of this section, the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to general internal medicine and general pediatrics in their medical education training programs.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this section $10,000,000 for the fiscal year ending September 30, 1977, $15,000,000 for the fiscal year ending September 30, 1978, $20,000,000 for the fiscal year ending September 30, 1979, $25,000,000 for the fiscal year ending September 30, 1980, $17,000,000 for the fiscal year ending September 30, 1982, $18,000,000 for the fiscal year ending September 30, 1983, $20,000,000 for the fiscal year ending September 30, 1984, $18,500,000 for the fiscal year ending September 30, 1986, $19,500,000 for the fiscal year ending September 30, 1987, and $22,000,000 for the fiscal year ending September 30, 1988.

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 106, title II, § 214, 99 Stat. 524, 540.)

AMENDMENTS

1985—Subsecs. (b), (c). Pub. L. 99-129 added subsec. (b), redesignated former subsec. (b) as (c), and in subsec. (c) as so redesignated, added authorization of appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 288, 293a of this title.

§ 295g-5. Repealed. Pub. L. 99-129, title II, § 220(e), Oct. 22, 1985, 99 Stat. 544

Section, act July 1, 1944, ch. 373, title VII, § 785, as added Oct. 12, 1976, Pub. L. 94-484, title VIII, § 801(a), 90 Stat. 2315, established grants to public or private nonprofit colleges or universities for occupational health training and education centers and authorized appropriations for those grants.

§ 295g-6. Family medicine and general practice of dentistry; authority of Secretary

[*See main edition for text of* (*a*)]

(b) Grants for specified general practice of dentistry programs

The Secretary may make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution—

(1) to plan, develop, and operate an approved residency program in the general practice of dentistry or an approved advanced education program in the general practice of dentistry; and

(2) to provide financial assistance (in the form of traineeships and fellowships) to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

(c) Family medicine

In making grants and entering into contracts under subsection (a) of this section, the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

(d) Authorization of appropriations

There are authorized to be appropriated to make grants under this section $45,000,000 for the fiscal year ending September 30, 1978, $45,000,000 for the fiscal year ending September 30, 1979, $50,000,000 for the fiscal year ending September 30, 1980, $32,000,000 for the fiscal year ending September 30, 1982, $34,000,000 for the fiscal year ending September 30, 1983, $36,000,000 for the fiscal year ending September 30, 1984, $36,000,000 for the fiscal year ending September 30, 1986, $37,000,000 for the fiscal year ending September 30, 1987, and $39,400,000 for the fiscal year ending September 30, 1988. In making grants and entering into contracts under this section with amounts appropriated under this subsection for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, September 30, 1986, September 30, 1987, and September 30, 1988, the Secretary shall give priority to grants and contracts for residency or internship programs under paragraphs (1) and (2) of subsection (a) of this section, and shall obligate not less than 7.5 percent of such amounts in each such fiscal year for grants under subsection (b) of this section.

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 107, title II, § 215, 99 Stat. 524, 540.)

AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99-129, § 215(a)(1), inserted "or an approved advanced educational program in the general practice of dentistry".

Subsec. (b)(2). Pub. L. 99-129, § 215(a)(2), substituted "participants" for "residents".

Subsec. (c). Pub. L. 99-129, § 215(b), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 99-129, § 215(b), (c), redesignated former subsec. (c) as (d), and inserted ", and shall obligate not less than 7.5 percent of such amounts in each such fiscal year for grants under subsection (b) of this section".

Pub. L. 99-129, § 107, added authorization of appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988, and inserted "September 30, 1986, September 30, 1987, and September 30, 1988," after "1984," and struck out "and" after "1983," in provision directing the Secretary to give priority to grants and contracts for residency or internship programs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 288, 293a of this title.

§ 295g-7. Educational assistance to individuals from disadvantaged backgrounds

(a) Authority of Secretary; grants and contracts for specified undertakings

(1) For the purpose of assisting individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary, to undertake education to enter a health profession, the Secretary may make grants to and enter into contracts with schools of medicine, osteopathy, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, and podiatry, public and nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to assist in meeting the costs described in paragraph (2).

(2) A grant or contract under paragraph (1) may be used by the health or educational entity to meet the cost of—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education,

(E) publicizing existing sources of financial aid available to students in the education program of such a school or who are undertaking training necessary to qualify them to enroll in such a program, and

(F) paying such stipends as the Secretary may determine for such individuals for any period of health professions education at a school of medicine, osteopathy, or dentistry.

The term "regular course of education of such a school" as used in subparagraph (D) includes a graduate program in clinical psychology.

(b) Authorization of appropriations

There are authorized to be appropriated for grants and contracts under subsection (a)(1) of this section, $20,000,000 for the fiscal year ending September 30, 1982, $21,500,000 for the fiscal year ending September 30, 1983, $23,000,000 for the fiscal year ending September 30, 1984, $26,000,000 for the fiscal year ending September 30, 1986, $28,000,000 for the fiscal year ending September 30, 1987, and $30,000,000 for the fiscal year ending September 30, 1988. Not less than 80 percent of the funds appropriated in any fiscal year shall be obligated for grants or contracts to institutions of higher education and not more than 5 percent of such funds may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers. Of the funds appropriated under this section for any fiscal year, 20 percent shall be obligated for stipends under subsection (a)(2)(F) of this section to individuals of exceptional financial need (as defined by regulations promulgated by the Secretary under section 294z of this title) who are students at schools of medicine, osteopathy, or dentistry.

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 108, title II, § 216, 99 Stat. 524, 541.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-129, § 216(a), inserted "chiropractic," after "allied health," and ", public and nonprofit private schools which offer graduate programs in clinical psychology," after "podiatry".

Subsec. (a)(2). Pub. L. 99-129, § 216(b), added subpar. (F) and provision following subpar. (F) defining "regular course of education of such a school" as used in subpar. (D).

Subsec. (b). Pub. L. 99-129, §§ 108, 216(c), added authorization of appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988, and provision that 20 percent of appropriated funds be obligated for stipends.

§ 295g-8. Two-year schools of medicine, interdisciplinary training, and curriculum development

(1) The Secretary may make grants to maintain and improve schools which provide the first or last two years of education leading to the degree of doctor of medicine or osteopathy. Grants provided under this paragraph to schools which were in existence on September 30, 1985, may be used for construction and the purchase of equipment.

(2) To be eligible to apply for a grant under paragraph (1), the applicant must be a public or nonprofit school providing the first or last two years of education leading to the degree of doctor of medicine or osteopathy and be accredited by or be operated jointly with a school that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.

(b) Authority of Secretary to grant and contract for enumerated projects and programs

(1) The Secretary may make grants to and enter into contracts with any health profession, allied health profession, or nurse training institution, or any other public or nonprofit private entity for projects in areas such as—

(A) health promotion and disease prevention;

(B) curriculum development and training in health policy and policy analysis, including curriculum development and training in areas such as—

(i) the organization, delivery, and financing of health care;

(ii) the determinants of health and the role of medicine in health; and

(iii) the promotion of economy in health professions teaching, health care practice, and health care systems management;

(C) curriculum development in clinical nutrition;

(D) the development of initiatives for assuring the competence of health professionals; and

(E) curriculum and program development and training in applying the social and behavioral sciences to the study of health and health care delivery issues.

(2)(A) Of the amounts available for grants and contracts under this subsection from amounts appropriated under subsection (g) of this section, at least 75 percent shall be obligated for grants to and contracts with health professions institutions, allied health institutions, and nurse training institutions.

(B) Any application for a grant to institutions described in subparagraph (A) shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

(C) The Secretary may not approve or disapprove an application for a grant to an institution described in subparagraph (A) unless the Secretary has received recommendations with respect to such application from the appropriate peer review group required under subparagraph (B) and has consulted with the National Advisory Council on Health Professions Education with respect to such application.

(3) Of the amounts available for grants and contracts under this subsection from amounts appropriated under subsection (g) of this section, not more than 25 percent shall be obligated for grants to and contracts with public and nonprofit entities which are not health professions institutions, allied health institutions, or nurse training institutions.

[*See main edition for text of* (c)]

(d) Grants and contracts related to geriatric medicine and care

(1) The Secretary may make grants to and enter into contracts with accredited health professions schools referred to in section 292a(4) or 292a(10) of this title and programs referred to in section 292a(8) of this title to assist in meeting the costs of such schools or programs of providing projects to—

(A) improve the training of health professionals in geriatrics;

(B) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(C) expand and strengthen instruction in methods of such treatment;

(D) support the training and retraining of faculty to provide such instruction;

(E) support continuing education of health professionals and allied health professionals who provide such treatment; and

(F) establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

(2)(A) Any application for a grant or contract under this subsection shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

(B) The Secretary may not approve or disapprove an application for a grant or contract under this subsection unless the Secretary has received recommendations with respect to such application from the appropriate peer review group required under subparagraph (A) and has consulted with the National Advisory Council on Health Professions Education with respect to such application.

[*See main edition for text of* (e)]

(f) Schools of veterinary medicine

The Secretary may make grants to schools of veterinary medicine for—

(1) the development of curricula for training in the care of animals used in research, the treatment of animals while being used in research, and the development of alternatives to the use of animals in research;

(2) the provision of such training; and

(3) large animal care and research.

(g) Authorization of appropriations

For purposes of this section, there are authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1982; $6,500,000 for the fiscal year ending September 30, 1983; $7,000,000 for the fiscal year ending September 30, 1984; $8,000,000 for the fiscal year ending September 30, 1986; $8,000,000 for the fiscal year ending September 30, 1987; and $8,000,000 for the fiscal year ending September 30, 1988. Of the amounts appropriated for each fiscal year to carry out this section—

(1) 25 percent of such amount for the fiscal year ending September 30, 1986; and

(2) 37.5 percent of such amount for each of the fiscal years ending September 30, 1987, and September 30, 1988,

shall be available to carry out subsection (d) of this section.

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 109, title II, § 217, 99 Stat. 524, 541.)

AMENDMENTS

1985—Pub. L. 99-129, § 217(f), substituted "Two-year schools of medicine, interdisciplinary training, and curriculum development" for "Conversion and curriculum grants and contracts" in section catchline.

Subsec. (a)(1). Pub. L. 99-129, § 217(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The Secretary may make grants to schools which provide the first two years of education leading to the degree of doctor of medicine to assist the schools in accelerating the date they will become schools of medicine."

Subsec. (a)(2). Pub. L. 99-129, § 217(a)(2), (3), redesignated par. (3) as (2), and in par. (2) as so redesignated, added "or last", "or osteopathy", and "or be operated jointly with a school that is accredited by". Former par. (2), which provided that the amount of a grant under par. (1) to a school shall be equal to the product of $25,000 and the number of full-time, third-year students which the Secretary estimates will enroll in the school in the school year beginning in the fiscal year in which such grant is made, and that estimates by the Secretary under this paragraph of the number of full-time, third-year students to be enrolled in the school may be made on assurances provided by the school, was struck out.

Subsec. (a)(3). Pub. L. 99-129, § 217(a)(2), redesignated par. (3) as (2).

Subsec. (b). Pub. L. 99-129, § 217(b), amended subsec. (b) generally, substituting a list of projects for health promotion and the development and training of health professionals for enumerated health manpower projects and programs.

Subsec. (d). Pub. L. 99-129, § 217(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The Secretary may make grants to and enter into contracts with schools of medicine or osteopathy or other appropriate public or nonprofit private entities to assist in meeting the costs of such schools or entities of providing projects to—

"(1) plan, develop, and establish courses, or expand or strengthen instruction in geriatric medicine; and

"(2) establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine."

Subsec. (f). Pub. L. 99-129, § 217(e), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 99-129, §§ 109, 217(d), (e), redesignated former subsec. (f) as (g), and in subsec. (g) as so redesignated, added authorization of appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988, and provisions relating to the percentages of appropriated funds available to carry out subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 295g-8b of this title; title 20 section 1064.

§ 295g-8a. Repealed. Pub. L. 99-129, title II, § 220(f)(1), Oct. 22, 1985, 99 Stat. 544

Section, act July 1, 1944, ch. 373, title VII, § 788A, as added Aug. 13, 1981, Pub. L. 97-35, title XXVII, § 2745, 95 Stat. 925, authorized the Secretary to make grants or enter into contracts with schools in serious financial distress to assist their operations, under certain terms and conditions.

§ 295g-8b. Advanced financial distress assistance

(a) Multiyear contracts; covered institutions and purposes; eligibility

The Secretary may enter into a multiyear contract with a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or pharmacy to provide financial assistance to such school to meet incurred or prospective costs of operation if the Secretary determines that payment of such costs is essential to remove the school from serious and longstanding financial instability. To be eligible for a contract under this section, a school must have previously received financial support under section 295g-8a of this title (as such section was in effect prior to October 1, 1985) or under section 295g-8(b) of this title (as such section was in effect prior to October 1, 1981) for a period of not less than three years.

(b) Prerequisites

No school may enter into a contract under this section unless—

(1) the school has submitted to the Secretary a plan providing for the school to achieve financial solvency within six years and has agreed to carry out such plan;

[*See main edition for text of* (2) *to* (4); (c) *to* (e)]

(f) Maximum term of assistance

No school may receive support under this section for more than six years.

[*See main edition for text of* (*g*)]

(h) Authorization of appropriations

For the purpose of entering into contracts to carry out this section, there are authorized to be appropriated $10,000,000 for the fiscal year ending September 30, 1982, and each of the succeeding two fiscal years, $4,200,000 for the fiscal year ending September 30, 1986, and $3,800,000 for the fiscal year ending September 30, 1987. Funds provided under this section shall remain available until expended without regard to any fiscal year limitation.

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 110, title II, §§ 218, 220(f)(2)-(4), 99 Stat. 524, 543, 544.)

REFERENCES IN TEXT

Section 295g-8a of this title, referred to in subsec. (a), was repealed by Pub. L. 99-129, title II, § 220(f)(1), Oct. 22, 1985, 99 Stat. 544.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-129, § 220(f)(2), inserted "(as such section was in effect prior to October 1, 1985)" after "section 295g-8a of this title".

Subsec. (b)(1). Pub. L. 99-129, § 218, substituted "six" for "five".

Subsec. (f). Pub. L. 99-129, §§ 218, 220(f)(3), substituted "six" for "five", and struck out provision directing that no contract could be entered into under this section or continued in a fiscal year in which the school received support under section 295g-8a of this title.

Subsec. (h). Pub. L. 99-129, §§ 110, 220(f)(4), struck out "and section 295g-8a of this title" after "this section" in first sentence, added authorization of appropriations for the fiscal years ending Sept. 30, 1986, and 1987, and struck out provision which directed that, of the amounts appropriated under the preceding sentence, not more than $2,000,000 could be available under section 295g-8a of this title.

§ 295g-9. Repealed. Pub. L. 99-129, title II, § 220(g), Oct. 22, 1985, 99 Stat. 544

Section, acts July 1, 1944, ch. 373, title VII, § 789, formerly § 776, as added Nov. 16, 1973, Pub. L. 93-154, § 3(a), 87 Stat. 604, renumbered Oct. 12, 1976, Pub. L. 94-484, title VIII, § 801(b), 90 Stat. 2322, and amended Oct. 21, 1976, Pub. L. 94-573, § 12, 90 Stat. 2717, as amended July 10, 1979, Pub. L. 96-32, § 7(h), 93 Stat. 84; Aug. 1, 1977, Pub. L. 95-83, title III, § 307(k), 91 Stat. 392; Dec. 12, 1979, Pub. L. 96-142, title I, § 102, 93 Stat. 1067, authorized the Secretary to make grants and enter into contracts for training in emergency medical services, set forth eligibility requirements and amounts, directed the Secretary to use a uniform funding cycle, and authorized appropriations for those grants and contracts.

PART G—PROGRAMS FOR PERSONNEL IN HEALTH ADMINISTRATION AND IN ALLIED HEALTH

SUBPART I—PUBLIC HEALTH PERSONNEL

§ 295h. Grants for graduate programs in health administration

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Applications; submission; approval by Secretary; regulations; waiver

[*See main edition for text of* (*1*)]

(2) The Secretary may not approve an application submitted under paragraph (1) unless—

(A) such application contains assurances satisfactory to the Secretary that in the school year (as defined in regulations of the Secretary) beginning in the fiscal year for which the applicant receives a grant under subsection (a) of this section that—

(i) at least 25 individuals will complete the graduate educational programs of the entity for which such application is submitted, except that in any case in which the number of minority students enrolled in the graduate educational programs of such entity in such school year will exceed an amount equal to 45 percent of the number of all students that will be enrolled in such programs in such school year, such application shall only be required to contain assurances that at least 20 individuals will complete such programs in such school year; and

(ii) such entity shall expend or obligate at least $100,000 in funds from non-Federal sources to conduct such programs; and

[*See main edition for text of* (*B*); (*3*) *and* (*4*)]

(d) Authorization of appropriations

There are authorized to be appropriated for payments under grants under this section $3,250,000 for the fiscal year ending September 30, 1978, $3,500,000 for the fiscal year ending September 30, 1979, $3,750,000 for the fiscal year ending September 30, 1980, $1,500,000 for the fiscal year ending September 30, 1982, $1,750,000 for the fiscal year ending September 30, 1983, $2,000,000 for the fiscal year ending September 30, 1984, $1,500,000 for the fiscal year ending September 30, 1986, $1,500,000 for the fiscal year ending September 30, 1987, and $1,500,000 for the fiscal year ending September 30, 1988.

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 111, title II, § 219, 99 Stat. 524, 543.)

Amendments

1985—Subsec. (c)(2)(A)(i). Pub. L. 99-129, § 219, inserted ", except that in any case in which the number of minority students enrolled in the graduate educational programs of such entity in such school year will exceed an amount equal to 45 percent of the number of all students that will be enrolled in such programs in such school year, such application shall only be required to contain assurances that at least 20 individuals will complete such programs in such school year".

Subsec. (d). Pub. L. 99-129, § 111, added authorization of appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988.

§ 295h-1a. Traineeships for students in other graduate programs

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Authorization of appropriations

For payments under grants under subsection (a) of this section, there are authorized to be appropriated $2,500,000 for the fiscal year ending September 30, 1978; $2,500,000 for the fiscal year ending September 30, 1979; $2,500,000 for the fiscal year ending September 30, 1980; $500,000 for the fiscal year ending September 30, 1982, and the next two fiscal years; and $500,000 for the fiscal year ending September 30, 1986, and each of the next two fiscal years.

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 112, 99 Stat. 525.)

Amendments

1985—Subsec. (c). Pub. L. 99-129 inserted "; and $500,000 for the fiscal year ending September 30, 1986, and each of the next two fiscal years" and struck out "and" after "1980;".

§ 295h-1b. Traineeships for students in schools of public health

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Authorization of appropriations

For payments under grants under subsection (a) of this section, there are authorized to be appropriated $7,500,000 for the fiscal year ending September 30, 1978; $9,000,000 for the fiscal year ending September 30, 1979; $10,000,000 for the fiscal year ending September 30, 1980; $3,000,000 for the fiscal year ending September 30, 1982; $3,500,000 for the fiscal year ending September 30, 1983; $4,000,000 for the fiscal year ending September 30, 1984; $3,000,000 for the fiscal year ending September 30, 1986; $3,075,000 for the fiscal year ending September 30, 1987; and $3,150,000 for the fiscal year ending September 30, 1988.

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 113, 99 Stat. 525.)

Amendments

1985—Subsec. (c). Pub. L. 99-129 added authorization of appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988.

§ 295h-1c. Training in preventive medicine

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Authorization of appropriations

For the purpose of grants under subsection (a) of this section, there are authorized to be appropriated $1,000,000 for the fiscal year ending September 30, 1982, and $1,500,000 for the fiscal year ending September 30, 1983, $2,000,000 for the fiscal year ending September 30, 1984, $1,600,000 for the fiscal year ending September 30, 1986, $1,600,000 for the fiscal year ending September 30, 1987, and $1,600,000 for the fiscal year ending September 30, 1988.

(As amended Oct. 22, 1985, Pub. L. 99-129, title I, § 114, 99 Stat. 525.)

Amendments

1985—Subsec. (c). Pub. L. 99-129 added authorization of appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988.

SUBCHAPTER VI—NURSE EDUCATION

Amendments

1985—Pub. L. 99-92, § 9(b)(3), Aug. 16, 1985, 99 Stat. 400, substituted "NURSE EDUCATION" for "NURSE TRAINING" in subchapter VI heading.

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 235, 292k, 300*l*-2 of this title; title 38 section 5070.

Part A—Special Projects

Amendments

1985—Pub. L. 99-92, § 9(b)(1), (2), Aug. 16, 1985, 99 Stat. 400, substituted "Special Projects" for "Assistance for Expansion and Improvement of Nurse Training" as part A heading, and struck out headings for subparts I, II, III, and IV of part A which read as follows: "Subpart I—Construction Assistance", "Subpart II—Capitation Grants", "Subpart III—Financial Distress Grants", and "Subpart IV—Special Projects".

§§ 296 to 296b. Repealed. Pub. L. 99–92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400

Section 296, acts July 1, 1944, ch. 373, title VIII, § 801 as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 908, and amended Nov. 3, 1966, Pub. L. 89–751, § 8(a), 80 Stat. 1236; Aug. 16, 1968, Pub. L. 90–490, title II, § 201(a), 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, § 2(a), 85 Stat. 465; July 29, 1975, Pub. L. 94–63, title IX, §§ 902(a), 910(a)(1), 89 Stat. 354, 355; Sept. 29, 1979, Pub. L. 96–76, title I, § 102, 93 Stat. 579, authorized appropriations for construction grants.

Section 296a, acts July 1, 1944, ch. 373, title VIII, § 802, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 909, and amended Aug. 16, 1968, Pub. L. 90–490, title II, § 201(b), 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, §§ 2(d)(3), (e), (f), 13, 85 Stat. 468, 480; July 29, 1975, Pub. L. 94–63, title IX, §§ 910(a)(2), 941(a), 89 Stat. 355, 363, related to time of submission, determinations, etc., respecting applications for construction grants.

Section 296b, acts July 1, 1944, ch. 373, title VIII, § 803, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 911, and amended Aug. 16, 1968, Pub. L. 90–490, title II, § 202, 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, §§ 2(b), 13, 85 Stat. 465, 480; July 29, 1975, Pub. L. 94–63, title IX, § 941(b), 89 Stat. 364, set forth provisions relating to amount of construction grant.

EFFECTIVE DATE OF REPEAL

Repeal of sections 296 to 296b effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 296k of this title.

§ 296c. Transferred

CODIFICATION

Section, acts July 1, 1944, ch. 373, title VIII, § 804, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 911, and amended Nov. 18, 1971, Pub. L. 92–158, §§ 2(d)(3), 13, 85 Stat. 468, 480; July 29, 1975, Pub. L. 94–63, title IX, § 941(c), 89 Stat. 364, which related to recovery of payments of funds by United States for construction of facilities, was renumbered section 858 of act July 1, 1944, by Pub. L. 99–92, § 9(c)(1), Aug. 16, 1985, 99 Stat. 400, and was transferred to section 298b–5 of this title.

§§ 296d to 296f. Repealed. Pub. L. 99–92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400

Section 296d, acts July 1, 1944, ch. 373, title VIII, § 805, formerly § 809, as added Nov. 18, 1971, Pub. L. 92–158, § 2(c), 85 Stat. 465, and renumbered and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 902(d), 910(b)(1)(A), (B)(i), (2), (c), 911(b), 941(d), 89 Stat. 355, 356, 364; Sept. 29, 1979, Pub. L. 96–76, title I, § 103, 93 Stat. 579, related to applications, amounts, etc., for loan guarantees and interest subsidies for construction of training facilities by nonprofit nursing schools.

Section 296e, acts July 1, 1944, ch. 373, title VIII, § 810, formerly § 806, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 912, amended Dec. 5, 1967, Pub. L. 90–174, § 12(a), 81 Stat. 541; Aug. 16, 1968, Pub. L. 90–490, title II, § 211, 82 Stat. 781; Nov. 18, 1971, Pub. L. 92–158, § 4(a), 85 Stat. 470, and renumbered and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 902(b), 915(a)–(c), 916(a), (b), 941(e), 89 Stat. 354, 356, 358, 365; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(o)(1)–(4), 91 Stat. 393; Sept. 29, 1979, Pub. L. 96–76, title I, § 104, 93 Stat. 579, set forth provisions relating to computation, requirements, etc., respecting grants for institutional support.

Section 296f, acts July 1, 1944, ch. 373, title VIII, § 811, formerly § 807, as added Aug. 16, 1968, Pub. L. 90–490, title II, § 212, 82 Stat. 782, amended Nov. 18, 1971, Pub. L. 92–158, § 4(c), 85 Stat. 475, and renumbered and amended July 29, 1975, Pub. L. 94–63, title IX, § 941(f), 89 Stat. 365, related to filing dates, etc., for applications for grants.

EFFECTIVE DATE OF REPEAL

Repeal of sections 296d to 296f effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 296k of this title.

§ 296j. Repealed. Pub. L. 99–92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400

Section, acts July 1, 1944, ch. 373, title VIII, § 815, as added July 29, 1975, Pub. L. 94–63, title IX, § 921, 89 Stat. 358, and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2752, 95 Stat. 929, set forth provisions relating to authorization, terms and conditions, etc., respecting grants for operational costs or meeting accreditation requirements.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 296k of this title.

§ 296k. Grants and contracts for special projects

(a) Covered costs; nonapplicability of statutory provisions to contracts

The Secretary may make grants to public and nonprofit private schools of nursing and other public or nonprofit private entities, and enter into contracts with any public or private entity, to meet the costs of special projects to—

[*See main edition for text of (1) to (3)*]

(4) demonstrate improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);

(5) help to increase the supply or improve the distribution by geographic area or by specialty group of adequately trained nursing personnel (including nursing personnel who are bilingual) needed to meet the health needs of the Nation, including the need to increase the availability of personal health services and the need to promote preventive health care;

(6) provide training and education to upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel;

(7) demonstrate clinical nurse education programs which combine educational curricula and clinical practice in health care delivery organizations, including acute care facilities, long-term care facilities, and ambulatory care facilities;

(8) demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities; or

(9) demonstrate methods to encourage nursing graduates to practice in health manpower shortage areas (designated under section 254e of this title) in order to improve the specialty and geographical distribution of nurses in the United States.

Contracts may be entered into under this subsection without regard to section 3324(a) and (b) of title 31 and section 5 of title 41.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Authorization of appropriations

(1) For payments under grants and contracts under paragraphs (1) through (6) of subsection (a) of this section, there are authorized to be appropriated $9,500,000 for the fiscal year ending September 30, 1986, $9,500,000 for the fiscal year ending September 30, 1987, and $9,500,000 for the fiscal year ending September 30, 1988. Of the funds appropriated under this paragraph for any fiscal year beginning after September 30, 1985, not less than 20 percent of the funds shall be obligated for payments under grants and contracts for special projects described in subsection (a)(1) of this section, not less than 20 percent of the funds shall be obligated for payments under grants and contracts for special projects described in subsection (a)(4) of this section, and not less than 10 percent of the funds shall be obligated for payments under grants and contracts for special projects described in subsection (a)(5) of this section.

(2) For payments under grants and contracts under paragraphs (7), (8), and (9) of subsection (a) of this section, there are authorized to be appropriated $2,700,000 for the fiscal year ending September 30, 1986, $2,700,000 for the fiscal year ending September 30, 1987, and $2,700,000 for the fiscal year ending September 30, 1988. In making grants and entering into contracts with amounts appropriated under this paragraph, the Secretary shall give priority to applications for grants and contracts under paragraph (8) of subsection (a) of this section.

(As amended Aug. 16, 1985, Pub. L. 99-92, § 3, 99 Stat. 393; Oct. 22, 1985, Pub. L. 99-129, title II, § 227(a), 99 Stat. 547.)

AMENDMENTS

1985—Subsec. (a)(4), (5). Pub. L. 99-129, § 227(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(6) to (9). Pub. L. 99-129, § 227(a)(1), redesignated pars. (6) to (8) as pars. (7) to (9), respectively.

Pub. L. 99-92, § 3(a), added pars. (6) to (8).

Subsec. (d)(1). Pub. L. 99-129, § 227(a)(2)(A), substituted "paragraphs (1) through (6)" for "paragraphs (1) through (5)".

Pub. L. 99-92, § 3(b)(1)-(3), redesignated former subsec. (d) as par. (1) and, as so designated, substituted provisions authorizing appropriations under subsec. (a)(1) to (5) for fiscal years ending Sept. 30, 1986, 1987, and 1988, for provisions authorizing appropriations under this section for fiscal year 1976 through fiscal year ending Sept. 30, 1984, and substituted "1985" for "1981", and "this paragraph" for "this subsection".

Subsec. (d)(2). Pub. L. 99-129, § 227(a)(2)(B), (C), substituted "paragraphs (7), (8), and (9)" for "paragraphs (6), (7), and (8)", and "paragraph (8)" for "paragraph (7)".

Pub. L. 99-92, § 3(b)(4), added par. (2).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 10 of Pub. L. 99-92 provided that:

"(a) Except as provided in subsection (b), this Act [enacting section 2971 of this title, transferring section 296c to section 298b-5 of this title, amending sections 296k to 296m, 297, 297-1, 297a, 297b, 297d, 297e, 298, 298b, and 298b-5 of this title, sections 1332, 1333, 1336, and 1341 of Title 15, Commerce and Trade, and section 6103 of Title 26, Internal Revenue Code, repealing sections 296 to 296b, 296d to 296f, 296j, 297h, and 297j of this title, and enacting provisions set out as notes under sections 201 and 298b-5 of this title and section 1333 of Title 15] and the amendments and repeals made by this Act shall take effect on October 1, 1985.

"(b)(1) The provisions of section 9(c) of this Act [transferring section 296c of this title to section 298b-5 of this title, amending section 298b-5 of this title, and enacting provisions set out as notes under section 298b-5 of this title] and the amendment made by paragraph (1) of such section shall take effect on the date of enactment of this Act [Aug. 16, 1985].

"(2) The amendment made by section 8(a) of this Act [amending section 297a of this title] shall take effect June 30, 1984."

§ 296*l*. Advanced nurse education

(a) Grants and contracts; covered costs

The Secretary may make grants to and enter into contracts with public and private nonprofit collegiate schools of nursing to meet the costs of projects to—

(1) plan, develop, and operate,

(2) expand, or

(3) maintain,

programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary to require advanced education. In making grants and entering into contracts under this section, the Secretary shall give priority to applications for grants and contracts for education projects in geriatric and gerentological nursing.

(b) Authorization of appropriations

For payments under grants and contracts under this section, there are authorized to be appropriated $16,500,000 for the fiscal year ending September 30, 1986, $17,000,000 for the fiscal year ending September 30, 1987, and $17,500,000 for the fiscal year ending September 30, 1988.

(As amended Aug. 16, 1985, Pub. L. 99-92, § 4, 99 Stat. 394; Oct. 22, 1985, Pub. L. 99-129, title II, § 227(b), 99 Stat. 548.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-129 added "In making grants and entering into contracts under this section, the Secretary shall give priority to applications for grants and contracts for education projects in geriatric and gerentological nursing."

Pub. L. 99-92 amended subsec. (a) generally, substituting provisions relating to covered advanced nurse education programs, for provisions relating to covered advanced nurse training programs.

Subsec. (b). Pub. L. 99-92 amended subsec. (b) generally, substituting provisions relating to authorizing appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988, for provisions relating to authorizing appropriations for fiscal year 1975 through fiscal year ending Sept. 30, 1984.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as a note under section 296k of this title.

§ 296m. Nurse practitioner and nurse midwife programs

(a) Covered costs; special considerations to applications; definition; guidelines

(1) The Secretary may make grants to and enter into contracts with public or nonprofit private schools of nursing and public health, public or nonprofit private schools of medicine which received grants or contracts under this subsection prior to October 1, 1985, public or nonprofit private hospitals, and other public or nonprofit private entities to meet the cost of projects to—

(A) plan, develop, and operate,
(B) expand, or
(C) maintain,

programs for the education of nurse practitioners and nurse midwives. The Secretary shall give special consideration to applications for grants or contracts for programs for the education of nurse practitioners and nurse midwives who will practice in health manpower shortage areas (designated under section 254e of this title) and for the education of nurse practitioners which emphasize education respecting the special problems of geriatric patients (particularly problems in the delivery of preventive care, acute care, and long-term care (including home health care and institutional care) to such patients) and education to meet the particular needs of nursing home patients and patients who are confined to their homes.

(2)(A) For purposes of this section, the term "programs for the education of nurse practitioners and nurse midwives" means educational programs for registered nurses (irrespective of the type of school of nursing in which the nurses received their training) which meet guidelines prescribed by the Secretary in accordance with subparagraph (B) and which have as their objective the education of nurses (including pediatric and geriatric nurses) who will, upon completion of their studies in such programs, be qualified to effectively provide primary health care, including primary health care in homes and in ambulatory care facilities, long-term care facilities (where appropriate), and other health care institutions.

(B) After consultation with appropriate educational organizations and professional nursing and medical organizations, the Secretary shall prescribe guidelines for programs for the education of nurse practitioners and nurse midwives. Such guidelines shall, as a minimum, require that such a program—

[*See main edition for text of* (*i*) *and* (*ii*)]

(b) Traineeship programs; special considerations; expenses included; service obligations; liability of trainee; waiver of obligations

(1) The Secretary may make grants to and enter into contracts with schools of nursing and public health, schools of medicine which received grants or contracts under this subsection prior to October 1, 1985, public or nonprofit private hospitals, and other nonprofit entities to establish and operate traineeship programs to train nurse practitioners and nurse midwives. In considering applications for a grant or contract under this subsection, the Secretary shall give special consideration to applications for traineeships to train individuals who are residents of health manpower shortage areas designated under section 254e of this title.

(2) Traineeships funded under this subsection shall include 100 percent of the costs of tuition, reasonable living and moving expenses (including stipends), books, fees, and necessary transportation.

(3) A traineeship funded under this subsection shall not be awarded unless the recipient enters into a commitment with the Secretary to practice as a nurse practitioner or nurse midwife in a health manpower shortage area (designated under section 254e of this title) or in a public health care facility for a period equal to one month for each month for which the recipient receives such a traineeship.

[*See main edition for text of* (*4*)]

(c) Required assurances in applications

No grant may be made or contract entered into for a project to plan, develop, and operate a program for the education of nurse practitioners and nurse midwives unless the application for the grant or contract contains assurances satisfactory to the Secretary that the program will upon its development meet the guidelines which are in effect under subsection (a)(2)(B) of this section; and no grant may be made or contract entered into for a project to expand or maintain such a program unless the application for the grant or contract contains assurances satisfactory to the Secretary that the program meets the guidelines which are in effect under such subsection.

(d) Authorization of appropriations

For payments under grants and contracts under this section, there are authorized to be appropriated $12,000,000 for the fiscal year ending September 30, 1986, $12,000,000 for the fiscal year ending September 30, 1987, and $12,000,000 for the fiscal year ending September 30, 1988.

(e) Redesignated (d)

(As amended Aug. 16, 1985, Pub. L. 99-92, § 5, 99 Stat. 394; Oct. 22, 1985, Pub. L. 99-129, title II, § 227(c), 99 Stat. 548.)

AMENDMENTS

1985—Pub. L. 99-92, § 5(f), added reference to nurse midwife programs in section catchline.

Subsec. (a)(1). Pub. L. 99-129 inserted "(particularly problems in the delivery of preventive care, acute care, and long-term care (including home health care and institutional care) to such patients)" after "geriatric patients".

Pub. L. 99-92, § 5(a)(1), amended par. (1) generally, substituting provisions relating to programs for the education of nurse practitioners and nurse midwives for provisions relating to programs for the training of nurse practitioners.

Subsec. (a)(2)(A). Pub. L. 99-92, § 5(a)(2)(A), amended subpar. (A) generally, substituting provisions defining "programs for the education of nurse practitioners and nurse midwives" for provisions defining "programs for the training of nurse practitioners".

Subsec. (a)(2)(B). Pub. L. 99-92, § 5(a)(2)(B), (C), substituted "education of nurse practitioners and nurse midwives" for "training of nurse practitioners".

Subsec. (b)(1). Pub. L. 99-92, § 5(b)(1), (2), added requirement that schools of medicine receive grants or contracts prior to Oct. 1, 1985, and applicability to nurse midwives.

Subsec. (b)(3). Pub. L. 99-92, § 5(b)(3), (4), added applicability to a nurse midwife, and to practice in a public health care facility.

Subsec. (c). Pub. L. 99-92, § 5(c), substituted "education of nurse practitioners and nurse midwives" for "training of nurse practitioners".

Subsecs. (d), (e). Pub. L. 99-92, § 5(d), (e), redesignated subsec. (e) as (d) and amended it generally, substituting authorization of appropriations for fiscal years 1986 through 1988 for authorization of appropriations for fiscal years 1976 through 1984. Former subsec. (d), relating to additional covered costs, was struck out.

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as a note under section 296k of this title.

Section Referred to in Other Sections

This section is referred to in sections 254*l*, 295g-3, 297 of this title.

Part B—Assistance to Nursing Students

SUBPART I—TRAINEESHIPS

§ 297. Grants to cover costs of traineeships for education of professional nurses

(a) Authority of Secretary; special considerations; preferences; payments; limitations

(1)(A) The Secretary may make grants to public or nonprofit private schools of nursing and public health, public or nonprofit private hospitals, and other public or nonprofit private entities to cover the cost of traineeships for nurses in masters' degree and doctoral degree programs in order to educate such nurses to—

(i) serve in and prepare for practice as nurse practitioners,

(ii) serve in and prepare for practice as nurse administrators, nurse educators, and nurse researchers, or

(iii) serve in and prepare for practice in other professional nursing specialties determined by the Secretary to require advanced education.

(B) The Secretary may make grants to public and private nonprofit schools of nursing and appropriate public and private nonprofit entities to cover the cost of traineeships to educate nurses to serve in and prepare for practice as nurse midwives.

[*See main edition for text of* (*2*) *and* (*3*)]

(b) Post-baccalaureate fellowships for faculty of schools of nursing; scope of study

The Secretary may make grants to public or private nonprofit schools of nursing to cover the costs of post-baccalaureate fellowships for faculty in such schools to enable such faculty to—

(1) investigate cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups;

(2) examine nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, and disease prevention; and

(3) address other areas of nursing practice considered by the Secretary to require additional study.

(c) Authorization of appropriations; priorities

(1) There are authorized to be appropriated for the purposes of subsection (a) of this section $11,500,000 for the fiscal year ending September 30, 1986, $12,250,000 for the fiscal year ending September 30, 1987, and $13,000,000 for the fiscal year ending September 30, 1988. Priority in the award of traineeships under subsection (a)(1)(A)(i) of this section shall go to nurse midwife trainees.

(2) There are authorized to be appropriated for the purposes of subsection (b) of this section $1,100,000 for the fiscal year ending September 30, 1986, $1,100,000 for the fiscal year ending September 30, 1987, and $1,100,000 for the fiscal year ending September 30, 1988.

(As amended Aug. 16, 1985, Pub. L. 99-92, § 6, 99 Stat. 395.)

Amendments

1985—Pub. L. 99-92, § 6(b)(7), substituted "education" for "training" in section catchline.

Subsec. (a)(1). Pub. L. 99-92, § 6(a), amended par. (1) generally, substituting provisions relating to costs of traineeships for nurses in masters' degree and doctoral degree programs and traineeships to educate nurses for practice as nurse midwives for provisions relating to costs of traineeships for the training of professional nurses for teaching and service.

Subsec. (b). Pub. L. 99-92, § 6(b)(1), (6), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99-92, § 6(b)(1)-(5), redesignated former subsec. (b) as par. (1) and, as so redesignated, substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988, for provisions authorizing appropriations for fiscal year ending June 30, 1976, through fiscal year ending Sept. 30, 1984, and minimum amounts required to be obligated for traineeships, struck out provision relating to obligation of not less than 25 percent of the funds appropriated under subsec. (c) for traineeships described in subsec. (a)(1)(A), and added par. (2).

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as a note under section 296k of this title.

§ 297-1. Nurse anesthetists

(a) Authority of Secretary; program eligibility; payments; limitations

(1) The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeships for the training, in programs which meet such requirements as the Secretary shall by regulation prescribe and which are accredited by an entity or entities designated by the Secretary of Education, of licensed, registered nurses to be nurse anesthetists.

[*See main edition for text of* (2)]

(b) Additional granting authorities

The Secretary may make grants to public or private nonprofit institutions to cover the cost of projects to improve existing programs for the education of nurse anesthetists which are accredited by an entity or entities designated by the Secretary of Education. Such grants shall include grants to such institutions for the purpose of providing financial assistance and support to certified registered nurse anesthetists who are faculty members of accredited programs to enable such nurse anesthetists to obtain advanced education relevant to their teaching functions.

(c) Authorization of appropriations; limitations

For the purpose of making grants under this section, there are authorized to be appropriated $800,000 for the fiscal year ending September 30, 1986, $800,000 for the fiscal year ending September 30, 1987, and $800,000 for the fiscal year ending September 30, 1988. Not more than 20 percent of the amount appropriated under this section for any fiscal year shall be obligated for grants under the second sentence of subsection (b) of this section.

(As amended Aug. 16, 1985, Pub. L. 99-92, § 7, 99 Stat. 396.)

AMENDMENTS

1985—Pub. L. 99-92, § 7(d), struck out "traineeships for training of" in section catchline.

Subsec. (a)(1). Pub. L. 99-92, § 7(a), substituted "Secretary of Education" for "Commissioner of Education".

Subsec. (b). Pub. L. 99-92, § 7(b), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99-92, § 7(b), (c), redesignated former subsec. (b) as (c) and amended it generally, substituting provisions authorizing appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988, for provisins authorizing appropriations for fiscal years ending Sept. 30, 1980, 1983, and 1984, and adding provision imposing 20 percent limitation on obligations for grants under second sentence of subsec. (b).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as a note under section 296k of this title.

SUBPART II—STUDENT LOANS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 298b of this title; title 26 section 6103.

§ 297a. Loan agreements; student loan fund; provisions of agreements; regulatory standards applicable to failure of school to collect loans

[*See main edition for text of* (a) *and* (b)]

(c)(1) Any standard established by the Secretary by regulation for the collection by schools of nursing of loans made pursuant to loan agreements under this subpart shall provide that the failure of any such school to collect such loans shall be measured in accordance with this subsection.

(2) The measurement of a school's failure to collect loans made under this subpart shall be the ratio (stated as a percentage) that the defaulted principal amount outstanding of such school bears to the matured loans of such school.

(3) For purposes of this subsection—

(A) the term "default" means the failure of a borrower of a loan made under this subpart to—

(i) make an installment payment when due; or

(ii) comply with any other term of the promissory note for such loan,

except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy or if the school reasonably concludes from written contacts with the borrower that the borrower intends to repay the loan;

(B) the term "defaulted principal amount outstanding" means the total amount borrowed from the loan fund of a school that has reached the repayment stage (minus any principal amount repaid or cancelled) on loans—

(i) repayable monthly and in default for at least 120 days; and

(ii) repayable less frequently than monthly and in default for at least 180 days;

(C) the term "grace period" means the period of nine months beginning on the date on which the borrower ceases to pursue a full-time or half-time course of study at a school of nursing; and

(D) the term "matured loans" means the total principal amount of all loans made by a school of nursing under this subpart minus the total principal amount of loans made by such school to students who are—

(i) enrolled in a full-time or half-time course of study at such school; or

(ii) in their grace period.

(As amended Aug. 16, 1985, Pub. L. 99-92, § 8(a), 99 Stat. 397; Oct. 22, 1985, Pub. L. 99-129, title II, § 209(j)(2), 99 Stat. 536.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-92 added subsec. (c).

Subsec. (c)(3)(C). Pub. L. 99-129, § 209(j)(2)(A), substituted provisions defining "grace period" as the period of nine months beginning on the date on which the borrower ceases to pursue a full-time or half-time course of study at a school of nursing for former provisions defining "grace period" as the period of one year beginning on (i) the date on which the borrower ceased to pursue a full-time or half-time course of study at a school of nursing; or (ii) the date on which ended any period described in clause (A) or (B) of section 297b(b)(2) of this title which was applicable to such borrower, whichever was later.

Subsec. (c)(3)(D)(ii). Pub. L. 99-129, § 209(j)(2)(B), struck out "first" before "grace period."

EFFECTIVE DATE OF 1985 AMENDMENTS

Amendment by Pub. L. 99-92 effective June 30, 1984, see section 10(b)(2) of Pub. L. 99-92, set out as a note under section 296k of this title.

Amendment by Pub. L. 99-129 effective June 30, 1984, see section 228(b)(5) of Pub. L. 99-129, set out as a note under section 254*l* of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 296e, 297c, 297d, 297e of this title.

§ 297b. Loan provisions

[*See main edition for text of* (*a*)]

(b) Terms and conditions

Loans from any such student loan fund by any school shall be made on such terms and conditions as the school may determine; subject, however, to such conditions, limitations, and requirements as the Secretary may prescribe (by regulation or in the agreement with the school) with a view to preventing impairment of the capital of such fund to the maximum extent practicable in the light of the objective of enabling the student to complete his course of study; and except that—

(1) such a loan may be made only to a student who (A) is in need of the amount of the loan to pursue a full-time or half-time course of study at the school leading to a baccalaureate or associate degree in nursing or an equivalent degree, or a diploma in nursing, or a graduate degree in nursing, (B) is capable, in the opinion of the school, of maintaining good standing in such course of study, and (C) if a student who will enroll in the school after June 30, 1986, is of exceptional financial need (as defined by regulations of the Secretary);

[*See main edition for text of* (*2*) *to* (*7*); (*c*) *to* (*e*)]

(f) Penalty for late payment

Subject to regulations of the Secretary and in accordance with this section, a school shall assess a charge with respect to a loan from the loan fund established pursuant to an agreement under this subpart for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment of the loan under subsection (b)(2) of this section or cancellation of part or all of the loan under subsection (b)(3) of this section, for any failure to file timely and satisfactory evidence for such entitlement. No such charge may be made if the payment of such installment or the filing of such evidence is made within 60 days after the date on which such installment or filing is due. The amount of any such charge may not exceed an amount equal to 6 percent of the amount of such installment. The school may elect to add the amount of any such charge to the principal amount of the loan as of the first day after the day on which such installment or evidence was due, or to make the amount of the charge payable to the school not later than the due date of the next installment after receipt by the borrower of notice of the assessment of the charge.

[*See main edition for text of* (*g*) *to* (*j*)]

(k) Collection by Secretary of loan in default; preconditions and procedures applicable

The Secretary is authorized to attempt to collect any loan which was made under this subpart, which is in default, and which was referred to the Secretary by a school of nursing with which the Secretary has an agreement under this subpart, on behalf of that school under such terms and conditions as the Secretary may prescribe (including reimbursement from the school's student loan fund for expenses the Secretary may reasonably incur in attempting collection), but only if the school has complied with such requirements as the Secretary may specify by regulation with respect to the collection of loans under this subpart. A loan so referred shall be treated as a debt subject to section 5514 of title 5. Amounts collected shall be deposited in the school's student loan fund. Whenever the Secretary desires the institution of a civil action regarding any such loan, the Secretary shall refer the matter to the Attorney General for appropriate action.

(As amended Aug. 16, 1985, Pub. L. 99-92, § 8(b)-(d), 99 Stat. 398.)

AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99-92, § 8(b), which directed that cl. (C) be inserted before period, was executed by inserting cl. (C) before the semicolon as the probable intent of Congress.

Subsec. (f). Pub. L. 99-92, § 8(c), substituted "the Secretary and in accordance with this section, a school shall" for "the Secretary, a school may", and substituted provisions relating to charges not allowed in certian cases and allowed where payment is late for provisions relating to maximum amount of late charges.

Subsec. (k). Pub. L. 99-92, § 8(d), added subsec. (k).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as a note under section 296k of this title.

§ 297d. Allotments and payments of Federal capital contributions

(a) Application for allotment; reduction or adjustment of amount requested in application; reallotment

(1) The Secretary shall from time to time set dates by which schools of nursing must file applications for Federal capital contributions.

(2)(A) If the total of the amounts requested for any fiscal year in such applications exceeds the total amount appropriated under section 297c of this title for that fiscal year, the allotment from such total amount to the loan fund of each school of nursing shall be reduced to whichever of the following is the smaller:

(i) The amount requested in its application.

(ii) An amount which bears the same ratio to the total amount appropriated as the number of students estimated by the Secretary to be enrolled on a full-time basis in such school during such fiscal year bears to the estimated total number of students enrolled in all such schools on a full-time basis during such year.

(B) Amounts remaining after allotment under subparagraph (A) shall be reallotted in accordance with clause (ii) of such subparagraph among schools whose applications requested more than the amounts so allotted to their loan funds, but with such adjustments as may be necessary to prevent the total allotted to any such school's loan fund under this paragraph and paragraph (3) from exceeding the total so requested by it.

(3) Funds which, pursuant to section 297e(c) of this title or pursuant to a loan agreement under section 297a of this title are returned to the Secretary in any fiscal year, shall be available for allotment in such fiscal year and in the fiscal year succeeding the fiscal year. Funds described in the preceding sentence shall be allotted among schools of nursing in such manner as the Secretary determines will best carry out this subpart, except that in making such allotments, the Secretary shall give priority to schools of nursing which established student loan funds under this subpart after September 30, 1975.

(b) Installment payment of allotments

Allotments to a loan fund of a school shall be paid to it from time to time in such installments as the Secretary determines will not result in unnecessary accumulations in the loan fund at such school.

[*See main edition for text of* (*c*)]

(As amended Aug. 16, 1985, Pub. L. 99-92, § 8(e), 99 Stat. 398.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-92 amended subsec. (a) generally, substituting provisions relating to application for allotment, reduction or adjustment of amount requested in application, reallotment, and availability of funds for allotment during fiscal years for provisions relating to determination of amount of allotment.

Subsec. (b). Pub. L. 99-92 amended subsec. (b) generally, substituting provisions relating to payment to a loan fund of a school of allotments for provisions relating to application for allotment, adjustment or reduction of amount requested in application, and reallotment.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as a note under section 296k of this title.

§ 297e. Distribution of assets from loan funds

(a) Capital distribution of balance of loan fund

After September 30, 1991, and not later than December 31, 1991, there shall be a capital distribution of the balance of the loan fund established under an agreement pursuant to section 297a of this title by each school as follows:

(1) The Secretary shall first be paid an amount which bears the same ratio to such balance in such fund at the close of September 30, 1991, as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 297a(b)(2)(A) of this title bears to the total amount in such fund derived from such Federal capital contributions and from funds deposited therein pursuant to section 297a(b)(2)(A) of this title.

(2) The remainder of such balance shall be paid to the school.

(b) Payment of principal or interest on loans

After December 31, 1991, each school with which the Secretary has made an agreement under this subpart shall pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school after September 30, 1991, in payment of principal or interest on loans made from the loan fund established pursuant to such agreement as was determined for the Secretary under subsection (a) of this section.

(c) Payment of balance of loan fund

(1) Within 90 days after the termination of any agreement with a school under section 297a of this title or the termination in any other manner of a school's participation in the loan program under this subpart, such school shall pay to the Secretary from the balance of the loan fund of such school established under section 297a of this title, an amount which bears the same ratio to the balance in such fund on the date of such termination as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 297a(b)(2)(A) of this title bears to the total amount in such fund on such date derived from such Federal capital contributions and from funds deposited in the fund pursuant to section 297a(b)(2)(B) of this title. The remainder of such balance shall be paid to the school.

(2) A school to which paragraph (1) applies shall pay to the Secretary after the date on which payment is made under such paragraph and not less than quarterly, the same proportionate share of amounts received by the school after the date of termination referred to in paragraph (1) in payment of principal or interest on loans made from the loan fund as was determined for the Secretary under such paragraph.

(As amended Aug. 16, 1985, Pub. L. 99-92, § 8(f), 99 Stat. 399.)

AMENDMENTS

1985—Subsecs. (a), (b). Pub. L. 99-92, § 8(f)(1), substituted "1991" for "1987" wherever appearing.

Subsec. (c). Pub. L. 99-92, § 8(f)(2), added subsec. (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as a note under section 296k of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 297d of this title.

§ 297h. Repealed. Pub. L. 99-92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400

Section, acts July 1, 1944, ch. 373, title VIII, § 841, formerly § 829, as added Aug. 16, 1968, Pub. L. 90-490, title II, § 222(h), 82 Stat. 785, and renumbered and amended July 29, 1975, Pub. L. 94-63, title IX, § 941(i)(1), (6), 89 Stat. 365, 366, related to transfers to the scholarship program.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as an Effective Date of 1985 Amendment note under section 296k of this title.

§ 297i. Procedures for appeal of terminations

In any case in which the Secretary intends to terminate an agreement with a school of nursing under this subpart, the Secretary shall provide the school with a written notice specifying such intention and stating that the school may request a formal hearing with respect to such termination. If the school requests such a hearing within 30 days after the receipt of such notice, the Secretary shall provide such school with a hearing conducted by an administrative law judge.

(July 1, 1944, ch. 373, title VIII, § 842, as added Aug. 16, 1985, Pub. L. 99-92, § 8(g), 99 Stat. 399.)

PRIOR PROVISIONS

A prior section 297i, act July 1, 1944, ch. 373, title VIII, § 830, as added Nov. 18, 1971, Pub. L. 92-158, § 6(b)(2), 85 Stat. 477, relating to loan forgiveness, was transferred to and redesignated as subsec. (j) of section 823 of act July 1, 1944, which is classified to section 297b of this title, by Pub. L. 94-63, title IX, § 941(h)(5), July 29, 1975, 89 Stat. 365.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as an Effective Date of 1985 Amendment note under section 296k of this title.

SUBPART III—SCHOLARSHIP GRANTS TO SCHOOLS OF NURSING

§ 297j. Repealed. Pub. L. 99-92, § 9(a)(2), Aug. 16, 1985, 99 Stat. 400

Section, acts July 1, 1944, ch. 373, title VIII, § 845, formerly § 860, as added Aug. 16, 1968, Pub. L. 90-490, title II, § 223(a), 82 Stat. 785, amended July 9, 1971, Pub. L. 92-52, § 4, 85 Stat. 145; Nov. 18, 1971, Pub. L. 92-158, § 7, 85 Stat. 478, and renumbered and amended July 29, 1975, Pub. L. 94-63, title IX, §§ 902(f), 937, 941(j)(1), (2), 89 Stat. 355, 363, 366; Sept. 29, 1979, Pub. L. 96-76, title I, § 110(a), (b), 93 Stat. 580; Aug. 13, 1981, Pub. L. 97-35, title XXVII, § 2758(a), (b), 95 Stat. 932, set forth provisions relating to scholarship grants to schools of nursing.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as a note under section 296k of this title.

PART C—GENERAL

§ 298. National Advisory Council on Nurse Training

[*See main edition for text of* (*a*)]

(b) The Council shall advise the Secretary (or his delegate) in the preparation of general regulations and with respect to policy matters arising in the administration of this subchapter.

(As amended Aug. 16, 1985, Pub. L. 99-92, § 9(d), 99 Stat. 402.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-92 struck out provisions respecting review of application functions of the Council.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as a note under section 296k of this title.

§ 298b. Definitions

For purposes of this subchapter—

(1) The term "State" means a State, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

[*See main edition for text of* (*2*) *to* (*5*)]

(6) The term "accredited" when applied to any program of nurse education means a program accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education and when applied to a hospital, school, college, or university (or a unit thereof) means a hospital, school, college, or university (or a unit thereof) which is accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education, except that a school of nursing seeking an agreement under subpart II of part B of this subchapter for the establishment of a student loan fund, which is not, at the time of the application under such subpart, eligible for accreditation by such a recognized body or bodies or State agency, shall be deemed accredited for purposes of such subpart if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of students who are in their first year of instruction at such school during the fiscal year in which the agreement with such school is made under such subpart; except that the provisions of this clause shall not apply for purposes of section 297d of this title. For the purpose of this paragraph, the Secretary of Education shall publish a list of recognized accrediting bodies, and of State agencies, which the Secretary of Education determines to be reliable authority as to the quality of education offered.

[*See main edition for text of* (*7*) *to* (*10*)]

(As amended Aug. 16, 1985, Pub. L. 99-92, § 9(e), (f), 99 Stat. 402.)

AMENDMENTS

1985—Par. (1). Pub. L. 99-92, § 9(e), substituted "Commonwealth of the Northern Mariana Islands" for "Canal Zone".

Par. (6). Pub. L. 99-92, § 9(f), amended par. (6) generally, substituting provisions relating to accreditation of a school of nursing seeking an agreement under subpart II of part B for the establishment of a student loan fund not eligible for accreditation under such subpart for provisions relating to accreditation of a program, or a hospital, school, college, or university (or a unit thereof) for purposes of this subchapter not eligible for accreditation at the time of application under this subchapter.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99-92, set out as a note under section 296k of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 205 of Pub. L. 90-490 provided that: "The amendments made by sections 201 [amending sections 296 and 296a of this title] and 204 [amending section 298b(c) of this title] shall apply with respect to appropriations for fiscal years ending after June 30, 1969."

Section 214 of Pub. L. 90-490 provided that: "The amendments made by the preceding provisions of this part [enacting sections 296f and 296g of this title and amending sections 296d, 296e, and 298b(f)(2) of this title] shall apply with respect to appropriations for fiscal years ending after June 30, 1969."

§ 298b–5. Recovery for construction assistance

(a) Conditions for recovery by United States of base amount and interest

If at any time within 20 years (or within such shorter period as the Secretary may prescribe by regulation for an interim facility) after the completion of construction of a facility with respect to which funds have been paid under subpart I of part A of this subchapter (as such subpart was in effect on September 30, 1985)—

(1) the owner of the facility ceases to be a public or nonprofit school,

(2) the facility ceases to be used for the training purposes for which it was constructed, or

(3) the facility is used for sectarian instruction or as a place for religious worship,

the United States shall be entitled to recover from the owner of the facility the base amount prescribed by subsection (c)(1) of this section plus the interest (if any) prescribed by subsection (c)(2) of this section.

(b) Notice by owner of cessation or change of use of facility

The owner of a facility which ceases to be a public or nonprofit school as described in paragraph (1) of subsection (a) of this section, or the owner of a facility the use of which changes as described in paragraph (2) or (3) of such subsection shall provide the Secretary written notice of such cessation or change of use within 10 days after the date on which such cessation or change of use occurs or within 30 days after October 22, 1985, whichever is later.

(c) Computation of base amount and interest

(1) The base amount that the United States is entitled to recover under subsection (a) of this section is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of the facility as the amount of the Federal participation bore to the cost of the construction.

(2)(A) The interest that the United States is entitled to recover under subsection (a) of this section is the interest for the period (if any) described in subparagraph (B) at a rate (determined by the Secretary) based on the average of the bond equivalent rates of 91-day Treasury bills auctioned during such period.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) if notice is provided as prescribed by subsection (b) of this section, 191 days after the date on which the owner of the facility ceases to be a public or nonprofit school as described in paragraph (1) of subsection (a) of this section, or 191 days after the date on which the use of the facility changes as described in paragraph (2) or (3) of such subsection, or

(ii) if notice is not provided as prescribed by subsection (b) of this section, 11 days after the date on which such cessation or change of use occurs,

and ending on the date the amount the United States is entitled to recover is collected.

(d) Waiver of recovery rights of United States

The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility (under such conditions as the Secretary may establish by regulation) if the Secretary determines that there is good cause for waiving such rights.

(e) Nature of prejudgment right of recovery

The right of recovery of the United States under subsection (a) of this section shall not, prior to judgment, constitute a lien on any facility.

(July 1, 1944, ch. 373, title VIII, § 858, formerly § 804, as added Sept. 4, 1964, Pub. L. 88-581, § 2, 78 Stat. 911, and amended Nov. 18, 1971, Pub. L. 92-158, §§ 2(d)(3), 13, 85 Stat. 468, 480; July 29, 1975, Pub. L. 94-63, title IX, § 941(c), 89 Stat. 364, renumbered § 858 and amended Aug. 16, 1985, Pub. L. 99-92, § 9(c)(1), 99 Stat. 400; Oct. 22, 1985, Pub. L. 99-129, title II, § 207(e)(1)-(3), 99 Stat. 529.)

REFERENCES IN TEXT

Subpart I of part A of this subchapter, referred to in subsec. (a), which consisted of sections 296 to 296d of this title was repealed (except for section 296c which was transferred to this section) by section 9(a)(1), (b)(1), (c)(1) of Pub. L. 99-92.

CODIFICATION

Provisions of this section were classified to section 296c of this title prior to renumbering by Pub. L. 99-92.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-92, in amending section generally, designated existing provisions as subsec. (a) and substituted therein provisions relating to recovery of funds paid under subpart I of part A, as in effect on Sept. 30, 1985, of the base amount and interest prescribed by subsec. (c), for provisions relating to recovery of funds paid under subpart I of part A of the amount bearing the same ratio to the value, as determined by the parties or in a judicial action, which the amount of the Federal participation bore to the cost of construction of the facility.

Subsec. (b). Pub. L. 99-129, § 207(e)(1), substituted "within" for "not later than" and inserted "or within 30 days after October 22, 1985, whichever is later".

Pub. L. 99-92 added subsec. (b).

Subsec. (c). Pub. L. 99-92 added subsec. (c).

Subsec. (c)(2)(B)(i). Pub. L. 99-129, § 207(e)(2), substituted designation "(i)" for "(1)" before "if notice is provided".

Subsec. (d). Pub. L. 99-129, § 207(e)(3), substituted "subsection (a)(2) of this section" for "subsection (a) of this section".

Pub. L. 99-92 added subsec. (d).

Subsec. (e). Pub. L. 99-92 added subsec. (e).

1975—Pub. L. 94-63 substituted "subpart" for "part" and redesignated pars. (a), (b), and (c) as (1), (2), and (3), respectively.

1971—Pub. L. 92-158, in material preceding subsec. (a), added "(or in the case of interim facilities, within such shorter period as the Secretary shall by regulation prescribe)" after "twenty years" and in subsec. (b), substituted "Secretary" for "Surgeon General".

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-92 effective Aug. 16, 1985, see section 10(b)(1) of Pub. L. 99-92, set out as a note under section 296k of this title.

Effective Date of 1975 Amendment

Amendment by Pub. L. 94-63 effective July 1, 1975, see section 942 of Pub. L. 94-63, set out as a note under section 296a of this title.

Interest Period for Facility Constructed On or Before August 16, 1985, or Within 180 Days After August 16, 1985

Section 9(c)(2) of Pub. L. 99-92 as amended by Pub. L. 99-129, title II, § 207(e)(4), Aug. 16, 1985, 99 Stat. 529, provided that: "In the case of any facility that was or is constructed on or before the date of enactment of this Act [Aug. 16, 1985] or within 180 days after the date of enactment of this Act, the period described in clause (i) or (ii), as the case may be, of section 858(c)(2)(B) of the Public Health Service Act [42 U.S.C. 298b-5(c)(2)(B)(i), (ii)] (as amended by paragraph (1) of this subsection) shall begin no earlier than 181 days after the date of enactment of this Act."

Preservation of Legal Rights of United States

Section 9(c)(3) of Pub. L. 99-92 provided that: "The amendments made by paragraph (1) of this subsection [transferring section 296c of this title to section 298b-5 of this title and amending section 298b-5 of this title] shall not adversely affect other legal rights of the United States."

SUBCHAPTER VII—EDUCATION, RESEARCH, TRAINING, AND DEMONSTRATIONS IN HEART DISEASE, CANCER, STROKE, AND RELATED DISEASES

§§ 299 to 299j. Repealed. Pub. L. 99-117, § 12(d), Oct. 7, 1985, 99 Stat. 495

Section 299, acts July 1, 1944, ch. 373, title IX, § 900, as added Oct. 6, 1965, Pub. L. 89-239, § 2, 79 Stat. 926, and amended Oct. 30, 1970, Pub. L. 91-515, title I, § 102, 84 Stat. 1297, set forth the Congressional declaration of purpose of this subchapter to encourage and assist regional cooperative arrangements among medical schools, research institutions, and hospitals for research, training and medical data exchange, and to improve the quality and capacity of health manpower and facilities available throughout the nation.

Section 299a, acts July 1, 1944, ch. 373, title IX, § 901, as added Oct. 6, 1965, Pub. L. 89-239, § 2, 79 Stat. 926, and amended Oct. 15, 1968, Pub. L. 90-574, title I, §§ 101, 102, 107, 82 Stat. 1005, 1006; June 30, 1970, Pub. L. 91-296, title IV, § 401(b)(1)(F), 84 Stat. 352; Oct. 30, 1970, Pub. L. 91-515, title I, § 103, 84 Stat. 1298; June 18, 1973, Pub. L. 93-45, title I, § 110, 87 Stat. 93, authorized appropriations for grants and contracts to carry out the purposes of this subchapter and set forth the extent of and limitations on grants.

Section 299b, acts July 1, 1944, ch. 373, title IX, § 902, as added Oct. 6, 1965, Pub. L. 89-239, § 2, 79 Stat. 927, and amended Oct. 15, 1968, Pub. L. 90-574, title I, § 103, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91-515, title I, §§ 104, 111(b), 84 Stat. 1299, 1301, defined terms for purposes of this subchapter.

Section 299c, acts July 1, 1944, ch. 373, title IX, § 903, as added Oct. 6, 1965, Pub. L. 89-239, § 2, 79 Stat. 927, and amended Oct. 15, 1968, Pub. L. 90-574, title I, § 104, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91-515, title I, §§ 105, 111(b), 84 Stat. 1299, 1301, authorized the Secretary to make planning grants and set forth requirements for grant applications.

Section 299d, acts July 1, 1944, ch. 373, title IX, § 904, as added Oct. 6, 1965, Pub. L. 89-239, § 2, 79 Stat. 928, and amended Oct. 15, 1968, Pub. L. 90-574, title I, § 104, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91-515, title I, §§ 106, 111(b), 84 Stat. 1299, 1301, authorized the Secretary to make grants for the establishment and operation of regional medical programs and set forth requirements for grant applications.

Section 299e, acts July 1, 1944, ch. 373, title IX, § 905, as added Oct. 6, 1965, Pub. L. 89-239, § 2, 79 Stat. 929, and amended Oct. 15, 1968, Pub. L. 90-574, title I, § 105, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91-515, title I, §§ 107(a), 111(b), title VI, § 601(b)(2), (4), 84 Stat. 1299, 1301, 1311; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695, provided for the establishment of a National Advisory Council on Regional Medical Programs and its functions.

Section 299f, acts July 1, 1944, ch. 373, title IX, § 906, as added Oct. 6, 1965, Pub. L. 89-239, § 2, 79 Stat. 930, and amended Oct. 30, 1970, Pub. L. 91-515, title I, § 111(b), 84 Stat. 1301, authorized the Secretary to establish rules and regulations covering terms of approval of grant applications and coordination of programs.

Section 299g, acts July 1, 1944, ch. 373, title IX, § 907, as added Oct. 6, 1965, Pub. L. 89-239, § 2, 79 Stat. 930, and amended Oct. 30, 1970, Pub. L. 91-515, title I, §§ 108, 111(b), 84 Stat. 1300, 1301, directed the Secretary to compile a list of facilities equipped and staffed to provide the most advanced methods for diagnosing and treating certain diseases and illnesses.

Section 299h, act July 1, 1944, ch. 373, title IX, § 908, as added Oct. 6, 1965, Pub. L. 89-239, § 2, 79 Stat. 930, called for a report to the President and the Congress on or before June 30, 1967, by the Surgeon General concerning activities under this subchapter with required statements, appraisals, and recommendations.

Section 299i, acts July 1, 1944, ch. 373, title IX, § 909, as added Oct. 6, 1965, Pub. L. 89-239, § 2, 79 Stat. 930, and amended Oct. 30, 1970, Pub. L. 91-515, title I, §§ 109, 111(b), 84 Stat. 1300, 1301; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695, provided for recordkeeping by grant recipients and for accessibility of records for audit and examination.

Section 299j, acts July 1, 1944, ch. 373, title IX, § 910, as added Oct. 15, 1968, Pub. L. 90-574, title I, § 106, 82 Stat. 1005, and amended Oct. 30, 1970, Pub. L. 91-515, title I, § 110, 84 Stat. 1300, related to grants and contracts for multiprogram services, costs of special projects, and support of research, studies, investigations, training, and demonstrations.

SUBCHAPTER VIII—POPULATION RESEARCH AND VOLUNTARY FAMILY PLANNING PROGRAMS

§ 300. Project grants and contracts for family planning services

[*See main edition for text of* (a) *and* (b)]

(c) Reduction of grant amount

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by the fair market value of any supplies or equipment furnished the grant recipient by the Secretary. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment on which the reduction of such grant is based. Such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(d) Authorization of appropriations

For the purpose of making grants and contracts under this section, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1971; $60,000,000 for the fiscal year ending June 30, 1972; $111,500,000 for the fiscal year ending June 30, 1973, $111,500,000 each for the fiscal years ending June 30, 1974, and June 30, 1975; $115,000,000 for fiscal year 1976; $115,000,000 for the fiscal year ending September 30, 1977; $136,400,000 for the fiscal year ending September 30, 1978; $200,000,000 for the fiscal year ending September 30, 1979; $230,000,000 for the fiscal year ending September 30, 1980; $264,500,000 for the fiscal year ending September 30, 1981; $126,510,000 for the fiscal year ending September 30, 1982; $139,200,000 for the fiscal year ending September 30, 1983; $150,830,000 for the fiscal year ending September 30, 1984; and $158,400,000 for the fiscal year ending September 30, 1985.

(As amended Oct. 19, 1984, Pub. L. 98-512, § 3(a), 98 Stat. 2409; Oct. 30, 1984, Pub. L. 98-555, § 9, 98 Stat. 2857.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-555 added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 98-512 added provisions authorizing appropriations for the fiscal year ending Sept. 30, 1985.

Subsec. (d). Pub. L. 98-555 redesignated former subsec. (c) as (d).

§ 300a-1. Training grants and contracts; authorization of appropriations

[*See main edition for text of* (*a*)]

(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1971; $3,000,000 for the fiscal year ending June 30, 1972; $4,000,000 for the fiscal year ending June 30, 1973; $3,000,000 each for the fiscal years ending June 30, 1974 and June 30, 1975; $4,000,000 for fiscal year ending 1976; $5,000,000 for the fiscal year ending September 30, 1977; $3,000,000 for the fiscal year ending September 30, 1978; $3,100,000 for the fiscal year ending September 30, 1979; $3,600,000 for the fiscal year ending September 30, 1980; $4,100,000 for the fiscal year ending September 30, 1981; $2,920,000 for the fiscal year ending September 30, 1982; $3,200,000 for the fiscal year ending September 30, 1983; $3,500,000 for the fiscal year ending September 30, 1984; and $3,500,000 for the fiscal year ending September 30, 1985.

(As amended Oct. 19, 1984, Pub. L. 98-512, § 3(b), 98 Stat. 2410.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-512 added provisions authorizing appropriations for the fiscal year ending Sept. 30, 1985.

§ 300a-3. Informational and educational materials development grants and contracts; authorization of appropriations

[*See main edition for text of* (*a*)]

(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $750,000 for the fiscal year ending June 30, 1971; $1,000,000 for the fiscal year ending June 30, 1972; $1,250,000 for the fiscal year ending June 30, 1973; $909,000 each for the fiscal years ending June 30, 1974, and June 30, 1975; $2,000,000 for fiscal year 1976; $2,500,000 for the fiscal year ending September 30, 1977; $600,000 for the fiscal year ending September 30, 1978; $700,000 for the fiscal year ending September 30, 1979; $805,000 for the fiscal year ending September 30, 1980; $926,000 for the fiscal year ending September 30, 1981; $570,000 for the fiscal year ending September 30, 1982; $600,000 for the fiscal year ending September 30, 1983; $670,000 for the fiscal year ending September 30, 1984; and $700,000 for the fiscal year ending September 30, 1985.

(As amended Oct. 19, 1984, Pub. L. 98-512, § 3(c), 98 Stat. 2410.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-512 added provisions authorizing appropriations for the fiscal year ending Sept. 30, 1985.

§ 300a-7. Sterilization or abortion

REFERENCES IN TEXT

The Developmental Disabilities Services and Facilities Construction Act, referred to in subsecs. (b) and (c)(1), is title I of Pub. L. 88-164, as added by Pub. L. 94-103, Oct. 4, 1975, 89 Stat. 496, and amended. Title I of Pub. L. 88-164, as amended generally by Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662, is known as the Developmental Disabilities Assistance and Bill of Rights Act and is classified generally to chapter 75 (§ 6000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (e), is title I of Pub. L. 88-164, as added by Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662, which is classified generally to chapter 75 (§ 6000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

SUBCHAPTER IX—GENETIC DISEASES, HEMOPHILIA PROGRAMS, AND SUDDEN INFANT DEATH SYNDROME

PART B—SUDDEN INFANT DEATH SYNDROME

§ 300c-12. Sudden infant death syndrome research and research reports

(a) Adequate amounts for identification and prevention progress

From the sums appropriated to the National Institute of Child Health and Human Development, the Secretary shall assure that there are applied to research of the type described in subparagraphs (A) and (B) of subsection (b)(1) of this section such amounts each year as will be adequate, given the leads and findings then available from such research, in order to make maximum feasible progress toward identification of infants at risk of sudden infant death syndrome and prevention of sudden infant death syndrome.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Nov. 20, 1985, Pub. L. 99-158, § 3(a)(6), 99 Stat. 879.)

Amendments

1985—Subsec. (a). Pub. L. 99-158 struck out "under section 289d of this title" before ", the Secretary".

SUBCHAPTER X—EMERGENCY MEDICAL SERVICES SYSTEMS

Part A—Assistance for Emergency Medical Services Systems

§ 300d-4. Repealed. Pub. L. 99-117, § 12(e), Oct. 7, 1985, 99 Stat. 495

Section, acts July 1, 1944, ch. 373, title XII, § 1201, formerly § 1205, as added Nov. 16, 1973, Pub. L. 93-154, § 2(a), 87 Stat. 597, and amended Oct. 21, 1976, Pub. L. 94-573, § 6, 90 Stat. 2713, renumbered and amended Aug. 13, 1981, Pub. L. 97-35, title IX, § 902(d)(1), (3), 95 Stat. 560, authorized the Secretary to make grants and enter into contracts to support research in emergency medical techniques, methods, devices, and delivery.

§ 300d-6. Repealed. Pub. L. 99-117, § 12(e), Oct. 7, 1985, 99 Stat. 495

Section, acts July 1, 1944, ch. 373, title XII, § 1202, formerly § 1207, as added Nov. 16, 1973, Pub. L. 93-154, § 2(a), 87 Stat. 602, and amended Oct. 21, 1976, Pub. L. 94-573, § 8, 90 Stat. 2714; Nov. 10, 1978, Pub. L. 95-626, title II, § 210(d), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96-142, title I, § 105, 93 Stat. 1068; renumbered and amended Aug. 13, 1981, Pub. L. 97-35, title IX, § 902(d)(1), (4), 95 Stat. 560, authorized appropriations for purposes of this subchapter.

SUBCHAPTER XI—HEALTH MAINTENANCE ORGANIZATIONS

§ 300e-1. Definitions

Section Referred to in Other Sections

This section is referred to in sections 300e, 1395x, 1395mm, 1396b of this title.

§ 300e-11. Continued regulation of health maintenance organizations

Section Referred to in Other Sections

This section is referred to in sections 300e-17, 1396b of this title.

SUBCHAPTER XII—SAFETY OF PUBLIC WATER SYSTEMS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 300j-10, 4365, 6905, 6924, 6925, 6979a, 9601 of this title; title 16 section 471i.

Part C—Protection of Underground Sources of Drinking Water

Part Referred to in Other Sections

This part is referred to in sections 6979a, 9601 of this title.

Part E—General Provisions

§ 300j-9. General provisions

[*See main edition for text of* (*a*) *to* (*h*)]

(i) Discrimination prohibition; filing of complaint; investigation; orders of Secretary; notice and hearing; settlements; attorneys' fees; judicial review; filing of petition; procedural requirements; stay of orders; exclusiveness of remedy; civil actions for enforcement of orders; appropriate relief; mandamus proceedings; prohibition inapplicable to undirected but deliberate violations

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

[*See main edition for text of* (*5*) *and* (*6*)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(38), 98 Stat. 3360.)

Amendments

1984—Subsec. (i)(4). Pub. L. 98-620 struck out provision which required civil actions filed under par. (4) to be heard and decided expeditiously.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER XIII—NATIONAL HEALTH PLANNING AND DEVELOPMENT

Subchapter Referred to in Other Sections

This subchapter is referred to in section 300s-3 of this title.

Part A—National Guidelines for Health Planning

§ 300k-3. National Council on Health Planning and Development

Section Referred to in Other Sections

This section is referred to in sections 254j, 300k-1 of this title.

Part B—Health Systems Agencies

§ 300*l*. Health service areas

References in Text

Subchapter VII of this chapter, referred to in subsec. (b)(2), which was classified to section 299 et seq. of this title, was repealed by Pub. L. 99-117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

Part C—State Health Planning and Development

§ 300m-3. Statewide Health Coordinating Council

Section Referred to in Other Sections

This section is referred to in sections 247a, 247b, 254j, 300a-29, 300k-1, 300k-3, 300*l*-2, 300m, 300m-1, 300m-2, 300m-6, 300n-4, 300n-5, 6371d of this title.

SUBCHAPTER XIV—HEALTH RESOURCES DEVELOPMENT

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 300k-3, 300m-1, 300n-4, 1395x of this title; title 40 App. section 214.

Part C—General Provisions

§ 300s-1a. Recovery of expenditures under certain conditions

(a) Persons liable

If any facility with respect to which funds have been paid under this subchapter shall, at any time within 20 years after the completion of construction or modernization—

(1) be sold or transferred to any entity (A) which is not qualified to file an application under section 300s-1 or 300t-12 of this title or (B) which is not approved as a transferee by the State Agency of the State in which such facility is located, or its successor, or

(2) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility,

the United States shall be entitled to recover, whether from the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount determined under subsection (c) of this section.

(b) Notice to Secretary

The transferor of a facility which is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which is changed as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change not later than the expiration of 10 days from the date on which such sale, transfer, or change occurs.

(c) Amount of recovery; interest; interest period

(1) Except as provided in paragraph (2), the amount the United States shall be entitled to recover under subsection (a) of this section is an amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district for which the facility involved is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the construction or modernization of such project or projects.

(2)(A) After the expiration of—

(i) 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section in the case of a facility which is sold or transferred or the use of which changes after July 18, 1984, or

(ii) thirty days after July 18, 1984, or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984,

the amount which the United States is entitled to recover under paragraph (1) with respect to a facility shall be the amount prescribed by paragraph (1) plus interest, during the period described in subparagraph (B), at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rate.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984, thirty days after such date or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section.[1]

(ii) in the case of a facility with respect to which notice is provided in accordance with subsection (b) of this section, upon the expiration of 180 days after the receipt of such notice, or

(iii) in the case of a facility with respect to which such notice is not provided as prescribed by subsection (b) of this section, on the date of the sale, transfer, or changes of use for which such notice was to be provided,

and ending on the date the amount the United States is entitled to under paragraph (1) is collected.

(d) Waiver

(1) The Secretary may waive the recovery rights of the United States under subsection (a)(1) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that the entity to which the facility was sold or transferred—

(A) has established an irrevocable trust—

(i) in an amount equal to the greater of twice the cost of the remaining obligation of the facility under clause (ii) of section 300s-1(b)(1)(K) of this title or the amount, determined under subsection (c) of this section, that the United States is entitled to recover, and

(ii) which will only be used by the entity to provide the care required by clause (ii) of section 300s-1(b)(1)(K) of this title; and

(B) will meet the obligation of the facility under clause (i) of section 300s-1(b)(1)(K) of this title.

(2) The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility in

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[1] So in original. The period probably should be a comma.

any State if the Secretary determines, in accordance with regulations, that there is good cause for waiving such rights with respect to such facility.

(e) Lien

The right of recovery of the United States under subsection (a) of this section shall not constitute a lien on any facility with respect to which funds have been paid under this subchapter.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2381(b), 98 Stat. 1114.)

AMENDMENTS

1984—Pub. L. 98-369 amended section generally. Prior to the amendment, section read as follows:

"(a) If any facility constructed, modernized, or converted with funds provided under this subchapter is, at any time within twenty years after the completion of such construction, modernization, or conversion with such funds—

"(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 300s-1 or 300t-12 of this title or (B) which is not approved as a transferee by the State Agency of the State in which such facility is located, or its successor; or

"(2) not used as a medical facility, and the Secretary has not determined that there is good cause for termination of such use,

the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction, modernization, or conversion of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment.

"(b) The Secretary may waive the recovery rights of the United States under subsection (a) of this section with respect to a facility in any State—

"(1) if (as determined under regulations prescribed by the Secretary) the amount which could be recovered under subsection (a) of this section with respect to such facility is applied to the development, expansion, or support of another medical facility located in such State which has been approved by the Statewide Health Coordinating Council for such State as consistent with the State health plan established pursuant to section 300m-3(c) of this title; or

"(2) if the Secretary determines, in accordance with regulations, that there is good cause for waiving such requirement with respect to such facility.

If the amount which the United States is entitled to recover under subsection (a) of this section exceeds 90 per centum of the total cost of the construction or modernization project for a facility, a waiver under this subsection shall only apply with respect to an amount which is not more than 90 per centum of such total cost."

REGULATIONS AND PERSONNEL

Requirements for regulations and personnel to implement this section, see section 2381(c) of Pub. L. 98-369, set out as a note under section 2911 of this title.

§ 300s-3. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290dd-2, 300s-1, 6372 of this title.

SUBCHAPTER XV—HEALTH INFORMATION AND HEALTH PROMOTION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 300w-10 of this title.

§ 300u. General authority of Secretary

(a) Development, support, and implementation of programs, activities, etc.

The Secretary shall—

[*See main edition for text of* (*1*) *to* (7)]

(8) provide technical assistance in the programs referred to in paragraph (7);

(9) use such other authorities for programs respecting health information and health promotion, preventive health services, and education in the appropriate use of health care as are available and coordinate such use with programs conducted under this subchapter; and

(10) establish in the Office of the Assistant Secretary for Health an Office of Disease Prevention and Health Promotion, which shall—

(A) coordinate all activities within the Department which relate to disease prevention, health promotion, preventive health services, and health information and education with respect to the appropriate use of health care;

(B) coordinate such activities with similar activities in the private sector;

(C) establish a national information clearinghouse to facilitate the exchange of information concerning matters relating to health information and health promotion, preventive health services, and education in the appropriate use of health care, to facilitate access to such information, and to assist in the analysis of issues and problems relating to such matters; and

(D) support projects, conduct research, and disseminate information relating to preventive medicine, health promotion, and physical fitness and sports medicine.

The Secretary shall administer this subchapter in a manner consistent with the national health priorities set forth in section 300k-2 of this title. The Secretary shall appoint a Director for the Office of Disease Prevention and Health Promotion established pursuant to paragraph (10) of this subsection. The Secretary shall administer this subchapter in cooperation with health care providers, educators, voluntary organizations, businesses, and State and local health agencies in order to encourage the dissemination of health information and health promotion activities.

(b) Authorization of appropriations

To carry out this subchapter, there are authorized to be appropriated $9,000,000 for the fiscal year ending September 30, 1985, $9,500,000 for the fiscal year ending September 30, 1986, and $10,000,000 for the fiscal year ending September 30, 1987.

[*See main edition for text of* (c)]

(As amended Oct. 30, 1984, Pub. L. 98-551, § 2(a), 98 Stat. 2815.)

Amendments

1984—Subsec. (a). Pub. L. 98-551, § 2(a)(1), added par. (10), and in the provisions following par. (10) struck out "and with health planning and resource development activities undertaken under subchapters XIII and XIV of this chapter" after "section 300k-2 of this title" and added provisions for appointment of a Director for the Office of Disease Prevention and Health Promotion and cooperation in the administration of this subchapter.

Subsec. (b). Pub. L. 98-551, § 2(a)(2), substituted "To carry out this subchapter, there are authorized to be appropriated $9,000,000 for the fiscal year ending September 30, 1985, $9,500,000 for the fiscal year ending September 30, 1986, and $10,000,000 for the fiscal year ending September 30, 1987" for "For payments under grants and contracts under this subchapter (other than grants and contracts under sections 300u-6, 300u-7, and 300u-8 of this title) there are authorized to be appropriated $7,000,000 for the fiscal year ending September 30, 1977, $10,000,000 for the fiscal year ending September 30, 1978, $14,000,000 for the fiscal year ending September 30, 1979, $14,000,000 for the fiscal year ending September 30, 1980, $15,000,000 for the fiscal year ending September 30, 1981, and $16,000,000 for the fiscal year ending September 30, 1982."

§ 300u-3. Grants and contracts for information programs; authority of Secretary; particular activities

The Secretary is authorized to conduct and support by grant or contract (and encourage others to support) such activities as may be required to make information respecting health information and health promotion, preventive health services, and education in the appropriate use of health care available to the consumers of medical care, providers of such care, schools, and others who are or should be informed respecting such matters. Such activities may include at least the following:

[*See main edition for text of* (1) *to* (5)]

(6) Repealed. Pub. L. 98-551, § 2(b), Oct. 30, 1984, 98 Stat. 2816.

(As amended Oct. 30, 1984, Pub. L. 98-551, § 2(b), 98 Stat. 2816.)

Amendments

1984—Par. (6). Pub. L. 98-551 struck out par. (6) which provided grant authority to the Secretary to assess, with respect to the effectiveness, safety, cost, and required training for and conditions of use, of new aspects of health care, and new activities, programs, and services designed to improve human health and publish in readily understandable language for public and professional use such assessments and, in the case of controversial aspects of health care, activities, programs, or services, publish differing views or opinions respecting the effectiveness, safety, cost, and required training for and conditions of use, of such aspects of health care, activities, programs, or services.

§ 300u-4. Status reports to President and Congress; study of health education and preventive health services with respect to insurance coverage

Section Referred to in Other Sections

This section is referred to in section 247b of this title.

§ 300u-5. Centers for research and demonstration of health promotion and disease prevention

(a) Establishment; grants; contracts; research and demonstration projects

The Secretary shall make grants or enter into contracts with academic health centers for the establishment, maintenance, and operation of centers for research and demonstration with respect to health promotion and disease prevention. Centers established, maintained, or operated under this section shall undertake research and demonstration projects in health promotion, disease prevention, and improved methods of appraising health hazards and risk factors, and shall serve as demonstration sites for the use of new and innovative research in public health techniques to prevent chronic diseases.

(b) Location; types of research and projects

Each center established, maintained, or operated under this section shall—

(1) be located in an academic health center with—

(A) a multidisciplinary faculty with expertise in public health and which has working relationships with relevant groups in such fields as medicine, psychology, nursing, social work, education and business;

(B) graduate training programs relevant to disease prevention;

(C) a core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental health sciences, and health administration;

(D) a demonstrated curriculum in disease prevention;

(E) a capability for residency training in public health or preventive medicine; and

(F) such other qualifications as the Secretary may prescribe;

(2) conduct—

(A) health promotion and disease prevention research, including retrospective studies and longitudinal prospective studies in population groups and communities;

(B) demonstration projects for the delivery of services relating to health promotion and disease prevention to defined population groups using, as appropriate, community outreach and organization techniques and other methods of educating and motivating communities; and

(C) evaluation studies on the efficacy of demonstration projects conducted under subparagraph (B) of this paragraph.

The design of any evaluation study conducted under subparagraph (C) shall be established prior to the commencement of the demonstration project under subparagraph (B) for which the evaluation will be conducted.

(c) Centers; fiscal years 1985 to 1987; equitable geographic distribution; procedures

(1) During fiscal year 1985, the Secretary shall make grants or enter into contracts for the establishment of three centers under this section. During fiscal year 1986, the Secretary shall make grants and enter into contracts for

the establishment of five centers under this section and the maintenance and operation of the three centers established under this section in fiscal year 1985. During fiscal year 1987, the Secretary shall make grants and enter into contracts for the establishment of five centers under this section and the operation and maintenance of the eight centers established under this section in fiscal years 1985 and 1986.

(2)(A) In making grants and entering into contracts under this section, the Secretary shall provide for an equitable geographical distribution of centers established, maintained, and operated under this section and for the distribution of such centers among areas containing a wide range of population groups which exhibit incidences of diseases which are most amenable to preventive intervention.

(B) The Secretary, through the Director of the Centers for Disease Control and in consultation with the Director of the National Institutes of Health, shall establish procedures for the appropriate peer review of applications for grants and contracts under this section by peer review groups composed principally of non-Federal experts.

(d) "Academic health center" defined

For purposes of this section, the term "academic health center" means a school of medicine, a school of osteopathy, or a school of public health, as such terms are defined in section 292a(4) of this title.

(e) Authorization of appropriations

To carry out this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1985, $8,000,000 for the fiscal year ending September 30, 1986, and $13,000,000 for the fiscal year ending September 30, 1987.

(July 1, 1944, ch. 373, title XVII, § 1706, as added Oct. 30, 1984, Pub. L. 98-551, § 2(d), 98 Stat. 2816.)

PRIOR PROVISIONS

A prior section 300u-5, act July 1, 1944, ch. 373, title XVII, § 1706, as added June 23, 1976, Pub. L. 94-317, title I, § 102, 90 Stat. 700, and amended Nov. 10, 1978, Pub. L. 95-626, title V, § 501, 92 Stat. 3592; Jan. 4, 1983, Pub. L. 97-414, § 8(r), 96 Stat. 2062, which related to the establishment of the Office of Health Promotion, was repealed by Pub. L. 98-551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

EX. ORD. NO. 12345. PHYSICAL FITNESS AND SPORTS

Ex. Ord. No. 12345, Feb. 2, 1982, 47 F.R. 5189, as amended by Ex. Ord. No. 12539, Dec. 3, 1985, 50 F.R. 49829, provided:

By virtue of the authority vested in me as President of the United States of America, and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), in order to expand the program for physical fitness and sports and to continue the President's Council on Physical Fitness and Sports, it is hereby ordered as follows:

[See main edition for text of Section 1]

SEC. 2. *President's Council on Physical Fitness and Sports.* (a) There is hereby continued the President's Council on Physical Fitness and Sports.

(b) The Council shall be composed of eighteen members appointed by the President. The President shall designate one of the members to be the Chairman.

[See main edition for text of Secs. 3 to 5]

EXTENSION OF TERM OF PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1984, see Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1985, see Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1987, see Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

§§ 300u-6 to 300u-9. Repealed. Pub. L. 98-551, § 2(c), Oct. 30, 1984, 98 Stat. 2816

Section 300u-6, acts July 1, 1944, ch. 373, title XVII, § 1707, as added Nov. 10, 1978, Pub. L. 95-626, title V, § 502, 92 Stat. 3593, and amended July 10, 1979, Pub. L. 96-32, § 6(k), 93 Stat. 84, related to project grants to State Councils on Physical Fitness for physical fitness improvement.

Section 300u-7, acts July 1, 1944, ch. 373, title XVII, § 1708, as added Nov. 10, 1978, Pub. L. 95-626, title V, § 502, 92 Stat. 3594, and amended July 10, 1979, Pub. L. 96-32, § 6(*l*), 93 Stat. 84, related to project grants for physical fitness improvement and research projects.

Section 300u-8, act July 1, 1944, ch. 373, title XVII, § 1709, as added Nov. 10, 1978, Pub. L. 95-626, title V, § 502, 92 Stat. 3594, related to the establishment of a national program on sports medicine research.

Section 300u-9, acts July 1, 1944, ch. 373, title XVII, § 1710, as added Nov. 10, 1978, Pub. L. 95-626, title V, § 502, 92 Stat. 3594, and amended Oct. 17, 1979, Pub. L. 96-88, title III, § 301(b)(2), title V, § 507, 93 Stat. 678, 692, related to a Conference on Education in Lifetime Sports.

SUBCHAPTER XVII—BLOCK GRANTS

PART A—PREVENTIVE HEALTH AND HEALTH SERVICES BLOCK GRANTS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300x-3, 9875 of this title.

§ 300w. Authorization of appropriations

(a) For the purpose of allotments under section 300w-1 of this title, there is authorized to be appropriated $95,000,000 for fiscal year 1982, $96,500,000 for fiscal year 1983, $98,500,000 for fiscal year 1984, $98,500,000 for the fiscal year ending September 30, 1985, $98,500,000 for the fiscal year ending September 30, 1986, and $98,500,000 for the fiscal year ending September 30, 1987.

(b) Of the amount appropriated for any fiscal year under subsection (a) of this section, at least $3,500,000 shall be made available for allotments under section 300w-1(b) of this title.

(As amended Oct. 30, 1984, Pub. L. 98-555, § 4, 98 Stat. 2855.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-555, § 4(a), added provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

Subsec. (b). Pub. L. 98-555, § 4(b), substituted "$3,500,000" for "$3,000,000".

§ 300w-1. Allotments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300w, 300w-2, 300w-3, 300w-4, 300w-7, 300w-10 of this title.

§ 300w-2. Payments under allotments to States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300w 3, 300w-4, 300w-5, 9875 of this title.

§ 300w-3. Use of allotments

REFERENCES IN TEXT

Section 300w-4(c)(2) of this title, referred to in subsec. (a)(1)(F), which related to grants for fiscal year 1982, was struck out, and par. (3) of section 300w-4(c) was redesignated as par. (2), by Pub. L. 98-555, § 5(a), Oct. 30, 1984, 98 Stat. 2855.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300w-2, 300w-5, 300w-9 of this title.

§ 300w-4. Application and description of activities

[See main edition for text of (a) and (b)]

(c) Certifications by chief executive officer of State

As part of the annual application required by subsection (a) of this section, the chief executive officer of each State shall certify that the State—

(1) agrees to use the funds alloted [2] to it under section 300w-1 of this title in accordance with the requirements of this part;

(2) agrees to establish reasonable criteria to evaluate the effective performance of entities which receive funds from the allotment of the State under this part and procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity.[3]

(3) agrees to permit and cooperate with Federal investigations undertaken in accordance with section 300w-6 of this title;

(4) has identified those populations, areas, and localities in the State with a need for the services for which funds may be provided by the State under this part;

(5) agrees that Federal funds made available under section 300w-2 of this title for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds; and

(6) has in effect a system to protect from inappropriate disclosure patient and rape victim records maintained by the State in connection with an activity funded under this part or by any entity which is receiving payments from the allotment of the State under this part.

The Secretary may not prescribe for a State the manner of compliance with the requirements of this subsection.

[See main edition for text of (d)]

(e) Repealed. Pub. L. 98-555, § 5(d), Oct. 30, 1984, 98 Stat. 2856

(As amended Oct. 30, 1984, Pub. L. 98-555, § 5(a), (d), 98 Stat. 2855, 2856.)

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-555, § 5(a), redesignated par. (3) as (2). Former par. (2), which related to grants for fiscal year 1982, was struck out.

Subsec. (c)(3). Pub. L. 98-555, § 5(a), redesignated par. (5) as (3). Former par. (3) redesignated (2).

Subsec. (c)(4). Pub. L. 98-555, § 5(a), redesignated par. (6) as (4). Former par. (4), which related to grants for preventive health service programs for hypertension, was struck out.

Subsec. (c)(5) to (8). Pub. L. 98-555, § 5(a), redesignated pars. (7) and (8) as (5) and (6), respectively. Former pars. (5) and (6) redesignated (3) and (4), respectively.

Subsec. (e). Pub. L. 98-555, § 5(d), struck out subsec. (e) which related to grants by States.

§ 300w-5. Reports and audits

(a) Annual reports; contents; copies

(1) Each State shall prepare and submit to the Secretary annual reports on its activities under this part. Such reports shall be in such form and contain such information as the Secretary determines (after consultation with the States and the Comptroller General) to be necessary (A) to determine whether funds were expended in accordance with this part and consistent with the needs within the State identified pursuant to section 300w-4(c)(6) [4] of this title, (B) to secure a description of the preventive health and preventive health services programs in the State assisted by funds from allotments under this part, including a summary of the services which were provided, the providers of such services, and the individuals who received such services, and (C) to secure a record of the purposes for which funds were spent, of the recipients of such funds, and of the progress made toward achieving the purposes for which the funds were provided. Copies of the report shall be provided, upon request, to any interested person (including any public agency).

[See main edition for text of (2); (b) and (c)]

(d) Development of model criteria and forms; collection of data and information

The Secretary, in consultation with appropriate national organizations, shall develop model criteria and forms for the collection of data and information with respect to services provided under this part to enable States to share uniform data and information with respect to the provision of such services.

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[2] So in original. Probably should be "allotted".

[3] So in original. The period probably should be a semicolon.

[4] See References in Text note below.

(As amended Oct. 30, 1984, Pub. L. 98-555, § 5(b), (c), 98 Stat. 2855, 2856.)

References in Text

Section 300w-4(c)(6) of this title, referred to in subsec. (a)(1)(A), which related to identification of areas in States in need of services, was redesignated section 300w-4(c)(4) by Pub. L. 98-555, § 5(a), Oct. 30, 1984, 98 Stat. 2855.

Amendments

1984—Subsec. (a)(1)(B). Pub. L. 98-555, § 5(b), substituted "preventive health and preventive health services programs in the State assisted by funds from allotments under this part, including a summary of the services which were provided, the providers of such services, and the individuals who received such services" for "activities of the State under this part".

Subsec. (d). Pub. L. 98-555, § 5(c), added subsec. (d).

Section Referred to in Other Sections

This section is referred to in sections 300w-1, 9875 of this title.

§ 300w-6. Withholding of funds

Section Referred to in Other Sections

This section is referred to in sections 300w-4, 9875 of this title.

§ 300w-7. Nondiscrimination provisions

Section Referred to in Other Sections

This section is referred to in section 9875 of this title.

§ 300w-8. Criminal penalty for false statements

Section Referred to in Other Sections

This section is referred to in section 9875 of this title.

§ 300w-9. Emergency medical services for children

(a) Grant authority

For activities in addition to the activities which may be carried out by States under section 300w-3(a)(1)(F) of this title, the Secretary may make grants to not more than four States in any fiscal year to support a program of demonstration projects in such States for the expansion and improvement of emergency medical services for children who need treatment for trauma or critical care. Any grant made under this subsection shall be for a one-year period.

(b) Renewals

The Secretary may renew a grant made under subsection (a) of this section for one additional one-year period only if the Secretary determines that renewal of such grant will provide significant benefits through the collection, analysis, and dissemination of information or data which will be useful to other States.

(c) Authorization of appropriations

To carry out this section, there are authorized to be appropriated $2,000,000 for fiscal year 1985 and for each of the two succeeding fiscal years.

(July 1, 1944, ch. 373, title XIX, § 1910, as added Oct. 30, 1984, Pub. L. 98-555, § 7, 98 Stat. 2856.)

§ 300w-10. State planning grants

(a) The Secretary may make grants to assist States to—

(1) develop long range plans to achieve the goals, objectives, and priorities established by the Secretary pursuant to subchapter XV of this chapter;

(2) identify particular needs within States for services and activities that may be conducted with payments made under allotments under section 300w-1 of this title; and

(3) determine the progress of States in achieving the goals, objectives, and priorities described in paragraph (1) and, to the extent feasible, use scientifically valid measures to make such determinations.

(b) To carry out this section, there are authorized to be appropriated $5,000,000 for fiscal year 1985 and for each of the two succeeding fiscal years.

(July 1, 1944, ch. 373, title XIX, § 1910A, as added Oct. 30, 1984, Pub. L. 98-555, § 8, 98 Stat. 2856.)

PART B—ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES BLOCK GRANT

Part Referred to in Other Sections

This part is referred to in sections 290aa, 300w-3 of this title; title 7 section 2012.

§ 300x. Authorization of appropriations

For the purpose of grants and allotments under section 300x-1a of this title, there is authorized to be appropriated $491,000,000 for fiscal year 1982, $511,000,000 for fiscal year 1983, $532,000,000 for fiscal year 1984, $515,000,000 for fiscal year 1985, $545,000,000 for fiscal year 1986, and $576,000,000 for fiscal year 1987.

(As amended Oct. 19, 1984, Pub. L. 98-509, title I, §§ 101, 106(a), 98 Stat. 2353, 2358.)

Amendments

1984—Pub. L. 98-509, § 106(a), substituted "section 300x-1a of this title" for "section 300x-1 of this title".

Pub. L. 98-509, § 101, added provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

Effective Date of 1984 Amendment

Section 107 of title I of Pub. L. 98-509 provided that: "The amendments made by this title [enacting section 300x-1a of this title, amending sections 300x, 300x-1, and 300x-2 to 300x-9 of this title, and enacting provisions set out as notes under sections 300x and 300x-1a of this title] shall apply with respect to applications for allotments under part B of title XIX of the Public Health Service Act [this part] for fiscal years beginning after fiscal year 1984 and to allotments made under such part for such fiscal years."

Execution Directions for 1984 Amendment

Section 106(h) of Pub. L. 98-509 provided that: "The sections of the Public Health Service Act amended by this section [sections 300x, 300x-1, and 300x-2 to 300x-9 of this title] are sections of the Act as in effect on the day before the date of the enactment of this Act [Oct. 19, 1984]."

Section Referred to in Other Sections

This section is referred to in sections 300x–1, 300x–1a of this title.

§ 300x–1. Grants

(a) The Secretary may use not more than 1 percent of the amount appropriated under section 300x of this title for any fiscal year to make grants to public and nonprofit private entities for projects for the training and retraining of employees adversely affected by changes in the delivery of mental health services and for providing such employees assistance in securing employment.

(b) No grant may be made by the Secretary under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain and be accompanied by such information, as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under subsection (a) of this section.

(July 1, 1944, ch. 373, title XIX, § 1912, as added Oct. 19, 1984, Pub. L. 98–509, title I, § 102(a), 98 Stat. 2353.)

Prior Provisions

A prior section 300x–1, act July 1, 1944, ch. 373, title XIX, § 1912, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 543, and amended Jan. 4, 1983, Pub. L. 97–414, § 8(t), 96 Stat. 2062; Oct. 19, 1984, Pub. L. 98–509, title I, § 106(e), 98 Stat. 2358, contained provisions similar to this section and to section 300x–1a of this title prior to repeal by section 102(a) of Pub. L. 98–509.

Effective Date

Section applicable with respect to applications for allotments under this part for fiscal years beginning after fiscal year 1984 and to allotments made under this part for such fiscal years, see section 107 of Pub. L. 98–509, set out as an Effective Date of 1984 Amendment note under section 300x of this title.

§ 300x–1a. Allotments

(a)(1) If the amount available for allotment from appropriations under section 300x of this title for a fiscal year does not exceed $490,000,000, the Secretary shall allot such amount—

(A) on the basis of a formula prescribed by the Secretary which is based equally—

(i) on the population of each State, and

(ii) the population of each State weighted by its relative per capita income, or

(B) on the basis of the amount received by a State in fiscal year 1984,

whichever yields a higher amount. For purposes of subparagraph (A), the term "relative per capita income" means the quotient of the per capita income of the United States and the per capita income of the State, except that if the State is Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Commonwealth of Puerto Rico, or the Virgin Islands, the quotient shall be considered to be one.

(2) If the amount available for allotment from appropriations under section 300x of this title for a fiscal year is at least $490,000,000, the Secretary shall allot $490,000,000 in accordance with paragraph (1) and shall allot the amount which is in excess of such amount on the basis of the formula described in paragraph (1)(A).

(3) Notwithstanding paragraph (1), if the aggregate of the amounts to be allotted to each State pursuant to paragraph (1)(B) in any fiscal year exceeds the total amount available for allotment from appropriations under section 300x of this title, the amount to be allotted to a State for such fiscal year shall be an amount which bears the same ratio to the amount which is to be allotted to the State pursuant to such paragraph as the total amount available for allotment from appropriations under section 300x of this title bears to the total of the amount required to be appropriated and made available under such section for allotments to provide each State with the allotment required by such paragraph.

(4) To the extent that all the funds appropriated under section 300x of this title for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

(A) one or more States have not submitted an application or description of activities in accordance with section 300x–4 of this title for the fiscal year;

(B) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

(C) some State allotments are offset or repaid under section 300x–5(b)(3) of this title;

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(b)(1) If the Secretary—

(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this part be provided directly by the Secretary to such tribe or organization, and

(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary on this part,

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) of this section for the fiscal year the amount determined under paragraph (2).

(2) The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) of this section an amount equal to the amount which bears the same ratio to the State's allotment for the fiscal year involved as the total amount provided or allotted for fiscal

year 1980 by the Secretary to such tribe or tribal organization under—

(A) the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.],

(B) the Mental Health Systems Act [42 U.S.C. 9401 et seq.],

(C) section 241 of this title,

(D) sections 301 and 312 of the Comprehensive Alcohol Abuse and Alcoholism, Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4571, 4578], and

(E) sections 409 and 410 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act [21 U.S.C. 1176, 1177],

bore to the total amount provided or allotted for such fiscal year by the Secretary to the State and entities (including Indian tribes and tribal organizations) in the State under such provisions of law.

(3) The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(4) In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

(5) The terms "Indian tribe" and "tribal organization" have the same meaning given such terms in section 450b(b) and (c) of title 25.

(July 1, 1944, ch. 373, title XIX, § 1913, as added Oct. 19, 1984, Pub. L. 98-509, title I, § 102(a), 98 Stat. 2353.)

References in Text

The Community Mental Health Centers Act, referred to in subsec. (b)(2)(A), is title II of Pub. L. 88-164, as added by Pub. L. 94-63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97-35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560.

The Mental Health Systems Act, referred to in subsec. (b)(2)(B), is Pub. L. 96-398, Oct. 7, 1980, 96 Stat. 1564, as amended, which is classified principally to chapter 102 (§ 9401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

Section 301 of the Comprehensive Alcohol Abuse and Alcoholism, Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4571], referred to in subsec. (b)(2)(D), was redesignated section 520 of title V of act July 1, 1944, by Pub. L. 98-24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd of this title.

Section 409 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act, referred to in subsec. (b)(2)(E), which was classified to section 1176 of Title 21, Food and Drugs, was repealed by Pub. L. 97-35, title IX, § 969(a), Aug. 13, 1981, 95 Stat. 595.

Prior Provisions

A prior section 1913 of act July 1, 1944, was redesignated section 1914 by section 106(g) of Pub. L. 98-509, and is classified to section 300x-2 of this title.

Provisions similar to those comprising this section were contained in subsecs. (b) and (c) of section 300x-1 of this title, prior to repeal by section 102(a) of Pub. L. 98-509.

Effective Date

Section applicable with respect to applications for allotments under this part for fiscal years beginning after fiscal year 1984 and to allotments made under such part for such fiscal years, see section 107 of Pub. L. 98-509, set out as an Effective Date of 1984 Amendment note under section 300x of this title.

Review of Allotment of Funds to States

Section 102(b) of Pub. L. 98-509 provided that:

"(1) The Secretary of Health and Human Services shall enter into an agreement with a nongovernmental entity to review the allotment of funds to the States under part B of title XIX of the Public Health Service Act [this part] for the purpose of determining whether a formula for the allotment of funds under such part can be devised which is more equitable than the formula specified in section 1913 of such Act [this section]. In conducting such review, such entity shall consider—

"(A) the financial resources of the various States;

"(B) the populations of the States;

"(C) any relevant conditions or circumstances which have changed since the date of enactment of such part B [Aug. 13, 1981]; and

"(D) any other factor which the Secretary may consider appropriate.

"(2) In conducting the review required by paragraph (1), such entity shall consult with appropriate representatives of State and local governments.

"(3) By October 1, 1986, the Secretary shall prepare and transmit to the Congress a report concerning the review conducted under paragraph (1) which includes such recommendations as the Secretary considers appropriate."

Section Referred to in Other Sections

This section is referred to in sections 300x, 300x-2, 300x-3, 300x-4, 300x-5, 300x-7 of this title.

§ 300x-2. Payments under allotments to States

(a)(1) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, to each State from its allotment under section 300x-1a(b) [1] of this title (other than any amount reserved under section 300x-1a(c) [2] of this title) from amounts appropriated for that fiscal year.

[See main edition for text of (2)]

(b) The Secretary, at the request of a State, may reduce the amount of payments under subsection (a) of this section by—

[See main edition for text of (1) and (2)]

when the furnishing of supplies or equipment or the detail of an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 300x-3 of this title. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which the reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

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[1] So in original. Probably should be "section 300x-1a(a)".

[2] So in original. Probably should be "section 300x-1a(b)".

(July 1, 1944, ch. 373, title XIX, § 1914, formerly § 1913, as added Aug. 13, 1981, Pub. L. 97-35, title IX, § 901, 95 Stat. 545, and renumbered and amended Oct. 19, 1984, Pub. L. 98-509, title I, § 106(a), (c)-(e), (g), 98 Stat. 2358, 2359.)

Prior Provisions

A prior section 1914 of act July 1, 1944, was redesignated section 1915 by section 106(g) of Pub. L. 98-509, and is classified to section 300x-3 of this title.

Amendments

1984—Pub. L. 98-509, § 106(d), (e), which directed a technical amendment to the references to sections 300x-4 and 300x-5 of this title to reflect the renumbering of the corresponding sections of the original act, could not be executed because there is no reference to those sections.

Subsec. (a)(1). Pub. L. 98-509, § 106(a), substituted "section 300x-1a" for "section 300x-1" in two places.

Subsec. (b). Pub. L. 98-509, § 106(c), made a technical amendment to the reference to section 300x-3 of this title to reflect the renumbering of the corresponding section of the original act.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-509 applicable with respect to applications for allotments under this part for fiscal years beginning after fiscal year 1984 and to allotments made under such part for such fiscal years, see section 107 of Pub. L. 98-509, set out as a note under section 300x of this title.

§ 300x-3. Use of allotments

(a) Alcohol and drug abuse prevention, treatment, and rehabilitation programs and activities; community mental health centers

Except as provided in subsections (b) and (c) of this section, amounts paid to a State under section 300x-2 of this title and amounts transferred by the State for use under this part may be used by the State for—

(1) planning, establishing, maintaining, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs and activities to deal with alcohol and drug abuse; and

(2) grants to community mental health centers in accordance with section 300x-4(c) of this title and grants to community mental health centers for the provision of the following services:

(A) Services for chronically mentally ill individuals, which include identification of chronically mentally ill individuals and assistance to such individuals in gaining access to essential services through the assignment of case managers.

(B) Identification and assessment of severely mentally disturbed children and adolescents and provision of appropriate services to such individuals.

(C) Identification and assessment of mentally ill elderly individuals and provision of appropriate services to such individuals.

(D) Services for identifiable populations which are currently underserved in the State.

(E) Coordination of mental health and health care services provided within health care centers.

Amounts provided for the activities referred to in the preceding sentence may also be used for related planning, administration, and educational activities.

(b) Prohibited uses

A State may not use amounts paid to it under section 300x-2 of this title to—

[See main edition for text of (1) to (5)]

The Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this part.

(c) Transfer of funds

A State may transfer not more than 7 percent of the amount allotted to the State under section 300x-1a of this title for any fiscal year for use by the State under parts A and C of this subchapter and title V of the Social Security Act [42 U.S.C. 701 et seq.] in such fiscal year as follows: At any time in the first three quarters of the fiscal year a State may transfer not more than 3 percent of the allotment of the State for the fiscal year for such use, and in the last quarter of a fiscal year a State may transfer for such use not more than the remainder of the amount of its allotment which may be transferred.

(d) Limitation on administrative costs

Of the amount paid to any State under section 300x-2 of this title, not more than 10 percent may be used for administering the funds made available under such section. The State will pay from non-Federal sources the remaining costs of administering such funds.

(July 1, 1944, ch. 373, title XIX, § 1915, formerly § 1914, as added Aug. 13, 1981, Pub. L. 97-35, title IX, § 901, 95 Stat. 545, and renumbered and amended Oct. 19, 1984, Pub. L. 98-509, title I, §§ 105(b), 106(a), (b), (d), (g), 98 Stat. 2358, 2359.)

Prior Provisions

A prior section 1915 of act July 1, 1944, was redesignated section 1916 by section 106(g) of Pub. L. 98-509, and is classified to section 300x-4 of this title.

Amendments

1984—Pub. L. 98-509, § 106(b), (d), made technical amendments to the references to sections 300x-2 and 300x-4 of this title wherever appearing in this section to reflect the renumbering of the corresponding sections of the original act.

Subsec. (a). Pub. L. 98-509, § 105(b), struck out the designation "(1)" before "Except as provided", redesignated former subpars. (A) and (B) as pars. (1) and (2), respectively, redesignated former cls. (i) through (v) as subpars. (A) through (E), respectively, and struck out former par. (2) which authorized the Secretary to provide technical assistance to States in planning and operating activities to be carried out under this part.

Subsec. (c). Pub. L. 98-509, § 106(a), substituted "section 300x-1a of this title" for "section 300x-1 of this title".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-509 applicable with respect to applications for allotments under this part for fiscal years beginning after fiscal year 1984 and to allotments made under such part for such fiscal years, see section 107 of Pub. L. 98-509, set out as a note under section 300x of this title.

§ 300x-4. Application and description of activities

(a) Submission, form and assurances

In order to receive an allotment for a fiscal year under section 300x-1a(b)[3] of this title each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require. Each such application shall contain assurances that the legislature of the State has complied with the provisions of subsection (b) of this section and that the State will meet the requirements of subsection (c) of this section.

(b) Public hearings

After the expiration of the first fiscal year in which a State receives an allotment under section 300x-1a(b)[3] of this title, no funds shall be allotted to such State for any fiscal year under such section unless the legislature of the State conducts public hearings on the proposed use and distribution of funds to be provided under section 300x-2 of this title for such fiscal year.

(c) Certifications by chief executive officer of State

As part of the annual application required by subsection (a) of this section, the chief executive officer of each State shall certify as follows:

(1) The State agrees to use the funds alloted[4] to it under section 300x-1a of this title in accordance with the requirements of this part.

(2) Except as provided in subsection (h) of this section, for fiscal years 1985, 1986, and 1987, the State agrees to make grants, subject to paragraphs (3) and (4), to each community mental health center within the State which received a grant under the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.] in fiscal year 1981 and which would be eligible to receive a grant for its operation under that Act (as in effect on the day before August 13, 1981) for such fiscal year if such grants were made under such Act.

[*See main edition for text of* (*3*)]

(4) The State agrees to require that any community mental health center in the State receiving a grant from the State under this part provide—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) day treatment or other partial hospitalization services or psychosocial rehabilitation services,

[*See main edition for text of* (*D*) *and* (*E*), (*5*)]

(6)(A) The State agrees to use the funds allotted to it under section 300x-1a of this title for fiscal year 1982 for the mental health and alcohol and drug abuse activities prescribed by section 300x-3(a) of this title as follows:

[*See main edition for text of* (*i*) *and* (*ii*)]

(B) The State agrees to use 75 percent of the funds allotted to it under section 300x-1a of this title for fiscal years beginning after fiscal year 1984 for the mental health and alcohol and drug abuse activities prescribed by section 300x-3(a) of this title as prescribed by subparagraph (A).

(C) Repealed. Pub. L. 98-509, title I, § 103(a), Oct. 19, 1984, 98 Stat. 2355.

(7) In any fiscal year, the State agrees to use funds for the alcohol and drug abuse activities prescribed by section 300x-3(a) of this title as follows:

[*See main edition for text of* (*A*) *and* (*B*), (*8*) *to* (*10*)]

(11) That the Federal funds made available under section 300x-2 of this title for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.

[*See main edition for text of* (*12*) *and* (*13*)]

(14) Of the amount allotted to a State under this part in any fiscal year, the State agrees to use—

(A) in fiscal year 1985, not less than 3 percent of such amount; and

(B) in any other fiscal year, not less than 5 percent of such amount,

to initiate and provide new or expanded alcohol and drug abuse services for women.

(15) Of the amount to be used in any fiscal year for mental health activities, the State agrees to use not less than 10 percent of such amount to initiate and provide—

(A) in fiscal year 1985, new comprehensive community mental health services for underserved areas or for underserved populations, with special emphasis on new mental health services for severely disturbed children and adolescents; and

(B) in any other fiscal year, new or expanded comprehensive community mental health services for underserved areas or for underserved populations, with special emphasis on new or expanded mental health services for severely disturbed children and adolescents.

The Secretary may not prescribe for a State the manner of compliance with the requirements of this subsection.

(d) Description of intended use of funds; public access; revision

The chief executive officer of a State shall, as part of the application required by subsection (a) of this section, also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 300x-2 of this title for the fiscal year for which the application is submitted, including information on the programs and activities to be supported and services to be provided. The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal. The description shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this part, and any revision shall be subject to the requirements of the preceding sentence.

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[3] So in original. Probably should be "section 300x-1a(a)".

[4] So in original. Probably should be "allotted".

(e) Comprehensive State mental health plan; contents

With amounts available under section 300x-3(a) of this title, the chief executive officer of a State may prepare and submit a comprehensive mental health plan which shall include—

(1) an identification of the mental health service areas within the State and the agency responsible for the delivery and coordination of mental health services within the State;

(2) an identification of the need in each mental health service area of the State for mental health and related services, particularly the need for services to chronically mentally ill individuals, seriously mentally ill children, adolescents, and elderly individuals, and other identified populations;

(3) a description of the resources devoted to and activities to be carried out under the plan, including—

(A) a description of mental health activities (including activities for chronically mentally ill individuals) funded or supported under this chapter,

(B) a description of mental health activities (including activities for chronically mentally ill individuals) funded or supported by State appropriations,

(C) a description of mental health and related support activities (including activities for chronically mentally ill individuals) funded under or supported through title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and other programs of Federal assistance, and

(D) to the extent feasible, a description of mental health activities reimbursed or provided in the State by private third party insurers and local governments;

(4) the mental health prevention and treatment objectives to be achieved under the plan and a listing of the programs and resources to be used to meet such objectives;

(5) a strategy for the establishment and implementation for chronically mentally ill individuals of an organized community-based system of care which shall provide for quantitative targets to be achieved in the implementation of the plan, including numbers of chronically mentally ill individuals residing in the areas to be served, a description of services to be provided to such individuals in gaining access to essential mental health services, and a description of medical and dental care and rehabilitation services and employment, housing, and other support services designed to enable such individuals to function outside of inpatient institutions to the maximum extent of their capabilities;

(6) quantitative targets for provision of community-based mental health services for underserved populations, with particular emphasis on elderly individuals, children and adolescents, and individuals residing in areas without adequate outpatient treatment facilities; and

(7) a method for the periodic evaluation of the plan's effectiveness in meeting the objectives set forth in the plan.

(f) State mental health services planning council

With amounts available under section 300x-3(a) of this title, the chief executive officer of the State may establish a State mental health services planning council which will—

(1) serve as an advocate for chronically mentally ill individuals, seriously mentally ill children, adolescents, elderly individuals, and other individuals with mental illness or emotional problems, and

(2) monitor, review, and evaluate, not less often than annually, the allocation and adequacy of mental health services within the State.

Such a council shall be made up of residents of the State and include in its membership representatives of the principal State agencies involved in mental health, higher education training facilities, and public and private entities concerned with the need, planning, operation, funding, and use of mental health and related services and activities. At least one half of the membership shall consist of individuals who are not State employees or providers of mental health services.

(g) Annual report by Secretary to Congressional committees

The Secretary shall report annually to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on the new or expanded programs and services initiated and provided in accordance with paragraphs (14) and (15) of subsection (c) of this section. The report shall include a detailed description of such programs and services, an assessment of the adequacy of such programs and services in meeting the alcohol and drug abuse treatment needs of women and the mental health needs of severely disturbed children and adolescents, and such other information, including legislative and administrative recommendations, as the Secretary deems appropriate.

(h) Grants by States

A State shall be required to make a grant to a community mental health center under subsection (c)(2) of this section unless—

(1) the State recommends on the basis of—

(A) any Federal finding, Federal administrative action, or judicial proceeding with respect to any such community mental health center, or

(B) a review of such center in accordance with the criteria and procedures required under subsection (c)(5) of this section, that the State not be required to make such grants; and

(2) the Secretary approves the recommendation of the State under paragraph (1) based upon a substantive and procedural review of the record made by the State in making its recommendation under paragraph (1) which review demonstrates that the community mental health center is not providing services as prescribed by paragraphs (3) and (4) of subsection (c) of this section or is engaged in a substantial misuse of funds.

(July 1, 1944, ch. 373, title XIX, § 1916, formerly § 1915, as added Aug. 13, 1981, Pub. L. 97-35, title IX, § 901, 95 Stat. 546, amended Jan. 4, 1983, Pub. L. 97-414, § 8(u), 96 Stat. 2063, renumbered and amended Oct. 19, 1984, Pub. L. 98-509, title I, §§ 103, 106(a)-(c), (f), (g), 98 Stat. 2355, 2358, 2359; Oct. 7, 1985, Pub. L. 99-117, § 7(a), 99 Stat. 492.)

REFERENCES IN TEXT

Section 301 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4571], referred to in subsec. (c)(6)(A), was redesignated section 520 of title V of act July 1, 1944, by Pub. L. 98-24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd of this title.

The Social Security Act, referred to in subsec. (e)(3)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 1916 of act July 1, 1944, was redesignated section 1917 by section 106(g) of Pub. L. 98-509, and is classified to section 300x-5 of this title.

AMENDMENTS

1985—Subsec. (c)(14). Pub. L. 99-117, § 7(a)(1), added par. (14). Former par. (14), providing that, of the amount allotted to a State under this part in any fiscal year, the State would agree to use not less than 5 pecent of such amount to initiate and provide new alcohol and drug abuse services for women, was struck out.

Subsec. (c)(15). Pub. L. 99-117, § 7(a)(1), added par. (15). Former par. (15), providing that, of the amounts to be used in any fiscal year for mental health activities, the State would agree to use not less than 10 percent of such amount to initiate and provide (A) new mental health services for severely disturbed children and adolescents, and (B) new comprehensive community mental health programs for underserved areas or for underserved populations, was struck out.

Subsec. (g). Pub. L. 99-117, § 7(a)(3), inserted "or expanded" after "Senate on the new".

1984—Pub. L. 98-509, § 106(b), (c), (f), made technical amendments to the references to sections 300x-2, 300x-3, 300x-6 of this title wherever appearing in this section to reflect the renumbering of the corresponding sections of the original act.

Subsecs. (a), (b), (c)(1). Pub. L. 98-509, § 106(a), substituted "section 300x-1a" for "section 300x-1".

Subsec. (c)(2). Pub. L. 98-509, § 103(b)(1), (d)(2), substituted "subsection (h) of this section" for "subsection (e) of this section" and "1985, 1986, and 1987" for "1982, 1983, and 1984".

Subsec. (c)(4)(C). Pub. L. 98-509, § 103(d)(3), inserted "or psychosocial rehabilitation services".

Subsec. (c)(6)(A). Pub. L. 98-509, § 106(a), substituted "section 300x-1a" for "section 300x-1".

Subsec. (c)(6)(B). Pub. L. 98-509, § 103(a), substituted "75 percent of the funds allotted to it under section 300x-1a of this title for fiscal years beginning after fiscal year 1984" for "95 percent of the funds allotted to it under section 300x-1 of this title for fiscal year 1983".

Subsec. (c)(6)(C). Pub. L. 98-509, § 103(a), struck out subpar. (C) which had required the State to use 85 percent of the funds allotted to it under former section 300x-1 of this title for fiscal year 1984 for the mental health and alcohol and drug abuse activities prescribed by section 300x-3(a) of this title as prescribed by subpar. (A).

Subsec. (c)(14), (15). Pub. L. 98-509, § 103(b)(2), which directed that pars. (14) and (15) be added at the end of subsec. (c) was executed by adding pars. (14) and (15) after par. (13) as the probable intent of Congress.

Subsecs. (e) to (h). Pub. L. 98-509, § 103(d)(1), added subsecs. (e) to (g) and redesignated former subsec. (e) as (h).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-509 applicable with respect to applications for allotments under this part for fiscal years beginning after fiscal year 1984 and to allotments made under such part for such fiscal years, see section 107 of Pub. L. 98-509, set out as a note under section 300x of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290aa-3, 300x-1a, 300x-3, 300x-5, 300x-6 of this title.

§ 300x-5. Reports and audits

(a) Annual reports; contents; copies

(1) Each State shall prepare and submit to the Secretary annual reports on its activities under this part. Such reports shall be in such form and contain such information as the Secretary determines (after consultation with the States and the Comptroller General) to be necessary (A) to determine whether funds were expended in accordance with this part and consistent with the needs within the State identified pursuant to section 300x-4(c)(10) of this title, (B) to secure a description of the activities of the State under this part, (C) to furnish the Secretary a detailed description of the new or expanded programs and services initiated and provided in accordance with paragraphs (14) and (15) of section 300x-4(c) of this title, and (D) to secure a record of the purposes for which funds were spent, of the recipients of such funds, and of the progress made toward achieving the purposes for which the funds were provided. Copies of the report shall be provided, upon request, to any interested person (including any public agency).

[*See main edition for text of* (2)]

(b) Fiscal control; accounting procedures; biennial audits; repayments and offsets; public inspection; Comptroller General evaluations; report to Congress

(1) Each State shall establish fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under section 300x-2 of this title and funds transferred for use under this part.

(2) Each State shall provide for one of the following:

(A) A financial and compliance audit of the funds provided the State under section 300x-2 of this title. Such audits shall be performed biennially, shall cover expenditures in each fiscal year, and shall be conducted in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, activities, and functions.

(B) A single financial and compliance audit of each entity administering funds provided under section 300x-2 of this title. An audit of such an entity shall be conducted biennially, shall cover expenditures in each fiscal year, and shall be conducted in accordance with standards of the Comptroller General referred to in subparagraph (A).

Within 30 days after completion of an audit under subparagraph (A) or (B), a copy of the audit report shall be transmitted to the State legislature and the Secretary and shall be made available for public inspection. For purposes of subparagraphs (A) and (B), the term "financial and compliance audit" means an audit to determine whether the financial statements of an audited entity present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

(3) Each State shall, after being provided by the Secretary with adequate notice and opportunity for a hearing within the affected State, repay to the United States amounts found not to have been expended in accordance with the requirements of this part or the certification provided under section 300x-4 of this title. If such repayment is not made, the Secretary shall, after providing the State with adequate notice and opportunity for a hearing, offset such amounts against the amount of any allotment to which the State is or may become entitled under section 300x-1a of this title.

[*See main edition for text of* (*4*) *and* (*5*)]

(6) Not later than October 1, 1986, the Secretary shall report to the Congress on the activities of the States which have received funds under this part and may include in the report any recommendations for appropriate changes in legislation.

[*See main edition for text of* (c)]

(d) Model criteria and forms for collection of data and information

The Secretary, in consultation with appropriate national organizations, shall develop model criteria and forms for the collection of data and information with respect to services provided under this part in order to enable States to share uniform data and information with respect to the provision of such services.

(July 1, 1944, ch. 373, title XIX, § 1917, formerly § 1916, as added Aug. 13, 1981, Pub. L. 97-35, title IX, § 901, 95 Stat. 549, and renumbered and amended Oct. 19, 1984, Pub. L. 98-509, title I, §§ 104, 106(a), (b), (d), (g), 98 Stat. 2357-2359; Oct. 7, 1985, Pub. L. 99-117, § 7(b), 99 Stat. 493.)

PRIOR PROVISIONS

A prior section 1917 of act July 1, 1944, was redesignated section 1918 by section 106(g) of Pub. L. 98-509, and is classified to section 300x-6 of this title.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-117 designated provisions preceding par. (2) as par. (1), redesignated therein cls. (1) to (4) as (A) to (D), respectively, and, in cl. (C) as so redesignated, inserted "or expanded" after "new".

1984—Pub. L. 98-509, § 106(b), (d), made technical amendments to the references to sections 300x-2 and 300x-4 of this title wherever appearing in this section to reflect the renumbering of the corresponding sections of the original act.

Subsec. (a). Pub. L. 98-509, § 104(a), added cl. (3) and redesignated former cl. (3) as (4).

Subsec. (b)(2). Pub. L. 98-509, § 104(b), substituted provisions requiring biennial financial and compliance audits of either the funds provided under section 300x-2 of this title or of each entity administering such funds and transmittal of a copy of the audit report to the State legislature and the Secretary within 30 days after completion of the audit (with such report to be made available for public inspection), and defining "financial and compliance audit", for provisions requiring annual audits, conducted by an entity independent of any agency administering a program funded under this part, of expenditures from funds provided under section 300x-2 of this title, and transmittal by the chief executive officer of the State of a copy of the audit to the Secretary within 30 days after completion.

Subsec. (b)(3). Pub. L. 98-509, § 106(a), substituted "section 300x-1a" for "section 300x-1".

Subsec. (b)(6). Pub. L. 98-509, § 104(c), substituted "October 1, 1986" for "October 1, 1983".

Subsec. (d). Pub. L. 98-509, § 104(d), added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-509 applicable with respect to applications for allotments under this part for fiscal years beginning after fiscal year 1984 and to allotments made under such part for such fiscal years, see section 107 of Pub. L. 98-509, set out as a note under section 300x of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x-1a of this title.

§ 300x-6. Withholding of funds

(a) Prerequisites

(1) The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not use its allotment in accordance with the requirements of this part or the certification provided under section 300x-4 of this title. The Secretary shall withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(2) The Secretary may not institute proceedings to withhold funds under paragraph (1) unless the Secretary has conducted an investigation concerning whether the State has used its allotment in accordance with the require-

ments of this part or the certification provided under section 300x-4 of this title. Investigations required by this paragraph shall be conducted within the affected State by qualified investigators.

(3) The Secretary shall respond in an expeditious manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the requirements of this part or the certification provided under section 300x-4 of this title.

(4) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the requirements of this part or the certification provided under section 300x-4 of this title.

(b) Investigations

(1) The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this part in order to evaluate compliance with the requirements of this part and the certification provided under section 300x-4 of this title.

(2) The Comptroller General of the United States may conduct investigations of the use of funds received under this part by a State in order to insure compliance with the requirements of this part and the certification provided under section 300x-4 of this title.

[*See main edition for text of* (c) *and* (d)]

(July 1, 1944, ch. 373, title XIX, § 1918, formerly § 1917, as added Aug. 13, 1981, Pub. L. 97-35, title IX, § 901, 95 Stat. 550, and renumbered and amended Oct. 19, 1984, Pub. L. 98-509, title I, § 106(d), (g), 98 Stat. 2358, 2359.)

PRIOR PROVISIONS

A prior section 1918 of act July 1, 1944, was redesignated section 1919 by section 106(g) of Pub. L. 98-509, and is classified to section 300x-7 of this title.

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-509, § 106(d), made a technical amendment to the references to section 300x-4 of this title to reflect the renumbering of the corresponding section of the original act.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-509 applicable with respect to applications for allotments under this part for fiscal years beginning after fiscal year 1984 and to allotments made under such part for such fiscal years, see section 107 of Pub. L. 98-509, set out as a note under section 300x of this title.

§ 300x-7. Nondiscrimination provisions

[*See main edition for text of* (a)]

(b) Failure to comply

Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under section 300x-1a of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

[*See main edition for text of* (1) *to* (3); (c)]

(July 1, 1944, ch. 373, title XIX, § 1919, formerly § 1918, as added Aug. 13, 1981, Pub. L. 97-35, title IX, § 901, 95 Stat. 551, and renumbered and amended Oct. 19, 1984, Pub. L. 98-509, title I, § 106(a), (g), 98 Stat. 2358, 2359.)

PRIOR PROVISIONS

A prior section 1919 of act July 1, 1944, was redesignated section 1920 by section 106(g) of Pub. L. 98-509, and is classified to section 300x-8 of this title.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-509, § 106(a), substituted "section 300x-1a" for "section 300x-1".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-509 applicable with respect to applications for allotments under this part for fiscal years beginning after fiscal year 1984 and to allotments made under such part for such fiscal years, see section 107 of Pub. L. 98-509, set out as a note under section 300x of this title.

§ 300x-8. Criminal penalty for false statements

[*See main edition for text*]

(July 1, 1944, ch. 373, title XIX, § 1920, formerly § 1919, as added Aug. 13, 1981, Pub. L. 97-35, title IX, § 901, 95 Stat. 552, and renumbered Oct. 19, 1984, Pub. L. 98-509, title I, § 106(g), 98 Stat. 2359.)

PRIOR PROVISIONS

A prior section 1920 of act July 1, 1944, was redesignated section 1920A by section 106(g) of Pub. L. 98-509, and is classified to section 300x-9 of this title.

§ 300x-9. Technical assistance; data collection

The Secretary, through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, shall—

(1) provide technical assistance to States (including public and nonprofit private entities within States) with respect to programs conducted under this part; and

(2) conduct data collection activities with respect to such programs, including data collection activities concerning the types of alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention activities conducted under this part, the number and types of individuals receiving services under such programs and activities, and the sources of funding (other than funding provided under this part) for such programs and activities.

(July 1, 1944, ch. 373, title XIX, § 1920A, formerly § 1920, as added Aug. 13, 1981, Pub. L. 97-35, title IX, § 901, 95 Stat. 552, and renumbered and amended Oct. 19, 1984, Pub. L. 98-509, title I, §§ 105(a), 106(g), 98 Stat. 2358, 2359; Oct. 7, 1985, Pub. L. 99-117, § 7(c), 99 Stat. 493.)

AMENDMENTS

1985—Par. (1). Pub. L. 99-117, § 7(c)(1), substituted "this part" for "part B of title XIX".

Par. (2). Pub. L. 99-117, § 7(c)(2), substituted "this part" for "such part" in two places.

1984—Pub. L. 98-509, § 105(a), substituted provisions relating to technical assistance and data collection for transition provisions regarding use, at the request of the State, of its allotment by the Secretary during the transition period prescribed by title XVII of the Omnibus Budget Reconciliation Act of 1981 for grants under this part.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-509 applicable with respect to applications for allotments under this part for fiscal years beginning after fiscal year 1984 and to allotments made under such part for such fiscal years, see section 107 of Pub. L. 98-509, set out as a note under section 300x of this title.

SUBCHAPTER XVIII—ADOLESCENT FAMILY LIFE DEMONSTRATION PROJECTS

§ 300z. Findings and purposes

(a) The Congress finds that—

[*See main edition for text of (1) to (4)*]

(5) pregnancy and childbirth among unmarried adolescents, particularly young adolescents, often results in severe adverse health, social, and economic consequences including: a higher percentage of pregnancy and childbirth complications; a higher incidence of low birth weight babies; a higher infant mortality and morbidity; a greater likelihood that an adolescent marriage will end in divorce; a decreased likelihood of completing schooling; and higher risks of unemployment and welfare dependency; and therefore, education, training, and job research services are important for adolescent parents;

[*See main edition for text of (6) to (11)*]

(b) Therefore, the purposes of this subchapter are—

[*See main edition for text of (1) and (2)*]

(3) to establish innovative, comprehensive, and integrated approaches to the delivery of care services both for pregnant adolescents, with primary emphasis on unmarried adolescents who are seventeen years of age or under, and for adolescent parents, which shall be based upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration, and linkages among such existing programs in order to—

[*See main edition for text of (A) and (B), (4) to (6)*]

(As amended Oct. 19, 1984, Pub. L. 98-512, § 2(b), (c), 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (a)(5). Pub. L. 98-512, § 2(b), deleted reference relating to developmental disabilities and added provision relating to the importance of education, training, and job research services for adolescent parents.

Subsec. (b)(3). Pub. L. 98-512, § 2(c), inserted "both" before "for pregnant adolescents".

§ 300z-1. Definitions; regulations applicable

(a) For the purposes of this subchapter, the term—

[*See main edition for text of (1) to (3)*]

(4) "necessary services" means services which may be provided by grantees which are—

[*See main edition for text of (A) to (G)*]

(H) appropriate educational and vocational services;

[*See main edition for text of (I) to (Q), (5) to (10); (b)*]

(As amended Oct. 19, 1984, Pub. L. 98-512, § 2(d), 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (a)(4)(H). Pub. L. 98-512 struck out "and referral to such services" after "vocational services".

§ 300z-7. Research

[*See main edition for text of (a) to (f)*]

(g) Repealed. Pub. L. 98-512, § 2(e), Oct. 19, 1984, 98 Stat. 2409

(As amended Oct. 19, 1984, Pub. L. 98-512, § 2(e), 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-512 struck out subsec. (g) which provided for the collection of survey data used primarily for generation of national population estimates.

§ 300z-9. Authorization of appropriations

(a) For the purpose of carrying out this subchapter, there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1982, $30,000,000 for the fiscal year ending September 30, 1983, $30,000,000 for the fiscal year ending September 30, 1984, and $30,000,000 for the fiscal year ending September 30, 1985.

[*See main edition for text of (b) and (c)*]

(As amended Oct. 19, 1984, Pub. L. 98-512, § 2(a), 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-509 added provisions authorizing appropriations for the fiscal year ending Sept. 30, 1985.

SUBCHAPTER XIX—MISCELLANEOUS

§ 300aa. Gifts for benefit of Service

(a) Acceptance by Secretary

The Secretary of Health and Human Services is authorized to accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Service or for the carrying out of any of its functions. Conditional gifts may be so accepted if recommended by the Surgeon General, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress.

(b) Depository of funds; availability for expenditure

Any unconditional gift of money accepted pursuant to the authority granted in subsection (a) of this section, the net proceeds from the liquidation (pursuant to subsection (c) or subsection (d) of this section) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Service, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such gifts and the income from such investments shall be available for expenditure in the operation of the Service and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Service by Congress.

(c) Evidences of unconditional gifts of intangible property

The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in subsection (a) of this section shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them, or liquidate them except that they shall be liquidated upon the request of the Secretary of Health and Human Services whenever necessary to meet payments required in the operation of the Service or the performance of its functions. The proceeds and income from any such property held by the Secretary of the Treasury shall be available for expenditure as is provided in subsection (b) of this section.

(d) Real property or tangible personal property

The Secretary of Health and Human Services, shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in subsection (a) of this section and he shall permit such property to be used for the operation of the Service and the performance of its functions or he may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in subsection (b) of this section: *Provided*, That the income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Secretary of Health and Human Services, for the maintenance, preservation, or repair and insurance of such property and that any proceeds from insurance may be used to restore the property insured. Any such property when not required for the operation of the Service or the performance of its functions may be liquidated by the Secretary of Health and Human Services, and the proceeds thereof deposited with the Secretary of the Treasury, whenever in his judgment the purposes of the gifts will be served thereby.

(July 1, 1944, ch. 373, title XXI, § 2101, formerly title V, § 501, 58 Stat. 709; July 3, 1946, ch. 538, § 10, 60 Stat. 425; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 15, 1968, Pub. L. 90-574, title V, § 503(b), 82 Stat. 1012; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695; renumbered Apr. 26, 1983, Pub. L. 98-24, § 2(a)(1), 97 Stat. 176.)

CODIFICATION

Section was formerly classified to section 219 of this title prior to its renumbering by Pub. L. 98-24.

AMENDMENTS

1968—Subsec. (e). Pub. L. 90-574 struck out subsec. (e) which provided for the acknowledgment of donations of $50,000 or more in aid of research by the establishment of suitable memorials within the National Institutes of Health, and the National Institute of Mental Health.

1948—Subsec. (e). Act June 16, 1948, substituted "National Institutes of Health" for "National Institute of Health".

1946—Subsec. (e). Act July 3, 1946, made provisions applicable to the National Institute of Mental Health.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. The Federal Security Agency and the office of Administrator were abolished by section 8 of Reorg. Plan No. 1 of 1953. The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

CROSS REFERENCES

National Institutes of Health gift fund and conditional gift fund to be classified on books of Treasury as trust funds, see section 1321 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 218, 284a, 286, 287a, 287c-2, 289f of this title.

§ 300aa-1. Use of immigration station hospitals

The Immigration and Naturalization Service may, by agreement of the heads of the departments concerned, permit the Public Health

Service to use hospitals at immigration stations for the care of Public Health Service patients. The Surgeon General shall reimburse the Immigration and Naturalization Service for the actual cost of furnishing fuel, light, water, telephone, and similar supplies and services, which reimbursement shall be covered into the proper Immigration and Naturalization Service appropriation, or such costs may be paid from working funds established as provided by law, but no charge shall be made for the expense of physical upkeep of the hospitals. The Immigration and Naturalization Service shall reimburse the Surgeon General for the care and treatment of persons detained in hospitals of the Public Health Service at the request of the Immigration and Naturalization Service unless such persons are entitled to care and treatment under section 249(a) [1] of this title.

(July 1, 1944, ch. 373, title XXI, § 2102, formerly title V, § 502, 58 Stat. 710, renumbered Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176.)

References in Text

Subsec. (a) of section 249 of this title, referred to in text, which related to persons entitled to care and treatment without charge, was repealed, and subsec. (c) of section 249 of this title was redesignated as subsec. (a), by Pub. L. 97–35, title IX, § 986(a), (b)(2), Aug. 13, 1981, 95 Stat. 603.

Codification

Section was formerly classified to section 220 of this title prior to its renumbering by Pub. L. 98–24.

Transfer of Functions

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by sections 1 and 2 of Reorg. Plan No. 2 of 1950, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, which were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 662. The Immigration and Naturalization Service, referred to in this section, is a bureau in the Department of Justice.

§ 300aa–2. Disposition of money collected for care of patients

Money collected as provided by law for expenses incurred in the care and treatment of foreign seamen, and money received for the care and treatment of pay patients, including any amounts received from any executive department on account of care and treatment of pay patients, shall be covered into the appropriation from which the expenses of such care and treatment were paid.

(July 1, 1944, ch. 373, title XXI, § 2103, formerly title V, § 503, 58 Stat. 710, renumbered Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176.)

Codification

Section was formerly classified to section 221 of this title prior to its renumbering by Pub. L. 98–24.

§ 300aa–3. Care of Service patients at Saint Elizabeths Hospital

Insane patients entitled to treatment by the Service shall be admitted, upon order of the Secretary, into Saint Elizabeths Hospital or, upon order of the Surgeon General, into any hospital, institution, or station of the Service especially equipped for the accommodation of such patients and shall be cared for and treated therein until cured or until ordered removed by the officer authorizing such admittance. Funds available for the operation of such hospitals, institutions, and stations of the Service shall also be available for expenditure to meet court costs and other expenses of the Service incident to proceedings for the commitment, to Saint Elizabeths Hospital or to any hospital, institution, or station of the Service, of any mentally incompetent person entitled to treatment by the Service.

(July 1, 1944, ch. 373, title XXI, § 2104, formerly title V, § 504, 58 Stat. 710; June 25, 1948, ch. 654, § 6, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176.)

Repeal of Section

Pub. L. 98–621, §§ 10(s), 11(b), Nov. 8, 1984, 98 Stat. 3381, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

Codification

Section was formerly classified to section 222 of this title prior to its renumbering by Pub. L. 98–24.

Amendments

1948—Act June 25, 1948, permitted the payment of court costs and other expenses of the Service incident to commitment of mental patients.

Transfer of Functions

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. The Federal Security Agency and the office of Administrator were abolished by section 8 of Reorg. Plan No. 1 of 1953. The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and

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[1] See References in Text note below.

Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

SAINT ELIZABETHS HOSPITAL PATIENTS IN SERVICE HOSPITALS

Section 1308, formerly § 608, of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, provided that insane patients receiving treatment at hospitals of the Service during World War II may continue to be cared for after termination of the War, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§ 300aa–4. Repealed. Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495

Section, acts July 1, 1944, ch. 373, title XXI, § 2105, formerly title V, § 505, 58 Stat. 710; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176, provided procedures under which the Secretary could settle claims for damages from collisions or incident to the operation of vessels within a year of the accrual of such claims and not to exceed $3,000.

§ 300aa–5. Transportation of remains of officers

Appropriations available for traveling expenses of the Service shall be available for meeting the cost of preparation for burial and of transportation to the place of burial of remains of commissioned officers, and of personnel specified in regulations, who die in line of duty. Appropriations available for carrying out the provisions of this chapter shall also be available for the payment of such expenses relating to the recovery, care and disposition of the remains of personnel or their dependents as may be authorized under other provisions of law.

(July 1, 1944, ch. 373, title XXI, § 2106, formerly title V, § 506, 58 Stat. 710; July 15, 1954, ch. 507, § 14(b), 68 Stat. 481; renumbered Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176.)

CODIFICATION

Section was formerly classified to section 224 of this title prior to its renumbering by Pub. L. 98–24.

AMENDMENTS

1954—Act July 15, 1954, added sentence relating to availability of appropriations for paying expenses relating to the recovery, care, and disposition of the remains of personnel or their dependents.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DISPOSITION OF REMAINS OF DECEASED PERSONNEL

Recovery, care and disposition of the remains of deceased members of the uniformed services and other deceased personnel, see section 1481 et seq. of Title 10, Armed Forces.

§ 300aa–6. Availability of appropriations for grants to Federal institutions

Appropriations to the Public Health Service available under this chapter for research, training, or demonstration project grants or for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence and appropriations under title VI of the Mental Health Systems Act [42 U.S.C. 9511 et seq.] shall also be available on the same terms and conditions as apply to non-Federal institutions, for grants for the same purpose to Federal institutions, except that grants to Federal institutions may be funded at 100 per centum of the costs.

(July 1, 1944, ch. 373, title XXI, § 2107, formerly title V, § 507, as added June 24, 1967, Pub. L. 90–31, § 5, 81 Stat. 79, and amended Oct. 27, 1970, Pub. L. 91–513, title I, § 3(c), 84 Stat. 1241; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1102(b), 90 Stat. 415; Oct. 7, 1980, Pub. L. 96–398, title VIII, § 804(b), 94 Stat. 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(2), 95 Stat. 560; renumbered Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176.)

REFERENCES IN TEXT

The Mental Health Systems Act, referred to in text, is Pub. L. 96–398, Oct. 7, 1980, 94 Stat. 1564, as amended. Title VI of the Mental Health Systems Act is classified generally to subchapter V (§ 9511 et seq.) of chapter 102 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

CODIFICATION

Section was formerly classified to section 225a of this title prior to its renumbering by Pub. L. 98–24.

PRIOR PROVISIONS

A prior section 507 of act July 1, 1944, which was classified to section 225 of this title, was repealed by act July 12, 1955, ch. 328, § 5(4), 69 Stat. 296.

AMENDMENTS

1981—Pub. L. 97–35 struck out provisions relating to appropriations available under the Community Mental Health Centers Act for construction, etc.

1980—Pub. L. 96–398 struck out "and" after "drug dependence," and added reference to title VI of the Mental Health Systems Act.

1976—Pub. L. 94–278 substituted "Federal institutions, except that grants to" for "hospitals of the Service, of the Veterans' Administration, or of the Bureau of Prisons of the Department of Justice, and to Saint Elizabeth Hospital, except grants to such".

1970—Pub. L. 91–513 inserted references to appropriations available for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence, and appropriations available under the Community Mental Health Centers Act for construction and staffing of community mental health centers and alcoholism and narcotic addiction, drug abuse, and drug dependence facilities, and added provision that grants to the specified Federal institutions may be funded at 100 per centum of the costs.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as a note under section 300aa-14 of this title.

EFFECTIVE DATE

Section 5 of Pub. L. 90-31 provided in part that this section shall be effective July 1, 1968.

§ 300aa-7. Transfer of funds

For the purpose of any reorganization under section 203 of this title, the Secretary, with the approval of the Director of the Office of Management and Budget, is authorized to make such transfers of funds between appropriations as may be necessary for the continuance of transferred functions.

(July 1, 1944, ch. 373, title XXI, § 2108, formerly title V, § 508, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; renumbered Apr. 26, 1983, Pub. L. 98-24, § 2(a)(1), 97 Stat. 176.)

CODIFICATION

Section was formerly classified to section 226 of this title prior to its renumbering by Pub. L. 98-24.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated the Bureau of the Budget as the Office of Management and Budget.

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. The Federal Security Agency and the office of Administrator were abolished by section 8 of Reorg. Plan No. 1 of 1953. The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

§ 300aa-8. Availability of appropriations

Appropriations for carrying out the purposes of this chapter shall be available for expenditure for personal services and rent at the seat of Government; books of reference, periodicals, and exhibits; printing and binding; transporting in Government-owned automotive equipment, to and from school, children of personnel who have quarters for themselves and their families at stations determined by the Surgeon General to be isolated stations; expenses incurred in pursuing, identifying, and returning prisoners who escape from any hospital, institution, or station of the Service or from the custody of any officer or employee of the Service, including rewards for the capture of such prisoners; furnishing, repairing, and cleaning such wearing apparel as may be prescribed by the Surgeon General for use by employees in the performance of their official duties; reimbursing officers and employees, subject to regulations of the Secretary, for the cost of repairing or replacing their personal belongings damaged or destroyed by patients while such officers or employees are engaged in the performance of their official duties; and maintenance of buildings of the National Institutes of Health.

(July 1, 1944, ch. 373, title XXI, § 2109, formerly title V, § 509, 58 Stat. 711; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; June 25, 1948, ch. 654, § 7, 62 Stat. 1018; Reorg. Plan No. 1 of 1953, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered Apr. 26, 1983, Pub. L. 98-24, § 2(a)(1), 97 Stat. 176.)

CODIFICATION

Section was formerly classified to section 227 of this title prior to its renumbering by Pub. L. 98-24.

AMENDMENTS

1948—Act June 25, 1948, amended section generally to make it apply to all appropriations to carry out the purposes of the Service instead of merely to appropriations to carry out the research functions of the Service.

Act June 16, 1948, substituted "National Institutes of Health" for "National Institute of Health".

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. The Federal Security Agency and the office of Administrator were abolished by section 8 of Reorg. Plan No. 1 of 1953. The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

§ 300aa-9. Wearing of uniforms

Except as may be authorized by regulations of the President, the insignia and uniform of commissioned officers of the Service, or any distinctive part of such insignia or uniform, or any insignia or uniform any part of which is similar to a distinctive part thereof, shall not be worn, after the promulgation of such regulations, by any person other than a commissioned officer of the Service.

(July 1, 1944, ch. 373, title XXI, § 2110, formerly title V, § 510, 58 Stat. 711; June 25, 1948, ch. 645, § 5, 62 Stat. 859; renumbered Apr. 26, 1983, Pub. L. 98-24, § 2(a)(1), 97 Stat. 176.)

Codification

Section was formerly classified to section 228 of this title prior to its renumbering by Pub. L. 98-24.

Amendments

1948—Act June 25, 1948, omitted penal provisions. See section 702 of Title 18, Crimes and Criminal Procedure.

Effective Date of 1948 Amendment

Amendment effective Sept. 1, 1948, see section 20 of act June 25, 1948.

Transfer of Functions

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Delegation of Functions

Functions of the President delegated to the Secretary of Health, Education, and Welfare [now Health and Human Services], see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, set out as a note under section 202 of this title.

§ 300aa-10. Annual report of Surgeon General

The Surgeon General shall transmit to the Secretary, for submission to the Congress at the beginning of each regular session, a full report of the administration of the functions of the Service under this chapter, including a detailed statement of receipts and disbursements.

(July 1, 1944, ch. 373, title XXI, § 2111, formerly title V, § 511, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered Apr. 26, 1983, Pub. L. 98-24, § 2(a)(1), 97 Stat. 176.)

Codification

Section was formerly classified to section 229 of this title prior to its renumbering by Pub. L. 98-24.

Transfer of Functions

The Office of the Surgeon General was abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and all functions thereof were transferred to the Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 202 of this title. The Federal Security Agency and the office of Administrator were abolished by section 8 of Reorg. Plan No. 1 of 1953. The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

Agency Reporting Requirements; Report by Secretary of Health, Education, and Welfare to Congressional Committees Relating to Requirements, Termination, etc.

Pub. L. 93-641, § 7, Jan. 4, 1975, 88 Stat. 2275, provided that by Jan. 4, 1976, the Secretary of Health, Education, and Welfare report to specific committees of the Senate and the House of Representatives on the identity, due date, etc., of certain reports required under the Public Health Service Act, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970.

§ 300aa-11. Memorials and other acknowledgments for contributions to the health of the Nation

The Secretary may provide for suitably acknowledging, within the Department (whether by memorials, designations, or other suitable acknowledgments), (1) efforts of persons who have contributed substantially to the health of the Nation and (2) gifts for use in activities of the Department related to health.

(July 1, 1944, ch. 373, title XXI, § 2112, formerly title V, § 512, as added Oct. 15, 1968, Pub. L. 90-574, title V, § 503(a), 82 Stat. 1012; renumbered Apr. 26, 1983, Pub. L. 98-24, § 2(a)(1), 97 Stat. 176.)

Codification

Section was formerly classified to section 229a of this title prior to its renumbering by Pub. L. 98-24.

§ 300aa-12. Evaluation of programs

Such portion as the Secretary may determine, but not more than 1 per centum, of any appropriation for grants, contracts, or other payments under any provision of this chapter, the Mental Health Systems Act [42 U.S.C. 9401 et seq.], the Act of August 5, 1954 (Public Law 568, Eighty-third Congress) [42 U.S.C. 2001 et seq.], or the Act of August 16, 1957 (Public Law 85-151) [42 U.S.C. 2005 et seq.], for any fiscal year beginning after June 30, 1970, shall be available for evaluation (directly, or by grants or contracts) of any program authorized by this chapter or any of such other Acts, and, in the case of allotments from any such appropriation, the amount available for allotment shall be reduced accordingly.

(July 1, 1944, ch. 373, title XXI, § 2113, formerly title V, § 513, as added June 30, 1970, Pub. L. 91-296, title IV, § 401(a), 84 Stat. 351, and amended Oct. 7, 1980, Pub. L. 96-398, title VIII, § 804(c), 94 Stat. 1608; Aug. 13, 1981, Pub. L. 97-35, title IX, § 902(g)(3), 95 Stat. 560; renumbered Apr. 26, 1983, Pub. L. 98-24, § 2(a)(1), 97 Stat. 176.)

References in Text

The Mental Health Systems Act, referred to in text, is Pub. L. 96-398, Oct. 7, 1980, 94 Stat. 1564, as amended, which is classified principally to chapter 102 (§ 9401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

The act of Aug. 5, 1954, referred to in text, is act Aug. 5, 1954, ch. 658, 68 Stat. 674, as amended, which is classified generally to subchapter I (§ 2001 et seq.)

of chapter 22 of this title. For complete classification of this Act to the Code, see Tables.

The act of Aug. 16, 1957, referred to in text, is Pub. L. 85-151, Aug. 16, 1957, 71 Stat. 370, which is classified generally to subchapter II (§ 2005 et seq.) of chapter 22 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 229b of this title prior to its renumbering by Pub. L. 98-24.

AMENDMENTS

1981—Pub. L. 97-35 struck out references to the Mental Retardation Facilities Construction Act and the Community Mental Health Centers Act.

1980—Pub. L. 96-398 added reference to the Mental Health Systems Act.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as a note under section 300aa-14 of this title.

FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976, DEEMED PART OF FISCAL YEAR BEGINNING JULY 1, 1975

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed part of fiscal year beginning July 1, 1975, for purposes of this section see section 204(1) of Pub. L. 94-274, Apr. 21, 1976, 90 Stat. 392, set out as a note under section 390e of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 242c of this title.

§ 300aa-13. Contract authority

The authority of the Secretary to enter into contracts under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(July 1, 1944, ch. 373, title XXI, § 2114, formerly title V, § 514, as added Nov. 9, 1978, Pub. L. 95-623, § 11(e), 92 Stat. 3456, and renumbered Apr. 26, 1983, Pub. L. 98-24, § 2(a)(1), 97 Stat. 176.)

CODIFICATION

Section was formerly classified to section 229c of this title prior to its renumbering by Pub. L. 98-24.

§ 300aa-14. Recovery

(a) Right of United States to recover base amount plus interest

If any facility with respect to which funds have been paid under the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.] (as such Act was in effect prior to October 1, 1981) is, at any time within twenty years after the completion of remodeling, construction, or expansion or after the date of its acquisition—

(1) sold or transferred to any entity (A) which would not have been qualified to file an application under section 222 of such Act [42 U.S.C. 2689j] (as such section was in effect prior to October 1, 1981) or (B) which is disapproved as a transferee by the State mental health agency or by another entity designated by the chief executive officer of the State, or

(2) ceases to be used by a community mental health center in the provision of comprehensive mental health services,

the United States shall be entitled to recover from the transferor, transferee, or owner of the facility, the base amount prescribed by subsection (c)(1) of this section plus the interest (if any) prescribed by subsection (c)(2) of this section.

(b) Notice of sale, transfer, or change

The transferor and transferee of a facility that is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which changes as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change within 10 days after the date on which such sale, transfer, or cessation of use occurs or within 30 days after October 22, 1985, whichever is later.

(c) Base amount; interest

(1) The base amount that the United States is entitled to recover under subsection (a) of this section is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the remodeling, construction, expansion, or acquisition of the project or projects.

(2)(A) The interest that the United States is entitled to recover under subsection (a) of this section is the interest for the period (if any) described in subparagraph (B) at a rate (determined by the Secretary) based on the average of the bond equivalent rates of ninety-one-day Treasury bills auctioned during that period.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) if notice is provided as prescribed by subsection (b) of this section, 191 days after the date on which such sale, transfer, or cessation of use occurs, or

(ii) if notice is not provided as prescribed by subsection (b) of this section, 11 days after such sale, transfer, or cessation of use occurs,

and ending on the date the amount the United States is entitled to recover is collected.

(d) Waiver of recovery rights

The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility (under such conditions as the Secretary may establish by regulation) if the Secretary determines that there is good cause for waiving such rights.

(e) Pre-judgment lien

The right of recovery of the United States under subsection (a) of this section shall not, prior to judgment, constitute a lien on any facility.

(July 1, 1944, ch. 373, title XXI, § 2115, formerly title V, § 515, formerly Pub. L. 88-164, title II, § 225, as added Pub. L. 94-63, title III, § 303, July 29, 1975, 89 Stat. 326, and amended Pub. L. 95-622, title I, § 110(c), Nov. 9, 1978, 92 Stat. 3420, renumbered title V, § 515, and amended Pub. L. 97-35, title IX, § 902(e)(2)(A), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, § 2115, Pub. L. 98-24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; Oct. 22, 1985, Pub. L. 99-129, title II, § 226(a), 99 Stat. 546.)

REFERENCES IN TEXT

The Community Mental Health Centers Act, referred to in subsec. (a), is title II of Pub. L. 88-164, as added by Pub. L. 94-63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97-35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560. Section 222 of the Community Mental Health Centers Act was classified to section 2689j of this title prior to its repeal.

CODIFICATION

Section was classified to section 229d of this title prior to its renumbering by Pub. L. 98-24, and to section 2689m of this title prior to its renumbering by Pub. L. 97-35.

AMENDMENTS

1985—Pub. L. 99-129 amended section generally. Prior to amendment, section read as follows:

"If any facility of a community mental health center acquired, remodeled, constructed, or expanded with funds provided under the Community Mental Health Centers Act is, at any time within twenty years after the completion of such remodeling, construction, or expansion or after the date of its acquisition with such funds—

"(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 222 of the Community Mental Health Centers Act, or (B) which is not approved as a transferee by the State agency of the State in which such facility is located, or its successor; or

"(2) not used by a community mental health center in the provision of comprehensive mental health services, and the Secretary has not determined that there is good cause for termination of such use,

the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the United States district court for the district in which the center is situated) of so much of such facility or center as constituted an approved project or projects, as the amount of the Federal participation bore to the acquisition, remodeling, construction, or expansion cost of such project or projects. Such right of recovery shall not constitute a lien upon such facility or center prior to judgment."

1981—Pub. L. 97-35 substituted "the Community Mental Health Centers Act" for "this subchapter" and "section 222 of the Community Mental Health Centers Act" for "section 2689j of this title".

1978—Pub. L. 95-622 substituted "this subchapter" for "this part".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 226(b) of Pub.L. 99-129 provided that: "In the case of any facility that was or is constructed, remodeled, expanded, or acquired on or before the date of enactment of this Act [Oct. 22, 1985] or within 180 days after the date of enactment of this Act, the period described in clause (i) or (ii), as the case may be, of section 2115(c)(2)(B) of the Public Health Service Act [subsec. (c)(2)(B)(i), (ii) of this section] (as amended by subsection (a) of this section) shall begin no earlier than 181 days after the date of enactment of this Act."

EFFECTIVE DATE OF 1981 AMENDMENT

Section 902(h) of Pub. L. 97-35 provided that: "The amendments made by this section [amending sections 201, 300aa-6, 300aa-12, 300aa-14, 243, 246, 290aa-3, 300d-4, 300d-6, 300*l*-2, 300m, 300m-2, 300m-3, 9412, and 9511 of this title, repealing sections 247b-1, 247b-2, 255, 300d to 300d-3, 300d-5, 300d-7 to 300d-9, 300d-21, 2689 to 2689*l*, 2689n to 2689p, 2689r to 2689aa, 9411, 9421 to 9423, 9431 to 9438, 9451, 9452, 9461 to 9465, 9471 to 9473, 9481, 9491 to 9493, 9502, 9512, 9521, and 9523 of this title, repealing provisions set out as notes under sections 246 and 2689 of this title, and transfering section 2689m to section 229d [300aa-14] of this title] shall take effect October 1, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Section 110(c) of Pub. L. 95-622 provided in part that the amendment of this section by Pub. L. 95-622 is effective July 29, 1975.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94-63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

OTHER LEGAL RIGHTS OF UNITED STATES NOT ADVERSELY AFFECTED BY 1985 AMENDMENT

Section 226(c) of Pub. L. 99-129 provided that: "The amendments made by subsection (a) of this section [amending this section] shall not adversely affect other legal rights of the United States."

CHAPTER 7—SOCIAL SECURITY

SUBCHAPTER IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN

Sec.
611. Repealed.

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement.
    (a) Types of procedures required.
    (b) Withholding from income of amounts payable as support.
    (c) Administration of support payments through State agency or other entity.
    (d) Exemption of States.
    (e) "Overdue support" defined.
667. State guidelines for child support awards.
    (a) Establishment of guidelines; method.
    (b) Availability of guidelines; binding nature.
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SUBCHAPTER VII—ADMINISTRATION

910. Recommendations by Board of Trustees to remedy inadequate balances in the Social Security trust funds.
    (a) Terms and conditions of recommendations.
    (b) "Balance ratio" defined.

Sec.

911. Budgetary treatment of trust fund operations.
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SUBCHAPTER XI—GENERAL PROVISIONS AND PEER REVIEW

PART A—GENERAL PROVISIONS

1317. Appointment of Administrator of Health Care Financing Administration.
1320b-6. Pilot projects to demonstrate the use of integrated service delivery systems for human services programs.
    (a) Establishment of pilot projects by States.
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    (f) "Human services program" defined; consultation by Secretary with other department heads.
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    (i) Study of program by Comptroller General.
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    (b) Applicable programs.
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SUBCHAPTER XIII—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN

1331 to 1336. Repealed.

SUBCHAPTER XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

PART C—MISCELLANEOUS PROVISIONS

1395dd, 1395ee. Repealed.
1395yy. Payment to skilled nursing facilities for routine service costs.
    (a) Per diem limitations.
    (b) Exception to limitations for hospital-based skilled nursing facility.
    (c) Adjustments in limitations.
1395zz. Purchase of durable medical equipment.
    (a) Lease-purchase basis or rental; determination by Secretary.
    (b) Waiver of coinsurance amount in purchase of used equipment.

Sec.

    (c) Reimbursement procedures.
    (d) Encouragement of lease-purchase basis.

SUBCHAPTER XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

1396q. Application of provisions of subchapter II relating to subpoenas.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 242c, 907a, 1437f, 4636 of this title; title 2 section 651; title 7 section 2012; title 20 sections 1078, 1089; title 25 sections 13d, 459e, 609c-1, 639, 640d-21, 1264, 1407, 1408, 2307, 3304; title 26 sections 86, 162, 412, 1402, 6103; title 29 sections 1082, 1552; title 31 sections 1516, 3701; title 40 App. section 202; title 45 sections 231, 231a, 231b, 231c, 231d, 231e, 231f, 231q, 231r, 231u; title 50 App. section 1291.

SUBCHAPTER I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 428, 602, 671, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1320b-2, 1320b-3, 1320b-7, 1382, 1395v, 1395z, 1396a, 1396b, 1396d of this title; title 7 sections 2012, 2014; title 26 section 6103.

§ 302. State old-age plans

(a) Contents

A State plan for old-age assistance must—

[*See main edition for text of* (*1*) *to* (*9*)]

(10) if the State plan includes old-age assistance—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of such assistance to help them attain self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and

(11) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2651(e), 98 Stat. 1149.)

AMENDMENTS

1984—Subsec. (a)(11). Pub. L. 98-369 added par. (11).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 602, 662, 907, 907a, 909, 1320a-6, 1320b-1, 1320b-7, 1382, 1382b, 1382c, 1382f, 1383, 1383b, 1395c, 1395v, 1395gg, 1395ii, 1395oo, 1396a, 1396q, 5055 of this title; title 2 sections 641, 905; title 5 sections 8141, 8311, 8345; title 7 sections 2012, 2014; title 10 section 1451; title 12 section 3413; title 14 section 707; title 22 sections 3310, 4046; title 26 sections 22, 86, 401, 404, 408, 411, 416, 1402, 2032A, 3121, 6402; title 29 sections 206, 762a, 1026, 1054, 1056, 1706; title 30 sections 922, 923; title 31 section 3720A; title 38 sections 412, 415, 3005, 3112; title 45 sections 231b, 231c, 231d, 231e, 231f, 231i, 231n, 231r, 354; title 49 App. section 1607a; title 50 App. section 36.

§ 401. Trust Funds

(a) Federal Old-Age and Survivors Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Old-Age and Survivors Insurance Trust Fund". The Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trust Fund as hereinafter provided. There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) the taxes imposed by subchapter A of chapter 9 of the Internal Revenue Code of 1939 with respect to wages (as defined in section 1426 of such Code), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 3121 of such Code) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1954 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages, which wages shall be certified by the Secretary of Health and Human Services on the basis of the records of wages established and maintained by such Secretary in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section; and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939, with respect to self-employment income (as defined in section 481 of such Code), and by chapter 2 (other than section 1401(b)) of the Internal Revenue Code of 1954 with respect to self-employment income (as defined in section 1402 of such Code) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the Secretary of Health and Human Services on the basis of the records of self-employment income established and maintained by the Secretary of Health and Human Services in accordance with such returns, less the amounts specified in clause (2) of subsection (b) of this section.

The amounts appropriated by clauses (3) and (4) of this subsection shall be transferred monthly on the first day of each calendar month from the general fund in the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) of this section shall be transferred monthly on the first day of each calendar month from the general fund in the Treasury to the Federal Disability Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in clauses (3) and (4) of this subsection, to be paid to or deposited into the Treasury during such month; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such clauses (3) and (4) of this subsection. All amounts transferred to either Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of such Trust Fund; and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d) of this section.

(b) Federal Disability Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Disability Insurance Trust Fund". The Federal Disability Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1)(A) ½ of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and before January 1, 1970, and so reported, (D) 1.10 per centum of the wages (as so defined) paid after December 31, 1969, and before January 1, 1973, and so reported, (E) 1.1 per centum of the wages (as so defined) paid after December 31, 1972, and before January 1, 1974, and so reported, (F) 1.15 per centum of the wages (as so defined) paid after December 31, 1973, and before January 1, 1978, and so reported, (G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1980, and so reported, (I) 1.12 per centum of the wages (as so defined) paid after December 31, 1979, and before January 1, 1981, and so reported, (J) 1.30 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1982, and so reported, (K) 1.65 per centum of the wages (as so defined) paid after December 31, 1981, and before January 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after December 31, 1982, and before January 1, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after December 31, 1983, and before January 1, 1988, and so reported, (N) 1.06 per centum of the wages (as so defined) paid after December 31, 1987, and before January 1, 1990, and so reported, (O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 2000, and so reported, and (P) 1.42 per centum of the wages (as so defined) paid after December 31, 1999, and so reported, which wages shall be certified by the Secretary of Health and Human Services on the basis of the records of wages established and maintained by such Secretary in accordance with such reports; and

(2)(A) ⅜ of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, and before January 1, 1973, (E) 0.795 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1972, and before January 1, 1974, (F) 0.815 of 1 per centum of the amount of self-employment income (as so defined) as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978, (G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1980, (I) 0.7775 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1979, and before January 1, 1981, (J) 0.9750 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1982, (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1981, and before January 1, 1983, (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1982, and before January 1, 1984, (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1983, and before January 1, 1988, (N) 1.06 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1987, and before January 1, 1990, (O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 2000, and (P) 1.42 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999, which self-employment income shall be certified by the Secretary of Health and Human Services on the basis of the records of self-employment income established and maintained by the Secretary of Health and Human Services in accordance with such returns.

(c) Board of Trustees; duties; reports to Congress

With respect to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (hereinafter in this subchapter called the "Trust Funds") there is hereby created a body to be known as the Board of Trustees of the Trust Funds (hereinafter in this subchapter called the "Board of Trustees") which Board of Trustees shall be composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this subchapter called the "Managing Trustee"). The Commissioner of Social Security shall serve as Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

[*See main edition for text of* (*1*) *to* (5)]

The report provided for in paragraph (2) of this subsection shall include a statement of the assets of, and the disbursements made from, the Trust Funds during the preceding fiscal year, an estimate of the expected future income to, and disbursements to be made from, the Trust Funds during each of the next ensuing five fiscal years, and a statement of the actuarial status of the Trust Funds. Such report shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable: *Provided*, That the certification shall not refer to economic assumptions underlying the Trustee's report, and shall also include an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.

(d) Investments

It shall be the duty of the Managing Trustee to invest such portion of the Trust Funds as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Funds. Such obligations issued for purchase by the Trust Funds shall have maturities fixed with due regard for the needs of the Trust Funds and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

[*See main edition for text of* (*e*) *and* (*f*)]

(g) Payments into Treasury

(1)(A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by subchapter XVIII of this chapter) is directed to pay from the Trust Funds into the Treasury—

(i) the amounts estimated by him and the Secretary of Health and Human Services which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health and Human Services and the Treasury Department for the administration of subchapters II, XVI, and XVIII of this chapter and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954, less

(ii) the amounts estimated (pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection) by the Secretary of Health and Human Services which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i).

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of subchapters II, XVI, and XVIII of this chapter and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i) of the first sentence of this subparagraph.

(B) After the close of each fiscal year the Secretary of Health and Human Services shall determine the portion of the costs, incurred during such fiscal year, of administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 432 of this title shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been made, the Secretary of Health and Human Services shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, for the part of the administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939 and section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1950. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health and Human Services in accordance with the wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

[*See main edition for text of* (*3*)]

(4) The Board of Trustees shall prescribe before January 1, 1981, the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined.

[*See main edition for text of* (*h*)]

(i) Gifts and bequests

(1) The Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to any one or more of such Trust Funds or to the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.

[*See main edition for text of* (*2*); (*j*) *and* (*k*)]

(*l*) Interfund borrowing

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee may borrow such amounts as he determines to be appropriate from the other such Trust Fund, or, subject to paragraph (5), from the Federal Hospital Insurance Trust Fund established under section 1395i of this

title for transfer to and deposit in the Trust Fund whose need for financing is involved.

(2) In any case where a loan has been made to a Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from the borrowing Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (d) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to a Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Hospital Insurance Trust Fund to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee determines that the OASDI trust fund ratio exceeds 15 percent, he shall transfer from the borrowing Trust Fund to the Federal Hospital Insurance Trust Fund an amount that—

(I) together with any amounts transferred from another borrowing Trust Fund under this paragraph for such year, will reduce the OASDI trust fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term "OASDI trust fund ratio" means, with respect to any calendar year, the ratio of—

(I) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as of the last day of such calendar year, to

(II) the amount estimated by the Secretary to be the total amount to be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the calendar year following such calendar year for all purposes authorized by this section (other than payments of interest on, and repayments of, loans from the Federal Hospital Insurance Trust Fund under paragraph (1), but excluding any transfer payments between such trust funds and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account).

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987, and before January 1, 1990, the Managing Trustee shall transfer each month to the Federal Hospital Insurance Trust Fund from any Trust Fund with any amount outstanding on a loan made from the Federal Hospital Insurance Trust Fund under paragraph (1) an amount not less than an amount equal to (I) the amount owed to the Federal Hospital Insurance Trust Fund by such Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

[*See main edition for text of (4)*]

(5)(A) No amounts may be borrowed from the Federal Hospital Insurance Trust Fund under paragraph (1) during any month if the Hospital Insurance Trust Fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term "Hospital Insurance Trust Fund ratio" means, with respect to any month, the ratio of—

(i) the balance in the Federal Hospital Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under this subsection, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Hospital Insurance Trust Fund during the month for which such ratio is to be determined (other than payments of interest on, or repayments of loans from another Trust Fund under this subsection), and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfer into the Hospital Insurance Trust Fund from that Account.

(m) Accounting for unnegotiated benefit checks

(1) The Secretary of the Treasury shall implement procedures to permit the identification of each check issued for benefits under this subchapter that has not been presented for payment by the close of the sixth month following the month of its issuance.

(2) The Secretary of the Treasury shall, on a monthly basis, credit each of the Trust Funds for the amount of all benefit checks (including interest thereon) drawn on such Trust Fund more than 6 months previously but not presented for payment and not previously credited to such Trust Fund, to the extent provided in advance in appropriation Acts.

(3) If a benefit check is presented for payment to the Treasury and the amount thereof has been previously credited pursuant to paragraph (2) to one of the Trust Funds, the Secretary of the Treasury shall nevertheless pay such check, if otherwise proper, recharge such

Trust Fund, and notify the Secretary of Health and Human Services.

(4) A benefit check bearing a current date may be issued to an individual who did not negotiate the original benefit check and who surrenders such check for cancellation if the Secretary of the Treasury determines it is necessary to effect proper payment of benefits.

(Aug. 14, 1935, ch. 531, title II, § 201, 49 Stat. 622; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362; Feb. 25, 1944, ch. 63, title IX, § 902, 58 Stat. 93; Aug. 28, 1950, ch. 809, title I, § 109(a), 64 Stat. 521; Aug. 1, 1956, ch. 836, title I, § 103(e), 70 Stat. 819; Aug. 28, 1958, Pub. L. 85-840, title II, § 205(a), 72 Stat. 1021; Sept. 22, 1959, Pub. L. 86-346, title I, § 104(2), 73 Stat. 622; Sept. 13, 1960, Pub. L. 86-778, title VII, § 701(a)-(e), 74 Stat. 992; July 30, 1965, Pub. L. 89-97, title I, § 108(a), title III, §§ 305, 327, 79 Stat. 338, 370, 400; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 110, 169, 81 Stat. 837, 875; Dec. 30, 1969, Pub. L. 91-172, title X, § 1005, 83 Stat. 741; July 1, 1972, Pub. L. 92-336, title II, § 205, 86 Stat. 422; Oct. 30, 1972, Pub. L. 92-603, title I, §§ 132(a)-(c), 136, title III, § 305(a), 86 Stat. 1360, 1364, 1484; Dec. 31, 1973, Pub. L. 93-233, § 7, 87 Stat. 955; Jan. 2, 1976, Pub. L. 94-202, § 8(d), 89 Stat. 1137; Dec. 20, 1977, Pub. L. 95-216, title I, § 102(a), 91 Stat. 1513; June 9, 1980, Pub. L. 96-265, title III, § 310(a), title V, § 505(a)(5), 94 Stat. 459, 474; Oct. 9, 1980, Pub. L. 96-403, § 1, 94 Stat. 1709; Dec. 29, 1981, Pub. L. 97-123, § 1(a), 95 Stat. 1659; Apr. 20, 1983, Pub. L. 98-21, title I, §§ 126, 141(a), 142(a)(1), (2)(A), (3), (4), 152(a), 154(a), title III, § 341(a), 97 Stat. 91, 98-100, 105, 107, 135; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2661(a), 2663(a)(1), (j)(2)(A)(i), 98 Stat. 1156, 1160, 1170.)

AMENDMENTS

1984—Subsecs. (a)(3), (4), (b)(1), (2). Pub. L. 98-369, § 2663(j)(2)(A)(i), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (d). Pub. L. 98-369, § 2663(a)(1)(A), substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as amended" and "public-debt obligations" for "public-debt obligation".

Subsec. (g)(1). Pub. L. 98-369, § 2663(j)(2)(A)(i), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (g)(1)(B). Pub. L. 98-369, § 2663(a)(1)(B), substituted "clause" for "clauses" in first sentence.

Subsecs. (g)(2), (4), (i)(1). Pub. L. 98-369, § 2663(j)(2)(A)(i), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (*l*)(3)(B)(i). Pub. L. 98-369, § 2661(a), added "Insurance" after "Survivors".

1983—Subsec. (a). Pub. L. 98-21, § 141(a) in provisions following par. (4), substituted "monthly on the first day of each calendar month" for "from time to time", wherever appearing, and "to be paid or desposited into the Treasury during such month" for "paid to or deposited into the Treasury", and added provision that all amounts transferred to either Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of such Trust Fund; and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on Jan. 1, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d) of this section.

Subsec. (b)(1)(K) to (P). Pub. L. 98-21, § 126(a), substituted, in cls. (K), (L), and (M), appropriations equivalent to 100 per centum of (K) 1.65 per centum of the wages (as so defined) paid after Dec. 31, 1981, and before Jan. 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after Dec. 31, 1982, and before Jan. 1, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after Dec. 31, 1983, and before Jan. 1, 1988, and so reported, for such appropriations of (K) 1.65 per centum of the wages (as so defined) paid after Dec. 31, 1981, and before Jan. 1, 1985, and so reported, (L) 1.90 per centum of the wages (as so defined) paid Dec. 31, 1984, and before Jan. 1, 1990, and so reported, and (M) 2.20 per centum of the wages (as so defined) paid after Dec. 31, 1989, and so reported, and added cls. (N) to (P).

Subsec. (b)(2)(K) to (P). Pub. L. 98-21, § 126(b), substituted, in cls. (K), (L), and (M), appropriations equivalent to 100 per centum of (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxble year beginning after Dec. 31, 1981, and before Jan. 1, 1983, (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1982, and before Jan. 1, 1984, (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1983, and before Jan. 1, 1988, for such appropriations of (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1981, and before Jan. 1, 1985, (L) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1984, and before Jan. 1, 1990, and (M) 1.6500 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1989, and added cls. (N) to (P).

Subsec. (c). Pub. L. 98-21, § 341(a), substituted "Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate" for "Secretary of Health, Education, and Welfare, all ex officio" in provisions preceding par. (1), and added provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds, in provisions following par. (5).

Pub. L. 98-21, § 154(a), added in provisions following par. (5), provision that the report referred to in par. (2) shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable, and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Subsec. (*l*)(1). Pub. L. 98-21, § 142(a)(1), substituted reference to January 1988 for reference to January 1983, and added ", subject to paragraph (5)," after "such Trust Fund, or".

Subsec. (*l*)(2). Pub. L. 98-21, § 142(a)(2)(A), substituted "on the last day of each month after such loan is made" for "from time to time", substituted "the total interest accrued to such day" for "interest", and added "(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)".

Subsec. (*l*)(3). Pub. L. 98-21, § 142(a)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (*l*)(5). Pub. L. 98-21, § 142(a)(4), added par. (5).

Subsec. (m). Pub. L. 98-21, § 152(a), added subsec. (m).

Effective Date of 1984 Amendment

Section 2664 of Pub. L. 98-369 provided that:

"(a) Except as otherwise specifically provided, the amendments made by sections 2661 and 2662 [amending sections 401, 402, 403, 405, 409, 410, 415, 416, 423, 428, and 429 of this title and sections 86, 134, 432A, 3121, 3306, and 6334 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 402 and 403 of this title and sections 3121 and 3306 of Title 26, and amending provisions set out as notes under sections 415 and 902 of this title, section 3121 of Title 26, and section 3023 of Title 38, Veterans' Benefits] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98-21).

"(b) Except to the extent otherwise specifically provided in this subtitle [subtitle D §§ 2661 to 2664 of Pub. L. 98-369], the amendments made by section 2663 [amending sections 401, 402, 403, 405, 408-410, 411, 413, 415, 416-418, 421-423, 426, 428, 430, 431, 433, 502, 503, 602, 603, 606, 607, 609, 610, 614, 615, 620, 631, 632, 633, 634, 636, 641, 643-645, 652-654, 656, 660, 662, 674, 902, 903, 907, 1101, 1104, 1108, 1301, 1302, 1306, 1307, 1314-1316, 1320, 1320a-5, 1320b-1, 1381a-1382a, 1382c, 1382d, 1382g, 1382j, 1383, 1395i, 1395s-1395u, 1396, 1397a, and 1397e of this title and sections 51, 1402, 3121, 6057, 6103, and 6511 of Title 26, repealing sections 1331-1336 of this title, and enacting provisions set out as notes under sections 1301 and 1307 of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date."

Effective Date of 1983 Amendment

Section 141(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending sections 401 and 1395i of this title] shall become effective on the first day of the month following the month in which this Act is enacted [Apr. 1983]."

Section 142(a)(2)(B) of Pub. L. 98-21 provided that: "The amendment made by this paragraph [amending subsec. (*l*)(2) of this section] shall apply with respect to months beginning more than thirty days after the date of enactment of this Act [Apr. 20, 1983]."

Section 152(b) of Pub. L. 98-21 provided that: "The amendment made by subsection (a) [enacting subsec. (m) of this section] shall apply with respect to all checks for benefits under title II of the Social Security Act [this subchapter] which are issued on or after the first day of the twenty-fourth month following the month in which this Act is enacted [Apr. 1983]."

Section 154(e) of Pub. L. 98-21 provided that: "The amendments made by this section [amending sections 401, 1395i, and 1395t of this title] shall take effect on the date of the enactment of this Act [Apr. 20, 1983]."

Section 341(d) of Pub. L. 98-21 provided that: "The amendments made by this section [amending sections 401, 1395i, and 1395t of this title] shall become effective on the date of enactment of this Act [Apr. 20, 1983]."

Transfer of Equivalent of 1983 Tax Increases to Payor Funds; Reports

Section 121(e) of Pub. L. 98-21 provided that:

"(1) In general.—There are hereby appropriated to each payor fund amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1954 [26 U.S.C. 1 et seq.] which is attributable to the application of sections 86 and 871(a)(3) of such Code (as added by this section) [26 U.S.C. 86, 871(a)(3)] to payments from such payor fund.

"(2) Transfers.—The amounts appropriated by paragraph (1) to any payor fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Any such quarterly payment shall be made on the first day of such quarter and shall take into account social security benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(3) Definitions.—For purposes of this subsection—

"(A) Payor fund.—The term 'payor fund' means any trust fund or account from which payments of social security benefits are made.

"(B) Social security benefits.—The term 'social security benefits' has the meaning given such term by section 86(d)(1) of the Internal Revenue Code of 1954 [26 U.S.C. 86(d)(1)].

"(4) Reports.—The Secretary of the Treasury shall submit annual reports to the Congress and to the Secretary of Health and Human Services and the Railroad Retirement Board on—

"(A) the transfers made under this subsection during the year, and the methodology used in determining the amount of such transfers and the funds or account to which made, and

"(B) the anticipated operation of this subsection during the next 5 years."

Reimbursement to Trust Funds for Unnegotiated Benefit Checks

Section 152(c) of Pub. L. 98-21 provided that:

"(1) The Secretary of the Treasury shall transfer from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, in the month following the month in which this Act is enacted [Apr. 1983] and in each of the succeeding 30 months, such sums as may be necessary to reimburse such Trust Funds in the total amount of all checks (including interest thereof) which he and the Secretary of Health and Human Services jointly determine to be unnegotiated benefit checks, to the extent provided in advance in appropriation Acts. After any amounts authorized by this subsection have been transferred to a Trust Fund with respect to any benefit check, the provisions of paragraphs (3) and (4) of section 201(m) of the Social Security Act (as added by subsection (a) of this section) [subsec. (m)(3), (4) of this section] shall be applicable to such check.

"(2) As used in paragraph (1), the term 'unnegotiated benefit checks' means checks for benefits under title II of the Social Security Act [this subchapter] which are issued prior to the twenty-fourth month following the month in which this Act is enacted [Apr. 1983], which remain unnegotiated after the sixth month following the date on which they were issued, and with respect to which no transfers have previously been made in accordance with the first sentence of such paragraph."

Study of Float Period of Monthly Insurance Benefit Checks

Section 153 of Pub. L. 98-21 provided that:

"(a) The Secretary of Health and Human Services and the Secretary of the Treasury shall jointly undertake, as soon as possible after the date of the enactment of this Act [April 20, 1983], a thorough study with respect to the period of time (hereafter in this section referred to as the 'float period') between the issuance of checks from the general fund of the Treasury in payment of monthly insurance benefits under title II of the Social Security Act [this subchapter] and the transfer to the general fund from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as applicable, of the amounts necessary to compensate the general fund for the issuance of such checks. Each such Secretary shall consult the other regularly during the course of the study and shall, as appropriate, provide the other with such information and assistance as he may require.

"(b) The study shall include—

"(1) an investigation of the feasibility and desirability of maintaining the float periods which are allowed as of the date of the enactment of this section in the procedures governing the payment of monthly insurance benefits under title II of the Social Security Act [this subchapter], and of the general feasibility and desirability of making adjustments in such procedures with respect to float periods; and

"(2) a separate investigation of the feasibility and desirability of providing, as a specific form of adjustment in such procedures with respect to float periods, for the transfer each day to the general fund of the Treasury from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate, of amounts equal to the amounts of the checks referred to in subsection (a) which are paid by the Federal Reserve Banks on such day.

"(c) In conducting the study required by subsection (a), the Secretaries shall consult, as appropriate, the Director of the Office of Management and Budget, and the Director shall provide the Secretaries with such information and assistance as they may require. The Secretaries shall also solicit the views of other appropriate officials and organizations.

"(d)(1) Not later than six months after the date of the enactment of this Act [Apr. 20, 1983], the Secretaries shall submit to the President and the Congress a report of the findings of the investigation required by subsection (b)(1), and the Secretary of the Treasury shall by regulation make such adjustments in the procedures governing the payment of monthly insurance benefits under title II of the Social Security Act [this subchapter] with respect to float periods (other than adjustments in the form described in subsection (b)(2)) as may have been found in such investigation to be necessary or appropriate.

"(2) Not later than twelve months after the date of the enactment of this Act [Apr. 20, 1983], the Secretaries shall submit to the President and the Congress a report of the findings of the separate investigation required by subsection (b)(2), together with their recommendations with respect thereto; and, to the extent necessary or appropriate to carry out such recommendations, the Secretary of the Treasury shall by regulation make adjustments in the procedures with respect to float periods in the form described in such subsection."

Due Date for 1983 Report on Operation and Status of Trust Fund

Section 154(d) of Pub. L. 98-21 provided that: "Notwithstanding sections 201(c)(2), 1817(b)(2), and 1841(b)(2) of the Social Security Act [42 U.S.C. 401(c)(2), 1395i(b)(2), 1395t(b)(2)], the annual reports of the Boards of Trustees of the Trust Funds which are required in the calendar year 1983 under those sections may be filed at any time not later than forty-five days after the date of the enactment of this Act [Apr. 20, 1983]."

Executive Order No. 12335

Ex. Ord. No. 12335, Dec. 16, 1981, 46 F.R. 61633, as amended by Ex. Ord. No. 12397, Dec. 23, 1982, 47 F.R. 57651; Ex. Ord. No. 12402, Jan. 15, 1983, 48 F.R. 2311, which established the National Commission on Social Security Reform and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in sections 415, 417, 418, 421, 429, 910, 1320b-1, 1395i, 1395t of this title; title 26 section 3121.

§ 402. Old-age and survivors insurance benefit payments

(a) Old-age insurance benefits

Every individual who—

(1) is a fully insured individual (as defined in section 414(a) of this title),

(2) has attained age 62, and

(3) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title),

shall be entitled to an old-age insurance benefit for each month, beginning with—

(A) in the case of an individual who has attained retirement age (as defined in section 416(*l*) of this title), the first month in which such individual meets the criteria specified in paragraphs (1), (2), and (3), or

(B) in the case of an individual who has attained age 62, but has not attained retirement age (as defined in section 416(*l*) of this title), the first month throughout which such individual meets the criteria specified in paragraphs (1) and (2) (if in that month he meets the criterion specified in paragraph (3)),

and ending with the month preceding the month in which he dies. Except as provided in subsection (q) and subsection (w) of this section, such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 415(a) of this title) for such month.

(b) Wife's insurance benefits

(1) The wife (as defined in section 416(b) of this title) and every divorced wife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

[*See main edition for text of* (*A*) *to* (*D*)]

shall (subject to subsection (s) of this section) be entitled to a wife's insurance benefit for each month, beginning with—

(i) in the case of a wife or divorced wife (as so defined) of an individual entitled to old-age benefits, if such wife or divorced wife has attained retirement age (as defined in section 416(*l*) of this title), the first month in which she meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a wife or divorced wife (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such wife or divorced wife has not attained retirement age (as defined in section 416(*l*) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which she is such a wife or divorced wife and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month she meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs—

[*See main edition for text of (E) to (K), (2)*]

(3) In the case of any divorced wife who marries—

(A) an individual entitled to benefits under subsection (c), (f), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d) of this section,

such divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) (but subject to subsection (s) of this section), not be terminated by reason of such marriage.

(4)(A) The amount of a wife's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

[*See main edition for text of (B)*]

(5)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced wife of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced wife—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a wife's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Secretary) in the manner otherwise provided for wife's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced wife first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A wife's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

(c) Husband's insurance benefits

(1) The husband (as defined in section 416(f) of this title) and every divorced husband (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such husband or such divorced husband—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62 or (in the case of a husband) has in his care (individually or jointly with such individual) at the time of filing such application a child entitled to child's insurance benefits on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced husband, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection(s) of this section) be entitled to a husband's insurance benefit for each month, beginning with—

(i) in the case of a husband or divorced husband (as so defined) of an individual who is entitled to an old-age insurance benefit, if such husband or divorced husband has attained retirement age (as defined in section 416(*l*) of this title), the first month in which he meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a husband or divorced husband (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such husband or divorced husband has not attained retirement age (as defined in section 416(*l*) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which he is such a husband or divorced husband and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs:

(E) he dies,

(F) such individual dies,

(G) in the case of a husband, they are divorced and either (i) he has not attained age 62, or (ii) he has attained age 62 but has not been married to such individual for a period of 10 years immediately before the divorce became effective,

(H) in the case of a divorced husband, he marries a person other than such individual,

(I) in the case of a husband who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) he becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2)(A) The amount of a husband's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such husband (or divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

[*See main edition for text of* (*B*)]

(3) Except as provided in subsection (q) of this section, and paragraph (2) of this subsection, such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife (or, in the case of a divorced husband, his former wife) for such month.

(4) In the case of any divorced husband who marries—

(A) an individual entitled to benefits under subsection (b), (e), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d) of this section, by reason of paragraph (1)(B)(ii) thereof,

such divorced husband's entitlement to benefits under this subsection, notwithstanding the provisions of paragraph (1) (but subject to subsection (s) of this section), shall not be terminated by reason of such marriage.

(5)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced husband of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced husband—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a husband's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Secretary) in the manner otherwise provided for husband's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced husband first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A husband's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (I) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

(d) Child's insurance benefits

(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—

[*See main edition for text of* (*A*) *to* (*C*)]

shall be entitled to a child's insurance benefit for each month, beginning with—

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in subparagraphs (B) and (C) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding whichever of the following first occurs—

[*See main edition for text of* (*D*) *to* (*F*)]

(G) if such child was under a disability (as so defined) at the time he attained the age of 18 or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22—

(i) the termination month, subject to section 423(e) of this title (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity),

or (if later) the earlier of—

(ii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 423(d) of this title except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

[*See main edition for text of* (*2*) *to* (*4*)]

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (c), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

[*See main edition for text of* (*6*)]

(7) For the purposes of this subsection—

(A) A "full-time elementary or secondary school student" is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Secretary (in accordance with regulations prescribed by him) in the light of the standards and practices of the schools involved, except that no individual shall be considered a "full-time elementary or secondary school student" if he is paid by his employer while attending an elementary or secondary school at the request, or pursuant to a requirement, of his employer. An individual shall not be considered a "full-time elementary or secondary school student" for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the effective date of this sentence [1]) which constituted a felony under applicable law. An individual who is determined to be a full-time elementary or secondary school student shall be deemed to be such a student throughout the month with respect to which such determination is made.

[*See main edition for text of* (*B*) *to* (*D*)]

(8) In the case of—

[*See main edition for text of* (*A*) *and* (*B*)]

a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States,

(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual (I) if he is an individual referred to in subparagraph (A), for the year immediately before the month in which such individual became entitled to old-age insurance benefits or, if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, the month in which such period of disability began, or (II) if he is an individual referred to in subparagraph (B), for the year immediately before the month in which began the period of disability of such individual which still exists at the time of adoption (or, if such child was adopted by such individual after such individual attained retirement age (as defined in section 416(*l*) of this title) the period of disability of such individual which existed in the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title)), or the month in which such individual became entitled to disability insurance benefits, or (III) if he is an individual referred to in either subparagraph (A) or subparagraph (B) and the child is the grandchild of such individual or his or her spouse, for the year immediately before the month in which such child files his or her application for child's insurance benefits, and

(iii) had not attained the age of 18 before he began living with such individual.

In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child.

[*See main edition for text of* (*9*)]

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[1] See References in Text note below.

(e) Widow's insurance benefits

(1) The widow (as defined in section 416(c) of this title) and every surviving divorced wife (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of this title) which began before the end of the period specified in paragraph (4),

(C)(i) has filed application for widow's insurance benefits, or was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died, and (I) has attained retirement age (as defined in section 416(*l*) of this title) or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or

(ii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained retirement age (as defined in section 416(*l*) of this title), and

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual,

shall be entitled to a widow's insurance benefit for each month, beginning with—

(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after her waiting period (as defined in paragraph (5)) in which she becomes so entitled to such insurance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual, or, if she became entitled to such benefits before she attained age 60, subject to section 423(e) of this title, the termination month (unless she attains retirement age (as defined in section 416(*l*) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which she engages or is determined able to engage in substantial gainful activity.

(2)(A) Except as provided in subsection (q) of this section, paragraph (7) of this subsection, and subparagraph (D) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had he lived to that age, or

(II) the second year preceding the year in which the widow or surviving divorced wife first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.

(D) If the deceased individual (on the basis of whose wages and self-employment income a widow or surviving divorced wife is entitled to widow's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widow's insurance benefit of such widow or surviving divorced wife for any month shall, if the amount of the widow's insurance benefit of such widow or surviving divorced wife (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual,

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) For purposes of paragraph (1), if—

(A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(4) The period referred to in paragraph (1)(B)(ii), in the case of any widow or surviving divorced wife, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income her benefits are or would be based, or

(B) the last month for which she was entitled to mother's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widow's insurance benefits on the basis of such wages and self-employment income terminated because her disability had ceased,

and ending with the month before the month in which she attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5) The waiting period referred to in paragraph (1)(F), in the case of any widow or surviving divorced wife, is the earliest period of five consecutive calendar months—

(A) throughout which she has been under a disability, and

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the seventeenth month before the month in which her application is filed, or (ii) the first day of the fifth month before the month in which the period specified in paragraph (4) begins.

(6) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(7)(A) The amount of a widow's insurance benefit for each month as determined (after application of the provisions of subsections (q) and (k) of this section, paragraph (2)(D), and paragraph (3)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(f) Widower's insurance benefits

(1) The widower (as defined in section 416(g) of this title) and every surviving divorced husband (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widower or such surviving divorced husband—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of the title) which began before the end of the period specified in paragraph (5),

(C)(i) has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, and (I) has attained retirement age (as defined in section 416(*l*) of this title) or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or

(ii) was entitled, on the basis of such wages and self-employment income, to father's insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title), and

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual,

shall be entitled to a widower's insurance benefit for each month, beginning with—

(E) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(F) if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (6)) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (5) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual, or, if he became entitled to such benefits before he attained age 60, subject to section 423(e) of this title, the termination month (unless he attains retirement age (as defined in section 416(*l*) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

(2)(A) The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (k) and (q) of this section, paragraph (3)(D), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widower for such month which is based upon his earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

[*See main edition for text of* (*B*)]

(3)(A) Except as provided in subsection (q) of this section, paragraph (2) of this subsection, and subparagraph (D) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had she lived to that age, or

(II) the second year preceding the year in which the widower or surviving divorced husband first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.

(D) If the deceased individual (on the basis of whose wages and self-employment income a widower or surviving divorced husband is entitled to widower's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widower's insurance benefit of such widower or surviving divorced husband for any month shall, if the amount of the widower's insurance benefit of such widower or surviving divorced husband (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable; and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual;

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(4) For purposes of paragraph (1), if—

(A) a widower or surviving divorced husband marries after attaining age 60 (or after attaining age 50 if he was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widower or surviving divorced husband described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(5) The period referred to in paragraph (1)(B)(ii), in the case of any widower or surviving divorced husband, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income his benefits are or would be based,

(B) the last month for which he was entitled to father's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widower's insurance benefits on the basis of such wages and self-employment income terminated because his disability had ceased,

and ending with the month before the month in which he attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(6) The waiting period referred to in paragraph (1)(F), in the case of any widower or surviving divorced husband, is the earliest period of five consecutive calendar months—

(A) throughout which he has been under a disability, and

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the seventeenth month before the month in which his application is filed, or (ii) the first day of the fifth month before the month in which the period specified in paragraph (5) begins.

(7) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(g) Mother's and father's insurance benefits

(1) The surviving spouse and every surviving divorced parent (as defined in section 416(d) of this title) of an individual who died a fully or currently insured individual, if such surviving spouse or surviving divorced parent—

(A) is not married,

(B) is not entitled to a surviving spouse's insurance benefit,

(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,

(D) has filed application for mother's or father's insurance benefits, or was entitled to a spouse's insurance benefit on the basis of the wages and self-employment income of such individual for the month preceding the month in which such individual died,

(E) at the time of filing such application has in his or her care a child of such individual entitled to a child's insurance benefit, and

(F) in the case of a surviving divorced parent—

(i) the child referred to in subparagraph (E) is his or her son, daughter, or legally adopted child, and

(ii) the benefits referred to in such subparagraph are payable on the basis of such individual's wages and self-employment income,

shall (subject to subsection (s) of this section) be entitled to a mother's or father's insurance benefit for each month, beginning with the first month in which he or she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such surviving spouse or surviving divorced parent becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, he or she becomes entitled to a surviving spouse's insurance benefit, he or she remarries, or he or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced parent, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced parent is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased individual.

(2) Except as provided in paragraph (4) of this subsection, such mother's or father's insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

(3) In the case of a surviving spouse or surviving divorced parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (a), (b), (c), (e), (f), or (h) of this section, or under section 423(a) of this title, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

the entitlement of such surviving spouse or surviving divorced parent to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(4)(A) The amount of a mother's or father's insurance benefit for each month to which any individual is entitled under this subsection (as determined after application of subsection (k) of this section) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day such individual was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

[*See main edition for text of (B)*]

(h) Parent's insurance benefits

[*See main edition for text of (1) to (3)*]

(4) In the case of a parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (b), (c), (e), (f), or (g) of this section, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

such parent's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

[*See main edition for text of (i)*]

(j) Application for monthly insurance benefits

[*See main edition for text of (1) to (3)*]

(4) [*See main edition for text of (A)*]

(B) [*See main edition for text of (i) and (ii)*]

(iii) Subparagraph (A) does not apply to a benefit under subsection (e) or (f) of this section for the month immediately preceding the month of application, if the insured individual died in that preceding month.

(iv) If the individual applying for retroactive benefits has excess earnings (as defined in section 403(f) of this title) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible.

(v) As used in this subparagraph, the term "retroactive benefits" means benefits to which an individual becomes entitled for a month prior to the month in which application for such benefits is filed.

(k) Simultaneous entitlement to benefits

[*See main edition for text of* (*1*)]

(2) [*See main edition for text of* (*A*)]

(B) Any individual (other than an individual to whom subsection (e)(3) or (f)(4) of this section applies) who, under the preceding provisions of this section and under the provisions of section 423 of this title, is entitled for any month to more than one monthly insurance benefit (other than an old-age or disability insurance benefit) under this subchapter shall be entitled to only one such monthly benefit for such month, such benefit to be the largest of the monthly benefits to which he (but for this subparagraph) would otherwise be entitled for such month. Any individual who is entitled for any month to more than one widow's or widower's insurance benefit to which subsection (e)(3) or (f)(4) of this section applies shall be entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

(3) [*See main edition for text of* (*A*)]

(B) If an individual is entitled for any month to a widow's or widower's insurance benefit to which subsection (e)(3) or (f)(4) of this section applies and to any other monthly insurance benefit under this section (other than an old-age insurance benefit), such other insurance benefit for such month, after any reduction under subparagraph (A) of this paragraph, any reduction under subsection (q) of this section, and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount equal to such widow's or widower's insurance benefit after any reduction or reductions under such subparagraph (A) and such section 403(a).

[*See main edition for text of* (*4*); (*l*) *to* (*p*)]

(q) Reduction of benefit amounts for certain beneficiaries

(1) Subject to paragraph (9), if the first month for which an individual is entitled to an old-age, wife's, husband's, widow's, or widower's insurance benefit is a month before the month in which such individual attains retirement age, the amount of such benefit for such month and for any subsequent month shall, subject to the succeeding paragraphs of this subsection, be reduced by—

[*See main edition for text of* (*A*)]

(B)(i) the number of months in the reduction period for such benefit (determined under paragraph (6)), if such benefit is for a month before the month in which such individual attains retirement age, or

(ii) if less, the number of such months in the adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is (I) for the month in which such individual attains age 62, or (II) for the month in which such individual attains retirement age.

(2) If an individual is entitled to a disability insurance benefit for a month after a month for which such individual was entitled to an old-age insurance benefit, such disability insurance benefit for each month shall be reduced by the amount such old-age insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained retirement age (as defined in section 416(*l*) of this title) in the first month for which he most recently became entitled to a disability insurance benefit.

(3)(A) If the first month for which an individual both is entitled to a wife's, husband's, widow's, or widower's insurance benefit and has attained age 62 (in the case of a wife's or husband's insurance benefit) or age 50 (in the case of a widow's or widower's insurance benefit) is a month for which such individual is also entitled to—

(i) an old-age insurance benefit (to which such individual was first entitled for a month before he attains retirement age (as defined in section 416(*l*) of this title)), or

(ii) a disability insurance benefit,

then in lieu of any reduction under paragraph (1) (but subject to the succeeding paragraphs of this subsection) such wife's, husband's, widow's, or widower's insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D).

[*See main edition for text of* (*B*) *to* (*D*)]

(E) If the first month for which an individual is entitled to an old-age insurance benefit (whether such first month occurs before, with, or after the month in which such individual attains retirement age (as defined in section 416(*l*) of this title)) is a month for which such individual is also (or would, but for subsection (e)(1) of this section in the case of a widow or surviving divorced wife or subsection (f)(1) of this section in the case of a widower or surviving divorced husband, be) entitled to a widow's or widower's insurance benefit to which such individual was first entitled for a month before she or he attained retirement age, then such old-age insurance benefit shall be reduced by whichever of the following is the larger:

(i) the amount by which (but for this subparagraph) such old-age insurance benefit would have been reduced under paragraph (1), or

(ii) the amount equal to the sum of (I) the amount by which such widow's or widower's insurance benefit would be reduced under paragraph (1) if the period specified in paragraph (6) ended with the month before the month in which she or he attained age 62 and (II) the amount by which such old-age insurance benefit would be reduced under paragraph (1) if it were equal to the excess of such old-age insurance benefit (before reduction under this subsection) over such widow's or widower's insurance benefit (before reduction under this subsection).

(F) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs with or after the month in which such individual attains the age of 62) is a month for which such individual is also (or would, but for subsection (e)(1) of this section in the case of a widow or surviving divorced wife or subsection (f)(1) of this section in the case of a widower or surviving divorced husband, be) entitled to a widow's or widower's insurance benefit to which such individual was first entitled for a month before she or he attained retirement age, then such disability insurance benefit for each month shall be reduced by whichever of the following is larger:

(i) the amount by which (but for this subparagraph) such disability insurance benefit would have been reduced under paragraph (2), or

(ii) the amount equal to the sum of (I) the amount by which such widow's or widower's insurance benefit would be reduced under paragraph (1) if the period specified in paragraph (6) ended with the month before the month in which she or he attained age 62 and (II) the amount by which such disability insurance benefit would be reduced under paragraph (2) if it were equal to the excess of such disability insurance benefit (before reduction under this subsection) over such widow's or widower's insurance benefit (before reduction under this subsection).

(G) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs before the month in which such individual attains the age of 62) is a month for which such individual is also (or would, but for subsection (e)(1) of this section in the case of a widow or surviving divorced wife or subsection (f)(1) of this section in the case of a widower or surviving divorced husband, be) entitled to a widow's or widower's insurance benefit, then such disability insurance benefit for each month shall be reduced by the amount such widow's or widower's insurance benefit would be reduced under paragraphs (1) and (4) for such month if the period specified in paragraph (6) ended with the month before the first month for which she or he most recently became entitled to a disability insurance benefit.

[*See main edition for text of* (*H*), (*4*)]

(5)(A) No wife's or husband's insurance benefit shall be reduced under this subsection—

(i) for any month before the first month for which there is in effect a certificate filed by him or her with the Secretary, in accordance with regulations prescribed by him, in which he or she elects to receive wife's or husband's insurance benefits reduced as provided in this subsection, or

(ii) for any month in which he or she has in his or her care (individually or jointly with the person on whose wages and self-employment income the wife's or husband's insurance benefit is based) a child of such person entitled to child's insurance benefits.

(B) Any certificate described in subparagraph (A)(i) shall be effective for purposes of this subsection (and for purposes of preventing deductions under section 403(c)(2) of this title)—

(i) for the month in which it is filed and for any month thereafter, and

(ii) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he or she attains age 62, nor shall it be effective for any month to which subparagraph (A)(ii) applies.

(C) If an individual does not have in his or her care a child described in subparagraph (A)(ii) in the first month for which he or she is entitled to a wife's or husband's insurance benefit, and if such first month is a month before the month in which he or she attains retirement age (as defined in section 416(*l*) of this title), he or she shall be deemed to have filed in such first month the certificate described in subparagraph (A)(i).

(D) No widow's or widower's insurance benefit for a month in which he or she has in his or her care a child of his or her deceased spouse (or deceased former spouse) entitled to child's insurance benefits shall be reduced under this subsection below the amount to which he or she would have been entitled had he or she been entitled for such month to mother's or father's insurance benefits on the basis of his or her deceased spouse's (or deceased former spouse's) wages and self-employment income.

(6) For purposes of this subsection, the "reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the period—

(A) beginning—

(i) in the case of an old-age insurance benefit, with the first day of the first month for which such individual is entitled to such benefit,

(ii) in the case of a wife's or husband's insurance benefit, with the first day of the first month for which a certificate described in paragraph (5)(A)(i) is effective, or

(iii) in the case of a widow's or widower's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit or the first day of the month in which such individual attains age 60, whichever is the later, and

(B) ending with the last day of the month before the month in which such individual attains retirement age.

(7) For purposes of this subsection, the "adjusted reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6) for such benefit, excluding—

(A) any month in which such benefit was subject to deductions under section 403(b), 403(c)(1), 403(d)(1), or 422(b) of this title,

(B) in the case of wife's or husband's insurance benefits, any month in which such individual had in his or her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child's insurance benefits,

[*See main edition for text of* (*C*)]

(D) in the case of widow's or widower's insurance benefits, any month in which the reduction in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow's or widower's insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which she or he attained retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitlement to such benefits, and

[*See main edition for text of* (*F*), (*8*)]

(9) The amount of the reduction for early retirement specified in parargaph (1)—

(A) for old-age insurance benefits, wife's insurance benefits, and husband's insurance benefits, shall be the amount specified in such paragraph for the first 36 months of the reduction period (as defined in paragraph (6)) or adjusted reduction period (as defined in paragraph (7)), and five-twelfths of 1 percent for any additional months included in such periods; and

(B) for widow's insurance benefits and widower's insurance benefits, shall be periodically revised by the Secretary such that—

(i) the amount of the reduction at early retirement age as defined in section 416(*l*) of this title shall be 28.5 percent of the full benefit; and

(ii) the amount of the reduction for each month in the reduction period (specified in paragraph (6)) or the adjusted reduction period (specified in paragraph (7)) shall be established by linear interpolation between 28.5 percent at the month of attainment of early retirement age and 0 percent at the month of attainment of retirement age.

(10) For purposes of applying paragraph (4), with respect to monthly benefits payable for any month after December 1977 to an individual who was entitled to a monthly benefit as reduced under paragraph (1) or (3) prior to January 1978, the amount of reduction in such benefit for the first month for which such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based and for all subsequent months (and similarly for all subsequent increases) shall be increased by a percentage equal to the percentage increase in such primary insurance amount (such increase being made in accordance with the provisions of paragraph (8)). In the case of an individual whose reduced benefit under this section is increased as a result of the use of an adjusted reduction period (in accordance with paragraphs (1) and (3) of this subsection), then for the first month for which such increase is effective, and for all subsequent months, the amount of such reduction (after the application of the previous sentence, if applicable) shall be determined—

[*See main edition for text of* (*A*)]

(B) in the case of widow's and widower's insurance benefits for the month in which such individual attains age 62, by multiplying such amount by the ratio of (i) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent to (ii) the number of months in the reduction period multiplied by 19/40 of 1 percent, and

(C) in the case of widow's and widower's insurance benefits for the month in which such individual attains retirement age (as defined in section 416(') of this title), by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period multiplied by 19/40 of 1 percent to (ii) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent,

such determination being made in accordance with the provisions of paragraph (8).

[*See main edition for text of* (*11*)]

(r) Presumed filing of application by individuals eligible for old-age insurance benefits and for wife's or husband's insurance benefits

(1) If the first month for which an individual is entitled to an old-age insurance benefit is a month before the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), and if such individual is eligible for a wife's or husband's insurance benefit for such first month, such individual shall be deemed to have filed an application in such month for wife's or husband's insurance benefits.

(2) If the first month for which an individual is entitled to a wife's or husband's insurance benefit reduced under subsection (q) of this section is a month before the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), and if such individual is eligible (but for subsection (k)(4) of this section) for an old-age insurance benefit for such first month, such individual shall be deemed to have filed an application for old-age insurance benefits—

[*See main edition for text of* (*A*) *and* (*B*), (*3*)]

(s) Child over specified age to be disregarded for certain benefit purposes unless disabled

(1) For the purposes of subsections (b)(1), (c)(1), (g)(1), (q)(5), and (q)(7) of this section and paragraphs (2), (3), and (4) of section 403(c) of this title, a child who is entitled to child's insurance benefits under subsection (d) of this section for any month, and who has attained the age of 16 but is not in such month under a disability (as defined in section 423(d) of this title), shall be deemed not entitled to such benefits for such month, unless he was under such a disability in the third month before such month.

(2) So much of subsections (b)(3), (c)(4), (d)(5), (g)(3), and (h)(4) of this section as precedes the semicolon, shall not apply in the case

of any child unless such child, at the time of the marriage referred to therein, was under a disability (as defined in section 423(d) of this title) or had been under such a disability in the third month before the month in which such marriage occurred.

(3) The last sentence of subsection (c) of section 403 of this title, subsection (f)(1)(C) of section 403 of this title, and subsections (b)(3)(B), (c)(6)(B), (f)(3)(B), and (g)(6)(B) of section 416 of this title shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior thereto such child was under a disability (as defined in section 423(d) of this title).

(t) Suspension of benefits of aliens who are outside the United States; residency requirements for dependents and survivors

[*See main edition for text of (1)*]

(2) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any individual who is a citizen of a foreign country which the Secretary finds has in effect a social insurance or pension system which is of general application in such country and under which—

[*See main edition for text of (A) and (B), (3)*]

(4) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any benefit for any month if—

[*See main edition for text of (A) to (D)*]

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which was treated as employment covered by this chapter pursuant to the provisions of section 5(k)(1) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(k)(1)] or section 18(2) of the Railroad Retirement Act of 1974 [45 U.S.C. 231q(2)];

except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior to the month in which the Social Security Amendments of 1967 are enacted (or the first month thereafter for which his benefits are subject to suspension under paragraph (1)) payments to individuals residing in such country were withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

[*See main edition for text of (5) to (10)*]

(11)(A) Paragraph (2) and subparagraphs (A), (B), (C), and (E) of paragraph (4) shall apply with respect to an individual's monthly benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of this section only if such individual meets the residency requirements of this paragraph with respect to those benefits.

(B) An individual entitled to benefits under subsection (b), (c), (e), (f), or (g) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing bore a spousal relationship to the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years. For purposes of this subparagraph, a period of time for which an individual bears a spousal relationship to another person consists of a period throughout which the individual has been, with respect to such other person, a wife, a husband, a widow, a widower, a divorced wife, a divorced husband, a surviving divorced wife, a surviving divorced husband, a surviving divorced mother, a surviving divorced father, or (as applicable in the course of such period) any two or more of the foregoing.

(C) An individual entitled to benefits under subsection (d) of this section meets the residency requirements of this paragraph with respect to those benefits only if—

(i)(I) such individual has resided in the United States (as the child of the person on whose wages and self-employment income such entitlement is based) for a total period of not less than 5 years, or

(II) the person on whose wages and self-employment income such entitlement is based, and the individual's other parent (within the meaning of subsection (h)(3) of this section), if any, have each resided in the United States for a total period of not less than 5 years (or died while residing in the United States), and

(ii) in the case of an individual entitled to such benefits as an adopted child, such individual was adopted within the United States by the person on whose wages and self-employment income such entitlement is based, and has lived in the United States with such person and received at least one-half of his or her support from such person for a period (beginning before such individual attained age 18) consisting of—

(I) the year immediately before the month in which such person became eligible for old-age insurance benefits or disability insurance benefits or died, whichever occurred first, or

(II) if such person had a period of disability which continued until he or she became entitled to old-age insurance benefits or disability insurance benefits or died, the year immediately before the month in which such period of disability began.

(D) An individual entitled to benefits under subsection (h) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing was a parent (within the meaning of subsection (h)(3) of this section) of the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years.

(E) This paragraph shall not apply with respect to any individual who is a citizen or resident of a foreign country with which the

United States has an agreement in force concluded pursuant to section 433 of this title, except to the extent provided by such agreement.

(u) Conviction of subversive activities, etc.

(1) If any individual is convicted of any offense (committed after August 1, 1956) under—

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18, or

(B) section 783 of title 50,

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 423 of this title is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is entitled to insurance benefits under part A of subchapter XVIII of this chapter for any such month, there shall not be taken into account—

[*See main edition for text of* (*C*) *and* (*D*); (*2*) *and* (*3*); (*v*)]

(w) Increase in old-age insurance benefit amounts on account of delayed retirement

(1) The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978 or section 415(a)(1)(C)(i) of this title as in effect thereafter) which is payable without regard to this subsection to an individual shall be increased by—

(A) the applicable percentage (as determined under paragraph (6)) of such amount, multiplied by

(B) the number (if any) of the increment months for such individual.

(2) For purposes of this subsection, the number of increment months for any individual shall be a number equal to the total number of the months—

(A) which have elapsed after the month before the month in which such individual attained retirement age (as defined in section 416(*l*) of this title) or (if later) December 1970 and prior to the month in which such individual attained age 70, and

[*See main edition for text of* (*B*)]

(3) For purposes of applying the provisions of paragraph (1), a determination shall be made under paragraph (2) for each year, beginning with 1972, of the total number of an individual's increment months through the year for which the determination is made and the total so determined shall be applicable to such individual's old-age insurance benefits beginning with benefits for January of the year following the year for which such determination is made; except that the total number applicable in the case of an individual who attains age 70 after 1972 shall be determined through the month before the month in which he attains such age and shall be applicable to his old-age insurance benefit beginning with the month in which he attains such age.

[*See main edition for text of* (*4*) *and* (*5*)]

(6) For purposes of paragraph (1)(A), the "applicable percentage" is—

(A) $\frac{1}{12}$ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year before 1979;

(B) $\frac{1}{4}$ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year after 1978 and before 1987;

(C) in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 1986 and before 2005, a percentage equal to the applicable percentage in effect under this paragraph for persons who first became eligible for an old-age insurance benefit in the preceding calendar year (as increased pursuant to this subparagraph), plus $\frac{1}{24}$ of 1 percent if the calendar year in which that particular individual first becomes eligible for such benefit is not evenly divisible by 2; and

(D) $\frac{2}{3}$ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 2004.

(x) Limitation on payments to prisoners

(1) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Secretary, is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonable time.

(2) Benefits which would be payable to any individual (other than a confined individual to whom benefits are not payable by reason of paragraph (1)) under this subchapter on the basis of the wages and self-employment income of such a confined individual but for the provisions of paragraph (1), shall be payable as though such confined individual were receiving such benefits under this section or section 423 of this title.

(3) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Secretary, upon written request, the name and social security account number of any individual who is confined in a jail, prison, or other penal institution or correctional facility under the jurisdiction of such agency, pursuant to his

conviction of an offense which constituted a felony under applicable law, which the Secretary may require to carry out the provisions of this subsection.

(Aug. 14, 1935, ch. 531, title II, § 202, 49 Stat. 623; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1363; Aug. 10, 1946, ch. 951, title IV, §§ 402, 403(a), 404(a), 405(a), 60 Stat. 986, 987; Aug. 28, 1950, ch. 809, title I, § 101(a), 64 Stat. 482; Aug. 14, 1953, ch. 483, § 2, 67 Stat. 580; Sept. 1, 1954, ch. 1206, title I, §§ 102(i), 105(a), 107, 110(a)-(c), 68 Stat. 1073, 1079, 1083, 1085; Aug. 9, 1955, ch. 685, § 2, 69 Stat. 621; Aug. 1, 1956, ch. 836, title I, §§ 101(a)-(c), 102(c), (d)(1)-(10), 103(c)(1)-(3), 113, 114(a), 118(a), 121(a), 70 Stat. 807, 810-814, 818, 831, 832, 835, 838; Aug. 1, 1956, ch. 837, title IV, §§ 403(a), 407, 70 Stat. 871, 876; Aug. 30, 1957, Pub. L. 85-238, §§ 1, 3(a)-(g), 71 Stat. 518; Aug. 28, 1958, Pub. L. 85-798, § 1, 72 Stat. 964; Aug. 28, 1958, Pub. L. 85-840, title I, § 101(e), title II, § 205(b)-(i), title III, §§ 301(a)(1), (b)(1), (c)(1), 303, 304(a)(1), 305(a), 306(a), 307(a)-(e), 72 Stat. 1017, 1021-1024, 1026, 1027, 1029-1032; Sept. 2, 1958, Pub. L. 85-857, § 13(i)(1), 72 Stat. 1265; Sept. 6, 1958, Pub. L. 85-927, § 301, 72 Stat. 1783; June 25, 1959, Pub. L. 86-70, § 32(c)(1), 73 Stat. 149; July 12, 1960, Pub. L. 86-624, § 30(c)(1), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86-778, title I, § 103(a)(1), (j)(2)(C), (D), title II, §§ 201(a), (b), 202(a), 203(a), 205(a), (b), 208(d), 211(i)-(*l*), title III, § 301(a), title IV, § 403(d), 74 Stat. 936, 937, 946, 947, 949, 952, 957-959, 1969; June 30, 1961, Pub. L. 87-64, title I, §§ 102(a), (b), (1), (2)(A), (3), (e), 104(a)-(d), 75 Stat. 131, 134, 136, 138, 139; July 30, 1965, Pub. L. 89-97, title I, § 104(a), title III, §§ 303(d), 304(a)-(j), 306(a), (b), (c)(1)-(9), 307(a), (b), 308(a), (b), (d)(1), (2)(A), (3)-(5), (12), (13), 319(d), 323(a), 324(a), 328(a), 333(a)-(c), 334(e), (f), 339(b), 343(a), 79 Stat. 334, 367-379, 392, 397, 398, 400, 403-405, 410, 412; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 103(a)-(d), 104(a)-(c), 112(a), 151(a)-(d), (1), (2), 157(a), (b), 158(c)(1), (2), 162(a)(1), (b)(1), (c)(1), (2), 81 Stat. 828-832, 838, 860, 867, 868, 871; Dec. 30, 1969, Pub. L. 91-172, title X, § 1004(a)-(c), 83 Stat. 741; Dec. 28, 1971, Pub. L. 92-223, § 1, 85 Stat. 802; Oct. 30, 1972, Pub. L. 92-603, title I, §§ 102(a), (b), (d)-(f), 103(a), (b), 107(a), 108(a)-(e), 109(a), 110(a), 111(a), 112(a), 113(b), 114(a)-(c), 116(b), (c), 86 Stat. 1335, 1336, 1338-1340, 1343-1348, 1350; July 9, 1973, Pub. L. 93-66, title II, § 240(a), 87 Stat. 161; Dec. 31, 1973, Pub. L. 93-233, §§ 1(f), (g), 18(b), 87 Stat. 947, 948, 967; Oct. 16, 1974, Pub. L. 93-445, title III, § 301, 88 Stat. 1357; Dec. 20, 1977, 95-216, title II, §§ 203, 204(a)-(d), 205(a), (b), title III, §§ 331(a)-(c), 332(a)(1), (2), 334(a)-(d)(4)(A), (5), (6), (e), 336(a), (b), 337(b), 353(f)(1), 91 Stat. 1527-1529, 1541-1548, 1554; Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(j)(14)(A), 92 Stat. 2942; June 9, 1980, Pub. L. 96-265, title III, §§ 303(b)(1)(B)-(D), 306(a), 94 Stat. 451, 452, 457; Oct. 19, 1980, Pub. L. 96-473, §§ 5(b), 6(a), 94 Stat. 2265; Dec. 5, 1980, Pub. L. 96-499, title X, § 1011(a), 94 Stat. 2655; Aug. 13, 1981, Pub. L. 97-35, title XXII, §§ 2201(b)(10), (11), (d), (f), 2202(a)(1), 2203(a), (b)(1), (c)(1), (d)(1), (2), 2205(a)(1), 2206(b)(1), 2210(a), 95 Stat. 831-838, 841; Dec. 29, 1981, Pub. L. 97-123, § 2(e), 95 Stat. 1660; Jan. 12, 1983, Pub. L. 97-455, § 7(c), 96 Stat. 2501; Apr. 20, 1983, Pub. L. 98-21, title I, §§ 111(a)(7), 113(d), 114(a)-(c)(1), 131(a)(1)-(3)(G), (b)(1)-(3)(F), (c), 132(a), 133(a), (b), 134(a), (b), title II, § 201(b), (c)(1)(A), title III, §§ 301(a), (b)(1), (2), (4), (6), (7), 302, 306(a), (d)-(h), 307(a), 309(a)-(e), 334(a), 337(a), 339(a), 340(a)(2), (b), 97 Stat. 72, 79, 92, 93, 95-98, 108, 111-116, 130, 131, 133-135; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2661(b)-(e), 2662(c)(1), 2663(a)(2), 98 Stat. 1156, 1159, 1160.)

References in Text

The effective date of this sentence, referred to in subsec. (d)(7)(A), is the effective date of section 5 of Pub. L. 96-473, which added such sentence effective with respect to benefits payable for months beginning on or after October 1, 1980. See Effective Date of 1980 Amendments note below.

Section 102(g) of the Social Security Amendments of 1972, referred to in subsecs. (e)(6) and (f)(7), is section 102(g) of Pub. L. 92-603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a Redetermination of Widow's and Widower's Benefits note under this section.

The Railroad Retirement Act of 1937, referred to in subsec. (t)(4)(E), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsec. (t)(4)(E), is title I of Pub. L. 93-445, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Such title I completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45. For complete classification of these Acts to the Code, see Tables.

Part A of subchapter XVIII of this subchapter, referred to in subsecs. (t)(9), (u)(1), and (v), is classified to section 1395c et seq. of this title.

Amendments

1984—Subsec. (a). Pub. L. 98-369, § 2662(c)(1), made a clarifying amendment to Pub. L. 98-21, § 201(c)(1)(A). See 1983 Amendment note below.

Subsec. (c)(1). Pub. L. 98-369, § 2661(b)(1)(A), (B), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65" in cls. (i) and (ii)(I) of provisions following subpar. (D) and preceding subpar. (E).

Pub. L. 98-369, § 2661(b)(1)(C), substituted "in which" for "to which" in provisions following cl. (ii) of provisions following subpar. (D) and preceding subpar. (E).

Subsec. (c)(5)(A). Pub. L. 98-369, § 2661(b)(2), substituted "clauses (i) and (ii)" for "classes (i) and (ii)".

Subsec. (d)(1). Pub. L. 98-369, § 2663(a)(2)(A)(i), substituted "subparagraphs" for "paragraphs" and "subparagraph" for "paragraph" in cl. (ii) of provisions following subpar. (C) and preceding subpar. (D).

Subsec. (d)(1)(G). Pub. L. 98-369, § 2663(a)(2)(A)(ii), in restructuring subpar. (G), struck out the comma after "age of 18", substituted a dash for a comma following "the age of 22", substituted "(i) the termination month, subject to section 423(e) of this title (and for purposes" for ", or, subject to section 423(e) of this title, the termination month (and for purposes", and added a closing parenthesis after "activity" and substituted "(ii)" and "(iii)" for "(III)" and "(IV)", respectively.

Subsec. (d)(7)(A). Pub. L. 98-369, § 2663(a)(2)(A)(iii), substituted "the effective date of this sentence" for "the date of enactment of this paragraph".

Subsec. (e)(1). Pub. L. 98-369, § 2663(a)(2)(B), in provisions following subpar. (F)(ii), struck out the first of two commas following "age 60" and substituted "she engages" for "he engages".

Subsec. (e)(2)(A). Pub. L. 98-369, § 2661(c)(1), substituted "paragraph (7) of this subsection" for "paragraph (8) of this subsection".

Subsec. (e)(2)(C). Pub. L. 98-369, § 2661(c)(2), struck out the period after "If such deceased individual" and inserted a closing parenthesis after "paragraph (3) of such subsection (w) of this section".

Subsec. (e)(7)(A). Pub. L. 98-369, § 2661(c)(3), substituted "paragraph (2)(D)" for "paragraph (2)(B)".

Subsec. (f)(1). Pub. L. 98-369, § 2663(a)(2)(C), struck out the first of two commas after "age 60" in provisions following subpar. (F).

Subsec. (f)(1)(C)(ii). Pub. L. 98-369, § 2661(d)(1), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65".

Subsec. (f)(2)(A). Pub. L. 98-369, § 2661(d)(2), substituted "paragraph (3)(D)" for "paragraph (3)(B)".

Subsec. (f)(3)(C). Pub. L. 98-369, § 2661(d)(3), struck out the period after "If such deceased individual".

Subsec. (f)(3)(D)(i). Pub. L. 98-369, § 2663(a)(2)(D), struck out the semicolon after "applicable,".

Subsec. (i). Pub. L. 98-369, § 2663(a)(2)(E), amended language being deleted by Pub. L. 97-35, § 2202(a)(1). See 1981 Amendment note below.

Subsec. (q)(3)(E). Pub. L. 98-369, § 2662(c)(1), made a clarifying amendment to Pub. L. 98-21, § 201(c)(1)(A). See 1983 Amendment note below.

Subsec. (q)(3)(G). Pub. L. 98-369, § 2663(a)(2)(F)(i), substituted "if the period" for "as if the period".

Subsec. (q)(7)(E). Pub. L. 98-369, § 2663(a)(2)(F)(ii), substituted "she or he attained retirement age" for "he attained retirement age".

Subsec. (q)(9)(B)(i). Pub. L. 98-369, § 2661(e), substituted "section 416(*l*) of this title" for "section 416(a) of this title".

Subsec. (t)(4)(E). Pub. L. 98-369, § 2663(a)(2)(G), added "of 1937 or 1974" after "Railroad Retirement Act" the first place it appears and substituted references to section 5(k)(1) of the Railroad Retirement Act of 1937 and section 18(2) of the Railroad Retirement Act of 1974 for reference to section 5(k)(1) of the Railroad Retirement Act.

Subsec. (u)(1)(B). Pub. L. 98-369, § 2663(a)(2)(H), struck out ", 822, or 823" after "section 783".

1983—Subsec. (a). Pub. L. 98-21, § 201(c)(1)(A), as amended by Pub. L. 98-369, § 2662(c)(1), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 or the age of 65, wherever appearing.

Subsec. (b)(1). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (b)(3). Pub. L. 98-21, § 307(a), struck out exception in provisions following subpar. (B) that, in the case of such a marriage to an individual entitled to benefits under subsection (d) of this section, the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsection (d) of this section unless he ceased to be so entitled by reason of his death.

Subsec. (b)(3)(A). Pub. L. 98-21, §§ 301(a)(7), 309(a), added references to subsecs. (c) and (g), respectively.

Subsec. (b)(4)(A). Pub. L. 98-21, § 337(a), substituted "by an amount equal to two-thirds of the amount of any monthly periodic benefit" for "by an amount equal to the amount of any monthly periodic benefit", and added provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Subsec. (b)(5). Pub. L. 98-21, § 132(a), added par. (5).

Subsec. (c)(1). Pub. L. 98-21, § 301(a)(1), added "and every divorced husband (as defined in section 416(d) of this title)" before "of an individual", and "or such divorced husband" after "if such husband" in provisions preceding subpar. (A).

Pub. L. 98-21, § 306(d), in provisions following subpar. (D) and preceding subpar. (E), added "(subject to subsection (s) of this section)" after "be entitled to".

Pub. L. 98-21, § 201(c)(1)(A), which directed the substitution of "retirement age (as defined in section 416(*l*) of this title" for "age 65" in provisions following subpar. (D) and preceding subpar. (E) was executed to those provisions after the execution of the amendment by section 301(a)(2)(C) of Pub. L. 98-21 as the probable intent of Congress.

Pub. L. 98-21, § 301(a)(2)(C), amended provisions following subpar. (D) generally, adding references to a divorced husband and to subpar. (D), designating existing provisions as subpars. (E) to (G) and (I) and (J), adding subpar. (H), and revising subpar. (G).

Subsec. (c)(1)(B). Pub. L. 98-21, § 306(e), added alternative provisions relating to the case of a husband.

Subsec. (c)(1)(C). Pub. L. 98-21, § 301(a)(2)(A), (B), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(1)(D). Pub. L. 98-21, § 301(a)(8), substituted "such individual" for "his wife" after "amount of".

Pub. L. 98-21, § 301(a)(2)(B), redesignated former subpar. (C) as (D).

Subsec. (c)(1)(I) to (K). Pub. L. 98-21, § 306(f), added subpar. (I), and redesignated subpars. (I) and (J), as added by section 301(a)(2)(C) of Pub. L. 98-21, as (J) and (K).

Subsec. (c)(2)(A). Pub. L. 98-21, § 337(a), substituted "by an amount equal to two-thirds of the amount of any monthly periodic benefit" for "by an amount equal to the amount of any monthly periodic benefit", and added provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98-21, § 301(a)(6), added "(or divorced husband)" after "payable to such husband".

Subsec. (c)(3). Pub. L. 98-21, § 301(a)(3), added "(or, in the case of a divorced husband, his former wife)" before "for such month".

Subsec. (c)(4). Pub. L. 98-21, § 301(a)(4), added par. (4).

Subsec. (c)(5). Pub. L. 98-21, § 301(a)(5), added par. (5).

Subsec. (d)(5). Pub. L. 98-21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to a male individual entitled to benefits under section 423(a) of this title or this subsection, the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under section 423(a) of this title or this subsection unless he ceased to be so entitled by reason of his death, or in the case of an individual entitled to benefits under section 423(a) of this title, he was entitled, for the month following such last month, to benefits under subsection (a) of this section.

Subsec. (d)(5)(A). Pub. L. 98-21, § 301(a)(9), added reference to subsec. (c).

Subsec. (d)(8)(D)(ii)(II). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (e)(1). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in provisions following subpar. (F).

Pub. L. 98-21, § 133(a)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C) of paragraph (2))" after "primary insurance amount" in provisions following subpar. (F).

Subsec. (e)(1)(B)(ii). Pub. L. 98-21, § 131(a)(3)(B), substituted reference to par. (4) for reference to par. (5).

Subsec. (e)(1)(C). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (e)(1)(D). Pub. L. 98-21, § 133(a)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C) of paragraph (2))" after "primary insurance amount".

Subsec. (e)(1)(F)(i). Pub. L. 98-21, § 131(a)(3)(C), substituted reference to par. (5) for reference to par. (6).

Subsec. (e)(1)(F)(ii). Pub. L. 98-21, § 131(a)(3)(C), substituted reference to par. (4) for reference to par. (5).

Subsec. (e)(2)(A). Pub. L. 98-21, § 133(a)(1)(B), amended subpar. (A), generally. Prior to the amendment subpar. (A) read as follows: "Except as provided in subsection (q) of this section, paragraph (7) of this subsection, and subparagraph (B) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of such deceased individual. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of subsection (w) of this section."

Pub. L. 98-21, § 131(a)(3)(D), substituted reference to par. (7) for reference to par. (8).

Pub. L. 98-21, § 113(d), substituted "section 415(f)(5), 415(f)(6), or 415(f)(9)(B)" for "section 415(f)(5) or (6)".

Subsec. (e)(2)(B). Pub. L. 98-21, § 133(a)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (D).

Subsec. (e)(2)(B)(i). Pub. L. 98-21, § 113(d), substituted "section 415(f)(5), 415(f)(6), or 415(f)(9)(B)" for "section 415(f)(5) or (6)".

Subsec. (e)(2)(C), (D). Pub. L. 98-21, § 133(a)(1), added subpar. (C) and redesignated former subpar. (B) as (D).

Subsec. (e)(2)(D)(ii). Pub. L. 98-21, § 133(a)(2)(B), inserted "(as determined without regard to subparagraph (C))" after "primary insurance amount".

Subsec. (e)(3). Pub. L. 98-21, § 131(a)(1)-(3)(A), redesignated par. (4) as (3), and in par. (3) as so redesignated, substituted provision that, for purposes of par. (1), if (A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection, or (B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50, such marriage shall be deemed not to have occurred, for provision that if a widow, after attaining age 60, married, such marriage would for purposes of par. (1) be deemed not to have occurred. Former par. (3), which had provided that if a widow before attaining age 60, or a surviving divorced wife, married (A) an individual entitled to benefits under subsec. (f) or (h), or (B) an individual who had attained the age of eighteen and was entitled to benefits under subsec. (d), such widow's or surviving divorced wife's entitlement to benefits under this subsection would, notwithstanding the provisions of par. (1) of this subsection, but subject to subsec. (s), not be terminated by reason of such marriage, except that, in the case of such a marriage to an individual entitled to benefits under subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsec. (d) unless he ceased to be so entitled by reason of his death, was struck out.

Subsec. (e)(4). Pub. L. 98-21, § 131(a)(3)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(5). Pub. L. 98-21, § 131(a)(3)(A), (E), redesignated par. (6) as (5) and, in par. (5) as so redesignated, substituted reference to par. (4) for reference to par. (5). Former par. (5) redesignated (4).

Subsec. (e)(6). Pub. L. 98-21, § 131(a)(3)(A), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (e)(7). Pub. L. 98-21, § 131(a)(3)(A), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (e)(7)(A). Pub. L. 98-21, § 337(a), substituted "by an amount equal to two-thirds of the amount of any monthly periodic benefit" for "by an amount equal to the amount of any monthly periodic benefit", and added provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98-21, § 131(a)(3)(F), substituted reference to par. (3) for reference to par. (4).

Subsec. (e)(8). Pub. L. 98-21, § 131(a)(3)(A), redesignated par. (8) as (7).

Subsec. (f)(1). Pub. L. 98-21, § 301(b)(1), added "and every surviving divorced husband (as defined in section 416(d) of this title)" before "of an individual", and "or such surviving divorced husband" after "if such widower" in provisions preceding subpar. (A).

Pub. L. 98-21, § 301(b)(2), substituted "such deceased individual" for "his deceased wife" in provisions following subpar. (F).

Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in provisions following subpar. (F).

Pub. L. 98-21, § 133(b)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C) of paragraph (3))" after "primary insurance amount" in provisions following subpar. (F).

Subsec. (f)(1)(A). Pub. L. 98-21, § 302, substituted "is not married" for "has not remarried".

Subsec. (f)(1)(B)(ii). Pub. L. 98-21, § 131(b)(3)(B), substituted reference to par. (5) for reference to par. (6).

Subsec. (f)(1)(C)(i). Pub. L. 98-21, § 306(g), designated existing provisions as cl. (i).

Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (f)(1)(C)(ii). Pub. L. 98-21, § 201(c)(1)(A), which directed the substitution of "retirement age (as defined in section 416(*l*) of this title)" for "age 65" in cl. (ii) was executed to those provisions after the execution of section 306(g) of Pub. L. 98-21 as the probable intent of Congress.

Pub. L. 98-21, § 306(g), added cl. (ii).

Subsec. (f)(1)(D). Pub. L. 98-21, § 301(b)(2), substituted "such deceased individual" for "his deceased wife".

Pub. L. 98-21, § 133(b)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C) of paragraph (3))" after "primary insurance amount".

Subsec. (f)(1)(F)(i). Pub. L. 98-21, § 131(b)(3)(C), substituted reference to par. (6) for reference to par. (7).

Subsec. (f)(1)(F)(ii)(I). Pub. L. 98-21, § 131(b)(3)(C), substituted reference to par. (5) for reference to par. (6).

Subsec. (f)(2)(A). Pub. L. 98-21, § 337(a), substituted "by an amount equal to two-thirds of the amount of any monthly periodic benefit" for "by an amount equal to the amount of any monthly periodic benefit", and added provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98-21, § 131(b)(3)(D), substituted reference to par. (4) for reference to par. (5).

Subsec. (f)(3)(A). Pub. L. 98-21, § 133(b)(1)(B), amended subpar. (A) generally. Prior to the amendment subpar. (A) read as follows: "Except as provided in subsection (q) of this section, paragraph (2) of this subsection, and subparagraph (B) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of his deceased wife. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of subsection (w) of this section."

Pub. L. 98-21, § 113(d), substituted "section 415(f)(5), 415(f)(6), or 415(f)(9)(B)" for "section 415(f)(5) or (6)".

Subsec. (f)(3)(B). Pub. L. 98-21, § 133(b)(1), added subpar. (B) and redesignated former subpar. (B) as (D).

Pub. L. 98-21, § 113(d), substituted "section 415(f)(5), 415(f)(6), or 415(f)(9)" for "section 415(f)(5) or (6)".

Subsec. (f)(3)(B)(ii)(II). Pub. L. 98-21, § 301(b)(3), added "or surviving divorced husband" after "widower".

Subsec. (f)(3)(C). Pub. L. 98-21, § 133(b)(1)(B), added subpar. (C).

Subsec. (f)(3)(D). Pub. L. 98-21, § 301(b)(4), added "or surviving divorced husband" after "widower" wherever appearing.

Pub. L. 98-21, § 301(b)(5), substituted "individual" for "wife" wherever appearing.

Pub. L. 98-21, § 133(b)(1)(A), redesignated former subpar. (B) as (D).

Subsec. (f)(3)(D)(ii). Pub. L. 98-21, § 133(b)(2)(B), inserted "(as determined without regard to subparagraph (C))" after "primary insurance amount".

Subsec. (f)(4). Pub. L. 98-21, § 301(b)(4), added "or surviving divorced husband" after "widower" in two places.

Pub. L. 98-21, § 131(b)(1)-(3)(A), redesignated par. (5) as (4), and amended par. (4) as so redesignated generally, substituting provision that for purposes of par. (1), if a widower married after attaining age 60 (or after attaining age 50 if entitled before such marriage occurred to benefits based on disability under this subsection), or a disabled widower described in paragraph (1)(B)(ii) married after attaining age 50, such marriage would be deemed not to have occurred, for provision that if a widower married after attaining age 60, such marriage would be deemed not to have occurred for purposes of par. (1). Former par. (4), which had provided that if a widower, before attaining age 60, remarried an individual entitled to benefits under subsec. (b), (e), (g), or (h) or an individual who had attained the age of eighteen and was entitled to benefits under subsec. (d), such widower's entitlement to benefits under this subsection would, notwithstanding the provisions of par. (1) of this subsection but subject to subsec. (s), not be terminated by reason of such marriage, was struck out.

Subsec. (f)(5). Pub. L. 98-21, § 301(b)(4), added "or surviving divorced husband" after "widower" in provisions preceding subpar. (A).

Pub. L. 98-21, § 131(b)(3)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (f)(5)(B), (C). Pub. L. 98-21, § 306(h), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(6). Pub. L. 98-21, § 301(b)(4), added "or surviving divorced husband" after "widower".

Pub. L. 98-21, § 131(b)(3)(A), (E), redesignated par. (7) as (6) and in par. (6) as so redesignated, substituted reference to par. (5) for reference to par. (6). Former par. (6) redesignated (5).

Subsec. (f)(7), (8). Pub. L. 98-21, § 131(b)(3)(A), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (g). Pub. L. 98-21, § 306(a)(7), inserted "or father's" after "mother's" wherever appearing.

Subsec. (g)(1). Pub. L. 98-21, § 306(a)(8), struck out "after August 1950" after "beginning with the first month" in provisions following subpar. (F).

Pub. L. 98-21, § 306(a)(1), (2), (5), (6), substituted "surviving spouse" for "widow", "surviving spouse's" for "widow's", "he or she" for "she", and "parent" for "mother", wherever appearing.

Subsec. (g)(1)(D). Pub. L. 98-21, § 306(a)(3), substituted "a spouse's insurance benefit" for "wife's insurance benefits" and "such individual" for "he".

Subsec. (g)(1)(E). Pub. L. 98-21, § 306(a)(4), substituted "his or her" for "her".

Subsec. (g)(1)(F)(i). Pub. L. 98-21, § 306(a)(4), substituted "his or her" for "her".

Subsec. (g)(3). Pub. L. 98-21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to an individual entitled to benefits under section 423(a) of this title or subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under section 423(a) of this title or subsec. (d) unless he ceased to be so entitled by reason of his death, or in the case of an individual entitled to benefits under section 423(a) of this title, he was entitled, for the month following such last month, to benefits under subsec. (a).

Pub. L. 98-21, § 306(a)(1), (6), substituted "surviving spouse" for "widow" and "parent" for "mother" wherever appearing.

Subsec. (g)(3)(A). Pub. L. 98-21, § 306(a)(9)(B), added reference to this subsection and subsecs. (b) and (e).

Pub. L. 98-21, § 301(b)(6), added reference to subsec. (c).

Subsec. (g)(4)(A). Pub. L. 98-21, § 337(a), substituted "by an amount equal to two-thirds of the amount of any monthly periodic benefit" for "by an amount equal to the amount of any monthly periodic benefit", and added provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Subsec. (h)(4). Pub. L. 98-21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to a male individual entitled to benefits under subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsec. (d) unless he ceased to be so entitled by reason of his death.

Subsec. (h)(4)(A). Pub. L. 98-21, § 301(b)(7), added reference to subsec. (c).

Subsec. (j)(4)(B)(iii) to (v). Pub. L. 98-21, § 334(a), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (k)(2)(B), (3)(B). Pub. L. 98-21, § 131(b)(3)(F), (G), substituted references to subsecs. (e)(3) and (f)(4) for references to subsecs. (e)(4) and (f)(5), respectively, wherever appearing.

Subsec. (m). Pub. L. 98-21, §§ 111(a)(7), 134(b), in par. (1) substituted "November" for "May" and in par. (2)(B) substituted "subsection (q)(6)(B)" for "subsection (q)(6)(A)(ii)", as subsec. (m) [notwithstanding its repeal by Pub. L. 97-35] continues to apply in certain cases by reason of section 2(j)(2)-(4) of Pub. L. 97-123, set out as an Effective Date of 1981 Amendment note under section 415 of this title. As thus amended subsec. (m) would read as follows:

"(1) In any case in which an individual is entitled to a monthly benefit under this section on the basis of a primary insurance amount computed under section 415(a) or (d) of this title, as in effect after December 1978, on the basis of the wages and self-employment income of a deceased individual for any month and no other person is (without the application of subsection (j)(1) of this section) entitled to a monthly benefit under this section for that month on the basis of such wages and self-employment income, the individual's benefit amount for that month, prior to reduction under subsection (k)(3) of this section, shall not be less than that provided by subparagraph (C)(1)(I) of section 415(a)(1) of this title and increased under section 415(i) of this title for months after November of the year in which the insured individual died as though such benefit were a primary insurance amount.

"(2) In the case of any such individual who is entitled to a monthly benefit under subsection (e) or (f) of this section, such individual's benefit amount, after reduction under subsection (q)(1) of this section, shall be not less than—

"(A) $84.50, if his first month of entitlement to such benefit is the month in which such individual attained age 62 or a subsequent month, or

"(B) $84.50 reduced under subsection (q)(1) of this section as if retirement age as specified in subsection (q)(6)(B) of this section were age 62 instead of the age specified in subsection (q)(9) of this section, if his first month of entitlement to such benefit is before the month in which he attained age 62.

"(3) In the case of any individual whose benefit amount was computed (or recomputed) under the provisions of paragraph (2) and such individual was entitled to benefits under subsection (e) or (f) of this section for a month prior to any month after 1972 for which a general benefit increase under this subchapter (as defined in section 415(i)(3) of this title) or a benefit increase under section 415(i) of this title becomes effective, the benefit amount of such individual as computed under paragraph (2) without regard to the reduction specified in subparagraph (B) thereof shall be increased by the percentage increase applicable for such benefit increase, prior to the application of subsection (q)(1) of this section pursuant to paragraph (2)(B) and subsection (q)(4) of this section."

Subsec. (q)(1). Pub. L. 98-21, § 201(b)(2), substituted "Subject to paragraph (9), if" for "If" at the beginning of par. (1).

Pub. L. 98-21, § 134(a)(1), struck out provisions following subpar. (B)(ii) which had directed that in the case of a widow or widower whose first month of entitlement to a widow's or widower's insurance benefit was a month before the month in which such widow or widower attained age 60, such benefit, reduced pursuant to preceding provisions of this paragraph (and before the application of the second sentence of paragraph (8)), had to be further reduced by $^{43}/_{240}$ of 1 percent of the amount of such benefit, multiplied by the number of months in the additional reduction period for such benefit (determined under paragraph (6)(B)), if such benefit was for a month before the month in which such individual attained age 62, or if less, the number of months in the additional adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit was for the month in which such individual attained age 62 or any month thereafter.

Subsec. (q)(1)(B)(i). Pub. L. 98-21, § 134(a)(2)(C), substituted "paragraph (6)" for "paragraph (6)(A)".

Subsec. (q)(2). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(3)(A)(i). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(3)(E). Pub. L. 98-21, § 309(b), added "or surviving divorced husband" after "widower".

Pub. L. 98-21, § 201(c)(1)(A), as amended by Pub. L. 98-369, § 2662(c)(1), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to the age of 65.

Subsec. (q)(3)(E)(ii). Pub. L. 98-21, § 134(a)(2)(C), substituted "paragraph (6)" for "paragraph (6)(A)".

Subsec. (q)(3)(F). Pub. L. 98-21, § 309(b), added "or surviving divorced husband" after "widower".

Subsec. (q)(3)(F)(ii)(I). Pub. L. 98-21, § 134(a)(2)(C), substituted "paragraph (6)" for "paragraph (6)(A)".

Subsec. (q)(3)(G). Pub. L. 98-21, § 309(b), added "or surviving divorced husband" after "widower".

Pub. L. 98-21, § 134(a)(2)(B), substituted "paragraph (6)" for "paragraph (6)(A) (or, if such paragraph does not apply, the period specified in paragraph (6)(B))".

Subsec. (q)(5). Pub. L. 98-21, § 309(c)(4), substituted "he or she" for "she" wherever appearing.

Pub. L. 98-21, § 309(c)(1), added "or husband's" after "wife's" wherever appearing.

Subsec. (q)(5)(A)(i). Pub. L. 98-21, § 309(c)(2), substituted "him or her" for "her".

Subsec. (q)(5)(A)(ii). Pub. L. 98-21, § 309(c)(3), substituted "the" for "her" after "income".

Subsec. (q)(5)(B)(ii). Pub. L. 98-21, § 309(c)(6), substituted "the individual" for "the woman".

Subsec. (q)(5)(C). Pub. L. 98-21, § 309(c)(6), substituted "an individual" for "a woman".

Pub. L. 98-21, § 309(c)(5), substituted "his or her" for "her".

Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 wherever appearing.

Subsec. (q)(5)(D). Pub. L. 98-21, § 309(c)(7), added "or widower's" after "widow's", substituted "spouse" for "husband" wherever appearing, substituted "spouse's" for "husband's" wherever appearing, and added "or father's" after "mother's".

Pub. L. 98-21, § 309(c)(5), substituted "his or her" for "her" in three places.

Subsec. (q)(6). Pub. L. 98-21, § 134(a)(2)(A), amended par. (6) generally, striking out subpar. designation "(A)" after "this subsection" and redesignated cl. (i) as subpar. (A), in subpar. (A) as so redesignated, redesignated subcls. (I) to (III) as cls. (i) to (iii), respectively, redesignated former cl. (ii) as subpar. (B), and struck out former subpar. (B), which had provided that the "additional reduction period" for an individual's widow's or widower's insurance benefit was the period beginning with the first day of the first month for which such individual was entitled to such benefit, but only if such individual had not attained age 60 in such first month, and ending with the last day of the month before the month in which such individual attained age 60.

Subsec. (q)(6)(A)(i). Pub. L. 98-21, § 309(d)(1), struck out "or husband's" after "old-age".

Subsec. (q)(6)(A)(ii). Pub. L. 98-21, § 309(d)(1), added "or husband's" after "wife's".

Subsec. (q)(7). Pub. L. 98-21, § 134(a)(3), amended provisions preceding subpar. (A) generally, substituting reference to par. (6) for reference to par. (6)(A), and striking out provision that the additional adjusted reduction period for an individual's, widow's, or widower's insurance benefit was the additional reduction period prescribed by par. (6)(B) for such benefit, with the same exclusions as from the adjusted reduction period.

Subsec. (q)(7)(B). Pub. L. 98–21, § 309(d)(2)(A), added "or husband's" after "wife's", substituted "such individual" for "she", and added "his or" before "her".

Subsec. (q)(7)(D). Pub. L. 98–21, § 309(d)(2)(B), added "or widower's" after "widow's".

Susbec. (q)(9). Pub. L. 98–21, § 201(b)(1), amended par. (9) generally, substituting provisions defining the amount of reduction for early retirement specified in par. (1) for provision that, for purposes of this subsection, the term "retirement age" meant age 65.

Subsc. (q)(10). Pub. L. 98–21, § 134(a)(4)(A), in that part of second sentence preceding cl. (A) struck out "or an additional adjusted reduction period" after "the use of an adjusted reduction period".

Subsec. (q)(10)(B)(i). Pub. L. 98–21, § 134(a)(4)(B), struck out ", plus the number of months in the adjusted additional reduction period multiplied by $\frac{43}{198}$ of 1 percent" before "to (ii)".

Subsec. (q)(10)(B)(ii). Pub. L. 98–21, § 134(a)(4)(C), struck out "plus the number of months in the additional reduction period multiplied by $\frac{43}{198}$ of 1 percent," after "1 percent".

Subsec. (q)(10)(C). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(10(C)(i). Pub. L. 98–21, § 134(a)(4)(B), struck out ", plus the number of months in the adjusted additional reduction period multiplied by $\frac{43}{198}$ of 1 percent" before "to (ii)".

Subsec. (q)(10)(C)(ii). Pub. L. 98–21, § 134(a)(4)(D), struck out "plus the number of months in the adjusted additional reduction period multiplied by $\frac{43}{198}$ of 1 percent." after "1 percent,".

Subsec. (r)(1), (2). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (s)(1). Pub. L. 98–21, § 309(e)(1), added reference to subsec. (c)(1).

Subsec. (s)(2). Pub. L. 98–21, § 309(e)(2), added reference to subsec. (c)(4).

Pub. L. 98–21, § 131(c)(1), substituted "So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4)" for "Subsection (f)(4), and so much of subsections (b)(3), (d)(5), (e)(3), (g)(3), and (h)(4)".

Subsec. (s)(3). Pub. L. 98–21, § 309(e)(3), substituted "The last sentence" for "So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4) of this section as follows the semicolon, the last sentence".

Pub. L. 98–21, § 131(c)(2), struck out "(e)(3)," after "(d)(5),".

Subsec. (t)(2), (4). Pub. L. 98–21, § 340(b), substituted "Subject to paragraph (11), paragraph (1)" for "Paragraph (1)".

Subsec. (t)(11). Pub. L. 98–21, § 340(a)(2), added par. (11).

Subsec. (w)(1)(A). Pub. L. 98–21, § 114(a), substituted a definition of the multiplicand as the applicable percentage (as determined under paragraph (6)) of such amount for a definition of the multiplicand as $\frac{1}{12}$ of 1 percent of such amount, or, in the case of an individual who first becomes eligible for an old-age insurance benefit after December 1978, one-quarter of 1 percent of such amount.

Subsec. (w)(2)(A). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Pub. L. 98–21, § 114(c)(1), substituted "age 70" for "age 72".

Subsec. (w)(3). Pub. L. 98–21, § 114(c)(1), substituted "age 70" for "age 72".

Subsec. (w)(6). Pub. L. 98–21, § 114(b), added par. (6).

Subsec. (x). Pub. L. 98–21, § 339(a), added subsec. (x).

1981—Pub. L. 97–35, § 2202(a)(1), as amended by Pub. L. 98–369, § 2663(a)(2)(E), substituted in par. (1) provision that a qualifying widow or widower be paid for provision that unpaid burial expenses to a funeral home be paid and in par. (2) provision for payment in the event that no one qualifies or if the person entitled dies before receiving payment for provision for payment if all burial expenses incurred by or through a funeral home were paid, and struck out pars. (3) and (4), which provided for payment if the body of the insured is not available for burial but expenses were incurred for a memorial marker, service, etc., and for distribution of any amounts remaining available after payments under this subsection were made, respectively, and struck out "(except a payment authorized pursuant to clause (1)(A) of the preceding sentence)" after "No payment".

Effective Date of 1984 Amendment

Amendment by sections 2661 and 2662 of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendments

Section 111(a)(8) of Pub. L. 98–21 provided that: "The amendments made by this subsection [amending sections 402, 403, 415, and 430 of this title] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [42 U.S.C. 415(i)] for years after 1982."

Section 114(c)(2) of Pub. L. 98–21 provided that: "The amendments made by paragraph (1) [amending subsec. (w)(2)(A), (3) of this section] shall apply with respect to increment months in calendar years after 1983."

Section 131(d) of Pub. L. 98–21 provided that:

"(1) The amendments made by this section [amending sections 402 and 426 of this title] shall be effective with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1983.

"(2) In the case of an individual who was not entitled to a monthly benefit of the type involved under title II of such Act for December 1983, no benefit shall be paid under such title by reason of such amendments unless proper application for such benefit is made."

Section 132(c)(1) of Pub. L. 98–21 provided that: "The amendments made by subsection (a) [enacting subsec. (b)(5) of this section] shall apply with respect to monthly insurance benefits for months after December 1984, but only on the basis of applications filed on or after January 1, 1985."

Section 133(c) of Pub. L. 98–21 provided that: "The amendments made by this section [amending subsecs. (e) and (f) of this section] shall apply with respect to monthly insurance benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under section 202(e) or (f) of the Social Security Act [subsecs. (e) and (f) of this section] (other than making application for such benefits) after December 1984."

Section 134(c) of Pub. L. 98–21 provided that: "The amendments made by this section [amending subsecs. (m) and (q) of this section] shall apply with respect to benefits for months after December 1983."

Section 301(a)(5) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title VI, § 2662(d), July 18, 1984, 98 Stat. 1159, provided in part that the enactment of subsec. (c)(5) of this section [by section 301(a)(5) of Pub. L. 98–21] is effective "with respect to monthly insurance benefits for months after December 1984 (but only on the basis of applications filed on or after January 1, 1985)".

Section 307(b) of Pub. L. 98-21 provided that: "The amendments made by subsection (a) [amending subsecs. (b)(3), (d)(5), (g)(3), and (h)(4) of this section] shall apply with respect to benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [Apr. 1983], but only in cases in which the 'last month' referred to in the provision amended is a month after the month in which this Act is enacted."

Section 310 of part A [§§ 301-310] of title III of Pub. L. 98-21 provided that:

"(a) Except as otherwise specifically provided in this title, the amendments made by this part [amending sections 402, 403, 405, 416, 417, 422, 423, 425, 426, 427, and 428 of this title] apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [Apr. 1983].

"(b) Nothing in any amendment made by this part shall be construed as affecting the validity of any benefit which was paid, prior to the effective date of such amendment, as a result of a judicial determination."

Section 334(b) of Pub. L. 98-21 provided that: "The amendments made by subsection (a) [amending subsec. (j)(4)(B) of this section] shall apply with respect to survivors whose applications for monthly benefits are filed after the second month following the month in which this Act is enacted [Apr. 1983]."

Section 337(b) of Pub. L. 98-21, as amended by Pub. L. 98-617, § 2(a)(1), Nov. 8, 1984, 98 Stat. 3294, provided that: "The amendments made by subsection (a) of this section [amending subsecs. (b)(4)(A), (c)(2)(A), (e)(7)(A), (f)(2)(A), and (g)(4)(A) of this section] shall apply only with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months after June 1983."

[Section 2(a)(2) of Pub. L. 98-617 provided that: "The amendments made by this subsection [amending above note] shall apply to benefits payable under title II of the Social Security Act [this subchapter] for months beginning after the month of enactment of this Act [November 1984]."]

Section 339(c) of Pub. L. 98-21 provided that: "The amendments made by subsections (a) and (b) [amending sections 402 and 423 of this title] shall apply with respect to monthly benefits payable for months beginning on or after the date of enactment of this Act [Apr. 20, 1983]."

Section 340(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending subsec. (t) of this section] shall apply with respect to any individual who initially becomes eligible for benefits under section 202 or 223 [42 U.S.C. 402 and 423] after December 31, 1984."

MONTHLY PAYMENTS TO SURVIVING SPOUSE OF MEMBER OR FORMER MEMBER OF ARMED FORCES WHERE SUCH PERSON HAS IN CARE A CHILD OF SUCH MEMBER; AMOUNT, CRITERIA, ETC.

Pub. L. 97-377, title I, § 156, Dec. 21, 1982, 96 Stat. 1920, as amended by Pub. L. 98-94, title IX, § 943, Sept. 24, 1983, 97 Stat. 654, provided that:

[*See main edition for text of* (a) *to* (f)]

"(g)(1) During each fiscal year the Secretary of Defense shall transfer from time to time to the head of the agency such amounts as the head of the agency determines to be necessary to pay the benefits provided for under subsections (a) and (b) during such fiscal year and to pay the administrative expenses incurred in paying such benefits during such fiscal year. During fiscal year 1983, transfers under this subsection shall be made from the 'Retired Pay, Defense' account of the Department of Defense. During subsequent fiscal years, such transfers shall be made from such account or from funds otherwise available to the Secretary for the purpose of the payment of such benefits and expenses. The Secretary of Defense may transfer funds under this subsection in advance of the payment of benefits and expenses by the head of the agency.

[*See main edition for text of* (2), (*h*) *and* (*i*)]

NONAPPLICABILITY OF AMENDMENTS BY SECTION 334 OF PUB. L. 95-216 TO MONTHLY INSURANCE BENEFITS PAYABLE TO INDIVIDUALS ELIGIBLE FOR MONTHLY PERIODIC BENEFITS; SAVINGS PROVISION

Section 334(g) of Pub. L. 95-216, as amended by Pub. L. 98-617, § 2(b)(1), Nov. 8, 1984, 98 Stat. 3294, provided that:

"(1) The amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [subsec. (b), (c), (e), (f), or (g) of this section] to an individual—

"(A)(i) to whom there is payable for any month within the 60-month period beginning with the month in which this Act [Dec., 1977] is enacted (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act) [section 418(b)(2) of this title], or (ii) who would have been eligible for such a monthly periodic benefit (within the meaning of paragraph (2)) before the close of such 60-month period, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

[*See main edition for text of* (*B*); (2) *and* (3)]

[Section 2(b)(3) of Pub. L. 98-617 provided that: "The amendments made by this subsection [amending above note and provisions set out as an Offset Against Spouses' Benefits on Account of Public Pensions note below] shall apply with respect to benefits payable under title II of the Social Security Act [this subchapter] for months beginning after the month of enactment of this Act [November 1984]."]

OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS

Section 334(h) of Pub. L. 95-216, as added by Pub. L. 97-455, § 7(a)(1), Jan. 12, 1983, 96 Stat. 2501, and amended by Pub. L. 98-617, § 2(b)(2), Nov. 8, 1984, 98 Stat. 3294, provided that: "In addition, the amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [subsec. (b), (c), (e), (f), or (g) of this section], to an individual—

"(1)(A) to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act [section 418(b)(2) of this title]), or (B) who would have been eligible for such a monthly periodic benefit (within the meaning of subsection (g)(2) [set out as a note above]) before the close of June 1983, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

[*See main edition for text of* (*2*)]

Ex. Ord. No. 12436. Payment of Certain Benefits to Survivors of Persons Who Died in or as a Result of Military Service

Ex. Ord. No. 12436, July 29, 1983, 48 F.R. 34931, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 156 of Public Law 97-377 (96 Stat. 1920; 42 U.S.C. 402 note), in order to provide certain benefits to the surviving spouses and children of certain persons who died in or as a result of military service, it is hereby ordered as follows:

Section 1. The Administrator of Veterans' Affairs is designated to administer the provisions of Section 156 of Public Law 97-377.

Sec. 2. The Secretary of Health and Human Services shall provide to the Administrator of Veterans' Affairs such information and such technical assistance as the Administrator may reasonably require to discharge his responsibilities under Section 156. The Administrator of Veterans' Affairs shall reimburse the Department of Health and Human Services for all expenses it incurs in providing such information and technical assistance to the Veterans' Administration. Such expenses shall be paid from the Veterans' Administration account described in Section 3 of this Order.

Sec. 3. During fiscal year 1983 and each succeeding fiscal year, the Secretary of Defense shall transfer, from time to time, from the "Retired Pay, Defense" account of the Department of Defense to an account established in the Veterans' Administration, such amounts as the Administrator of Veterans' Affairs determines to be necessary to pay the benefits authorized by Section 156 during fiscal year 1983 and each succeeding fiscal year, and the expenses incurred by the Veterans' Administration in paying such benefits during fiscal year 1983 and each succeeding fiscal year. Such transfers shall, to the extent feasible, be made in advance of the payment of benefits and expenses by the Veterans' Administration.

Sec. 4. This Order shall be effective as of January 1, 1983.

Ronald Reagan.

Section Referred to in Other Sections

This section is referred to in sections 401, 403, 405, 415, 416, 417, 422, 423, 424a, 425, 426, 426a, 427, 428, 433, 1320b-1, 1395i-1, 1395p, 1395r, 1395s of this title; title 5 section 8332; title 30 sections 902, 922, 932; title 38 sections 412, 422; title 45 sections 231a, 231b, 231c, 231d, 231e, 231f.

§ 403. Reduction of insurance benefits

(a) Maximum benefits

[*See main edition for text of* (*1*) *and* (*2*)]

(3)(A) When an individual who is entitled to benefits on the basis of the wages and self-employment income of any insured individual and to whom this subsection applies would (but for the provisions of section 402(k)(2)(A) of this title) be entitled to child's insurance benefits for a month on the basis of the wages and self-employment income of one or more other insured individuals, the total monthly benefits to which all beneficiaries are entitled on the basis of such wages and self-employment income shall not be reduced under this subsection to less than the smaller of—

(i) the sum of the maximum amounts of benefits payable on the basis of the wages and self-employment income of all such insured individuals, or

(ii) an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title, for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title.

The year established for purposes of clause (ii) shall be 1983 or, if it occurs later with respect to any individual, the year in which occurred the month that the application of the reduction provisions contained in this subparagraph began with respect to benefits payable on the basis of the wages and self-employment income of the insured individual. If for any month subsequent to the first month for which clause (ii) applies (with respect to benefits payable on the basis of the wages and self-employment income of the insured individual) the reduction under this subparagraph ceases to apply, then the year determined under the preceding sentence shall be redetermined (for purposes of any subsequent application of this subparagraph with respect to benefits payable on the basis of such wages and self-employment income) as though this subparagraph had not been previously applicable.

[*See main edition for text of* (*B*) *and* (*C*), (*4*) *to* (*6*)]

(7) In the case of any individual who is entitled for any month to benefits based upon the primary insurance amounts of two or more insured individuals, one or more of which primary insurance amounts were determined under section 415(a) or (d) of this title as in effect (without regard to the table contained therein) prior to January 1979 and one or more of which primary insurance amounts were determined under section 415(a)(1) or (4) of this title, or section 415(d) of this title, as in effect after December 1978, the total benefits payable to that individual and all other individuals entitled to benefits for that month based upon those primary insurance amounts shall be reduced to an amount equal to the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7).

(8) Subject to paragraph (7), this subsection as in effect in December 1978 shall remain in effect with respect to a primary insurance amount computed under section 415(a) or (d) of this title, as in effect (without regard to the table contained therein) in December 1978, except that a primary insurance amount so computed with respect to an individual who first becomes eligible for an old-age or disability insurance benefit, or dies (before becoming eli-

gible for such a benefit), after December 1978, shall instead be governed by this section as in effect after December 1978. For purposes of the preceding sentence, the phrase "rounded to the next higher multiple of $0.10", as it appeared in subsection (a)(2)(C) of this section as in effect in December 1978, shall be deemed to read "rounded to the next lower multiple of $0.10".

[*See main edition for text of* (9)]

(b) Deductions on account of work

(1) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—

(A) such individual's benefit or benefits under section 402 of this title for any month, and

(B) if such individual was entitled to old-age insurance benefits under section 402(a) of this title for such month, the benefit or benefits of all other persons for such month under section 402 of this title based on such individual's wages and self-employment income,

if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (A) and (B). If the excess earnings so charged are less than such total of benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings. If a child who has attained the age of 18 and is entitled to child's insurance benefits, or a person who is entitled to mother's or father's insurance benefits, is married to an individual entitled to old-age insurance benefits under section 402(a) of this title, such child or such person, as the case may be, shall, for the purposes of this subsection and subsection (f) of this section, be deemed to be entitled to such benefits on the basis of the wages and self-employment income of such individual entitled to old-age insurance benefits. If a deduction has already been made under this subsection with respect to a person's benefit or benefits under section 402 of this title for a month, he shall be deemed entitled to payments under such section for such month for purposes of further deductions under this subsection, and for purposes of charging of each person's excess earnings under subsection (f) of this section, only to the extent of the total of his benefits remaining after such earlier deductions have been made. For purposes of this subsection and subsection (f) of this section—

(i) an individual shall be deemed to be entitled to payments under section 402 of this title equal to the amount of the benefit or benefits to which he is entitled under such section after the application of subsection (a) of this section, but without the application of the first sentence of paragraph (4) thereof; and

(ii) if a deduction is made with respect to an individual's benefit or benefits under section 402 of this title because of the occurrence in any month of an event specified in subsection (c) or (d) of this section or in section 422(b) of this title, such individual shall not be considered to be entitled to any benefits under such section 402 for such month.

(2) When any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title for any month and such person has been so divorced for not less than 2 years, the benefit to which he or she is entitled on the basis of the wages and self-employment income of the individual referred to in paragraph (1) for such month shall be determined without regard to deductions under this subsection as a result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in paragraph (1) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(c) Deductions on account of noncovered work outside the United States or failure to have child in care

Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, until the total of such deductions equals such individual's benefits or benefit under section 402 of this title for any month—

(1) in which such individual is under the age of seventy and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States;

(2) in which such individual, if a wife or husband under retirement age (as defined in section 416(*l*) of this title) entitled to a wife's or husband's insurance benefit, did not have in his or her care (individually or jointly with his or her spouse) a child of such spouse entitled to a child's insurance benefit and such wife's or husband's insurance benefit for such month was not reduced under the provisions of section 402(q) of this title;

(3) in which such individual, if a widow or widower entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased spouse entitled to a child's insurance benefit; or

(4) in which such an individual, if a surviving divorced mother or father entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased former spouse who (A) is his or her son, daughter, or legally adopted child and (B) is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased former spouse.

For purposes of paragraphs (2), (3), and (4) of this subsection, a child shall not be considered to be entitled to a child's insurance benefit for any month in which paragraph (1) of section 402(s) of this title applies or an event specified in section 422(b) of this title, occurs with respect to such child. Subject to paragraph (3) of such section 402(s) of this title, no deduction shall be made under this subsection from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of eighteen or any subsequent month; nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower or surviving divorced husband is entitled and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if he became so entitled prior to attaining age 60).

(d) Deductions from dependent's benefits on account of noncovered work outside the United States by old-age insurance beneficiary

(1)(A) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, to which a wife, divorced wife, husband, divorced husband, or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 402 of this title for any month in which such individual is under the age of seventy and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States.

(B) When any divorced spouse is entitled to monthly benefits under section 402(b) or (c) of this title for any month and such divorced spouse has been so divorced for not less than 2 years, the benefit to which he or she is entitled for such month on the basis of the wages and self-employment income of the individual entitled to old-age insurance benefits referred to in subparagraph (A) shall be determined without regard to deductions under this paragraph as a result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in subparagraph (A) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled, or from any mother's or father's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or mother's or father's insurance benefit or benefits under section 402 of this title for any month in which such child or person entitled to mother's or father's insurance benefits is married to an individual under the age of seventy who is entitled to old-age insurance benefits and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States.

[*See main edition for text of* (*e*)]

(f) Months to which earnings are charged

For purposes of subsection (b) of this section—

(1) The amount of an individual's excess earnings (as defined in paragraph (3) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled for such month under section 402 of this title on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the extent, in the case of each such month, of the sum of the payments to which such individual and all such other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 402(a) of this title and other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled to benefits under section 402(b), (c), or (d) of this title on the basis of the wages and self-employment income of such individual, the excess earnings of such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding provisions of this paragraph but subject to section 402(s) of this title, no part of the excess earnings of an individual shall be charged to any month (A) for which such individual was not entitled to a benefit under this subchapter, (B) in which such individual was age seventy or over, (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 18, (D) for which such individual is entitled to widow's insurance benefits and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if he became so entitled prior to attaining age 60), (E) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), if such month is in the taxable year in which occurs the first month after December 1977 that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsec-

tions), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8), or (F) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), in the case of an individual entitled to benefits under section 402(b) or (c) of this title (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c) of this section, as may be applicable) or under section 402(d) or (g) of this title, if such month is in a year in which such entitlement ends for a reason other than the death of such individual, and such individual is not entitled to any benefits under this subchapter for the month following the month during which such entitlement under section 402(b), (d), or (g) of this title ended.

[*See main edition for text of (2) to (4)*]

(5) [*See main edition for text of (A)*]

(B) For purposes of this section—

[*See main edition for text of (i)*]

(ii) an individual's net loss from self-employment for any taxable year is the excess of the deductions (plus his distributive share of loss described in section 702(a)(8) of the Internal Revenue Code of 1954 taken into account under clause (i) over the gross income (plus his distributive share of income so described) taken into account under clause (i).

(C) For purposes of this subsection, an individual's wages shall be computed without regard to the limitations as to amounts of remuneration specified in subsections (a), (g)(2), (g)(3), (h)(2), and (j) of section 409 of this title; and in making such computation services which do not constitute employment as defined in section 410 of this title, performed within the United States by the individual as an employee or performed outside the United States in the active military or naval service of the United States, shall be deemed to be employment as so defined if the remuneration for such services is not includible in computing his net earnings or net loss from self-employment. The term "wages" does not include—

(i) the amount of any payment made to, or on behalf of, an employee or any of his dependents (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement, or

(ii) any payment or series of payments by an employer to an employee or any of his dependents upon or after the termination of the employee's employment relationship because of retirement after attaining an age specified in a plan referred to in section 409(m)(2) of this title or in a pension plan of the employer.

(D) In the case of—

(i) an individual who has attained retirement age (as defined in section 416(*l*) of this title) on or before the last day of the taxable year, and who shows to the satisfaction of the Secretary that he or she is receiving royalties attributable to a copyright or patent obtained before the taxable year in which he or she attained such age and that the property to which the copyright or patent relates was created by his or her own personal efforts, or

[*See main edition for text of (ii)*]

there shall be excluded from gross income any such royalties or other income.

[*See main edition for text of (6)*]

(7) Where an individual's excess earnings are charged to a month and the excess earnings so charged are less than the total of the payments (without regard to such charging) to which all persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled under section 402 of this title for such month on the basis of his wages and self-employment income, the difference between such total and the excess so charged to such month shall be paid (if it is otherwise payable under this subchapter) to such individual and other persons in the proportion that the benefit to which each of them is entitled (without regard to such charging, without the application of section 402(k)(3) of this title, and prior to the application of section 403(a) of this title) bears to the total of the benefits to which all of them are entitled.

(8)(A) Whenever the Secretary pursuant to section 415(i) of this title increases benefits effective with the month of December following a cost-of-living computation quarter [2] he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C)) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death, during such year).

[*See main edition for text of (B) and (C)*]

(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 416(*l*) of this title) before the close of the taxable year involved—

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[2] So in original. Probably should be followed by a comma.

[*See main edition for text of* (*i*) *to* (*v*)]

(9) For purposes of paragraphs (3), (5)(D)(i), and (8)(D), the term "retirement age (as defined in section 416(*l*) of this title)", with respect to any individual entitled to monthly insurance benefits under section 402 of this title, means the retirement age (as so defined) which is applicable in the case of old-age insurance benefits, regardless of whether or not the particular benefits to which the individual is entitled (or the only such benefits) are old-age insurance benefits.

[*See main edition for text of* (*g*)]

(h) Report of earnings to Secretary

[*See main edition for text of* (*1*) *to* (*3*)]

(4) The Secretary shall develop and implement procedures in accordance with this subsection to avoid paying more than the correct amount of benefits to any individual under this subchapter as a result of such individual's failure to file a correct report or estimate of earnings or wages. Such procedures may include identifying categories of individuals who are likely to be paid more than the correct amount of benefits and requesting that they estimate their earnings or wages more frequently than other persons subject to deductions under this section on account of earnings or wages.

[*See main edition for text of* (*i*) *to* (*l*)]

(Aug. 14, 1935, ch. 531, title II, § 203, 49 Stat. 623; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1367; Aug. 10, 1946, ch. 951, title IV, § 406, 60 Stat. 988; Aug. 28, 1950, ch. 809, title I, §§ 102(a), 103(a), 64 Stat. 489; July 18, 1952, ch. 945, §§ 2(b)(2), 4(a)-(d), 66 Stat. 768, 773; Sept. 1, 1954, ch. 1206, title I, §§ 102(e)(7), 103(a)-(h), (i)(3), 112(a), 68 Stat. 1070, 1073, 1078, 1085; Aug. 1, 1956, ch. 836, title I, §§ 101(d)-(g), 102(d)(11), 107(a), 112 (a), (b), 70 Stat. 808, 814, 829, 831; Aug. 28, 1958, Pub. L. 85-840, title I, § 101(f), title II, § 205(j), (k), title III, §§ 307(f), 308(a)-(e), 72 Stat. 1017, 1024, 1032, 1033; Sept. 13, 1960, Pub. L. 86-778, title I, § 103(b), title II, §§ 209(a), 211(a)-(h), title III, § 302(a), 74 Stat. 936, 953-955, 957, 960; June 30, 1961, Pub. L. 87-64, title I, § 108(a), 75 Stat. 140; July 30, 1965, Pub. L. 89-97, title III, §§ 301(c), 306(c)(10)-(12), 308(d) (6)-(8), 310(a), 325(a), 79 Stat. 363, 373, 378-380, 399; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 101(b), 104(d)(1), 107(a), 160, 161(a), (b), 163(a)(1), 81 Stat. 826, 832, 834, 870, 872; Dec. 30, 1969, Pub. L. 91-172, title X, § 1002(b)(1), 83 Stat. 739; Mar. 17, 1971, Pub. L. 92-5, title II, § 201(b), 85 Stat. 8; July 1, 1972, Pub. L. 92-336, title II, §§ 201(b), (h)(1), 202(a)(2)(A), (B), 86 Stat. 410, 411, 415; Oct. 30, 1972, Pub. L. 92-603, title I, §§ 101(b), 102(c), 103(c), 105(a), (b), 106(a), 107(b)(1), (2), 144(a)(2), (3), 86 Stat. 1334, 1336, 1340-1343, 1370; July 9, 1973, Pub. L. 93-66, title II, § 202(a)-(c), 87 Stat. 153; Dec. 31, 1973, Pub. L. 93-233, §§ 3(k), 18(a), 87 Stat. 953, 967; Jan. 2, 1976, Pub. L. 94-202, § 8(i), 89 Stat. 1140; Dec. 20, 1977, Pub. L. 95-216, title II, §§ 202, 204(e), title III, §§ 301(a), (b), (c)(1), (d), 302(a)-(d), 303(a), 353(a), 91 Stat. 1524, 1528, 1530, 1531, 1552; June 9, 1980, Pub. L. 96-265, title I, § 101(a), (b)(1), (2), 94 Stat. 442; Oct. 19, 1980, Pub. L. 96-473, §§ 1(a), 3(a), 4(a), 6(b), 94 Stat. 2263-2265; Aug. 13, 1981, Pub. L. 97-35, title XXII, §§ 2201(c)(6), 2206(b)(2)-(4), 95 Stat. 831, 838; Dec. 29, 1981, Pub. L. 97-123, § 2(f), 95 Stat. 1661; Apr. 20, 1983, Pub. L. 98-21, title I, §§ 111(a)(4), 132(b), title II, § 201(c)(1)(B), (2), title III, §§ 306(i), 309(f)-(h), 324(c)(4), 331(a), (b), 97 Stat. 72, 94, 109, 114, 116, 117, 125, 128, 129; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2602(a), 2661(g)(1)(A), (2)(A), 2662(c)(1), 2663(a)(3), 98 Stat. 1127, 1157, 1159, 1161.)

AMENDMENT OF SUBSECTION (*f*)(3)

Pub. L. 98-21, title III, § 347, Apr. 20, 1983, 97 Stat. 138, provided that, applicable only with respect to taxable years beginning after December 1989, and only in the case of individuals who have attained retirement age (as defined in section 416(l) of this title, subsection (f)(3) of this section is amended by striking out "50 per centum of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8)" and inserting in lieu thereof the following: "33⅓ percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) in the case of an individual who has attained retirement age (as defined in section 416(l) of this title) before the close of such taxable year, or 50 percent of his earnings for such year in excess of such product in the case of any other individual".

AMENDMENTS

1984—Subsec. (a)(8). Pub. L. 98-369, § 2663(a)(3)(A), added a period at end of par. (8).

Subsec. (d)(1)(A). Pub. L. 98-369, § 2661(g)(1)(A)(i), substituted "for more than forty-five hours of which such individual engaged" for "on seven or more different calendar days of which he engaged".

Subsec. (d)(2). Pub. L. 98-369, § 2663(a)(3)(B), substituted "an individual under the age of seventy who is entitled" for "an individual who is entitled".

Pub. L. 98-369, § 2661(g)(1)(A)(ii), substituted "for more than forty-five hours" for "on seven or more different calendar days".

Subsec. (f)(5)(B)(ii). Pub. L. 98-369, § 2663(a)(3)(C), substituted "702(a)(8)" for "702(a)(9)".

Subsec. (f)(5)(D)(i). Pub. L. 98-369, § 2662(c)(1), made a clarifying amendment to Pub. L. 98-21, § 201(c)(1)(B). See 1983 Amendment note below.

Subsec. (f)(8)(B), (C). Pub. L. 98-369, § 2663(a)(3)(D), realigned margins of subpars. (B) and (C).

Subsec. (f)(9). Pub. L. 98-369, § 2661(g)(2)(A), added par. (9).

Subsec. (h)(4). Pub. L. 98-369, § 2602(a), added par. (4).

1983—Subsec. (a)(3)(A). Pub. L. 98-21, § 331(a)(1), amended cl. (ii) generally, substituting provisions relating to an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title, for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title, for provisions relating to an amount equal to the product of

1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and added provisions following cl. (ii).

Subsec. (a)(7). Pub. L. 98-21, § 331(a)(2), substituted "the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7)" for "the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined under section 430 of this title for the year in which that month occurs".

Subsec. (b)(1). Pub. L. 98-21, § 309(f), added "or father's" after "mother's" in provisions following subpar. (B).

Pub. L. 98-21, § 132(b)(1)(A)(iii), substituted "clauses (A) and (B)" for "clauses (1) and (2)" in provisions following subpar. (B).

Pub. L. 98-21, § 132(b)(1)(A)(i), (ii), (iv), designated existing provisions of subsec. (b) as par. (1), and in par. (1), as so designated, redesignated cls. (1) and (2) as (A) and (B), respectively, and cls. (A) and (B) as (i) and (ii), respectively.

Subsec. (b)(1)(i). Pub. L. 98-21, § 331(b), substituted "first sentence of paragraph (4)" for "penultimate sentence".

Subsec. (b)(2). Pub. L. 98-21, § 132(b)(1)(A)(v), added par. (2).

Subsec. (c). Pub. L. 98-21, § 201(c)(2), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age sixty-five".

Pub. L. 98-21, § 201(c)(1)(B), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65" wherever appearing in provisions following par. (4).

Pub. L. 98-21, § 309(g), amended subsec. (c) generally, substituting in par. (1) specification of more than forty-five hours of nonrecovered remunerative activity for specification of seven or more different days of such activity, and in pars. (2) to (4) provisions not distinguishing between the sexes for provisions relating only to the entitlements of women, and in provisions following par. (4) adding "or surviving divorced husband" after "widower".

Subsec. (d)(1). Pub. L. 98-21, § 309(h), added "divorced husband," after "husband,".

Pub. L. 98-21, § 132(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(2). Pub. L. 98-21, § 309(h), added "or father's" after "mother's" in three places.

Subsec. (f)(1). Pub. L. 98-21, § 132(b)(1)(B)(i), inserted "(excluding divorced spouses referred to in subsection (b)(2) of this section)" after "and all other persons" and after "other persons" and inserted "such" after "payments to which such individual and all" in first sentence.

Subsec. (f)(1)(D). Pub. L. 98-21, § 201(c)(1)(B), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65" in two places.

Subsec. (f)(1)(F). Pub. L. 98-21, § 306(i), substituted "section 402(b) or (c) of this title (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c) of this section, as may be applicable)" for "section 402(b) of this title (but only by reason of having a child in her care within the meaning of paragraph (1)(B) of that subsection)".

Subsec. (f)(5)(C). Pub. L. 98-21, § 324(c)(4), added provision excluding from "wages" certain payments on account of retirement or under a pension plan of the employer.

Subsec. (f)(5)(D)(i). Pub. L. 98-21, § 201(c)(1)(B), as amended by Pub. L. 98-369, § 2662(c)(1), substituted "retirement age (as defined in section 416(*l*) of this title)" for "the age of 65".

Subsec. (f)(7). Pub. L. 98-21, § 132(b)(1)(B)(ii), inserted "(excluding divorced spouses referred to in subsection (b)(2) of this section)" after "all persons".

Subsec. (f)(8)(A). Pub. L. 98-21, § 111(a)(4), substituted "December" for "June".

Subsec. (f)(8)(D). Pub. L. 98-21, § 201(c)(1)(B), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65".

Effective Date of 1984 Amendment

Section 2602(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (h)(4) of this section] shall be effective upon the date of the enactment of this Act [July 18, 1984]."

Section 2661(g)(1)(B) of Pub. L. 98-369 provided that: "The amendments made by subparagraph (A) [amending subsec. (d) of this section] shall apply only with respect to months beginning with the second month after the month in which this Act is enacted [July 1984]."

Section 2661(g)(2)(B) of Pub. L. 98-369 provided that: "The amendment made by subparagraph (A) [enacting subsec. (f)(9) of this section] shall be effective as though it had been enacted on April 20, 1983, as a part of section 201 of the Social Security Amendments of 1983 [section 201 of Pub. L. 98-21]."

Amendment by section 2662 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendment

Amendment by section 111(a) of Pub. L. 98-21 applicable with respect to cost-of-living increases determined under section 415(i) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98-21, set out as a note under section 402 of this title.

Section 132(c)(2) of Pub. L. 98-21 provided that: "The amendments made by subsection (b) [amending subsecs. (b), (d), and (f) of this section] shall apply with respect to monthly insurance benefits for months after December 1984."

Amendment by sections 306(i) and 309(f)-(h) of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

Amendment by section 324 of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98-21, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Section 331(c) of Pub. L. 98-21 provided that: "The amendments made by subsection (a) [amending subsec. (a)(3)(A), (7) of this section] shall be effective with respect to payments made for months after December 1983."

Section Referred to in Other Sections

This section is referred to in sections 402, 408, 415, 423, 424a, 1382a of this title; title 10 section 1451; title 26 sections 86, 1402; title 30 sections 922, 932; title 45 sections 231a, 231q.

§ 405. Evidence, procedure, and certification for payments

[*See main edition for text of* (*a*)]

(b) Administrative determination of entitlement to benefits; findings of fact; hearings; investigations; evidentiary hearings in reconsiderations of disability benefit terminations

(1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father, husband, divorced husband, widower, surviving divorced husband, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.

[*See main edition for text of* (*2*)]

(c) Wage records

(1) For the purposes of this subsection—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) The term "survivor" means an individual's spouse, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent, who survives such individual.

[*See main edition for text of* (*D*)]

(2) [*See main edition for text of* (*A*) *to* (*C*)]

(D) The Secretary shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be made of banknote paper, and (to the maximum extent practicable) shall be a card which cannot be counterfeited.

[*See main edition for text of* (*3*) *and* (*4*)]

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Secretary may change or delete any entry with respect to wages or self-employment income in his records of such year for such individual or include in his records of such year for such individual any omitted item of wages or self-employment income but only—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this subchapter when they should have been credited under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.], or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act of 1937 or 1974 when they should have been credited under this subchapter;

[*See main edition for text of* (*E*) *to* (*H*)]

(I) to enter items which constitute remuneration for employment under subsection (o) of this section, such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k)(3) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(k)(3)] or section 7(b)(7) of the Railroad Retirement Act of 1974 [45 U.S.C. 231f(b)(7)]; or

[*See main edition for text of* (*J*), (*6*) *to* (*8*); (*d*)]

(e) Judicial enforcement of subpenas; contempt

In case of contumacy by, or refusal to obey a subpena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Secretary, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

[*See main edition for text of* (*f*) *and* (*g*)]

(h) Finality of Secretary's decision

The findings and decision of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28 to recover on any claim arising under this subchapter.

(i) Certification for payment

Upon final decision of the Secretary, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this subchapter, the Secretary shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Department of the Treasury, and prior to any action thereon by the General Accounting Office, shall make payment in accordance with the certification of the Secretary (except that in the case of (A) an individual who will have completed ten years of service creditable under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] or the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], (B) the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], and (D) any other person entitled to benefits under section 402 of this title on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974): *Provided*, That where a review of the Secretary's decision is or may be sought under subsection (g) of this section the Secretary may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary.

(j) Certification for direct or indirect payment; investigation; accountability monitoring; exceptions; reports to Congress

(1) When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.

(2) Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.

(3)(A) In any case where payment under this subchapter is made to a person other than the individual entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

(C) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

(D) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(E) Notwithstanding subparagraphs (A), (B), (C), and (D), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

(4)(A) The Secretary shall make an initial report to each House of the Congress on the implementation of paragraphs (2) and (3) within 270 days after October 9, 1984.

(B) The Secretary shall include as a part of the annual report required under section 904 of this title, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.

[*See main edition for text of* (*k*)]

(*l*) Delegation of powers and duties by Secretary

The Secretary is authorized to delegate to any member, officer, or employee of the Department of Health and Human Services designated by him any of the powers conferred upon him by this section, and is authorized to be represented by his own attorneys in any court in any case or proceeding arising under the provisions of subsection (e) of this section.

[*See main edition for text of* (*m*) *to* (*o*)]

(p) Special rules in case of Federal service

(1) With respect to service included as employment under section 410 of this title which is performed in the employ of the United States or in the employ of any instrumentality which

is wholly owned by the United States, including service, performed as a member of a uniformed service to which the provisions of subsection (*l*)(1) of such section are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(o) of this title are applicable, the Secretary shall not make determinations as to whether an individual has performed such service, the periods of such service, the amounts of remuneration for such service which constitute wages under the provisions of section 409 of this title, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section 3122 of the Internal Revenue Code of 1954 and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

[*See main edition for text of* (2) *and* (3); (*q*)]

(r) Use of death certificates to correct program information

(1) The Secretary shall undertake to establish a program under which—

(A) States (or political subdivisions thereof) voluntarily contract with the Secretary to furnish the Secretary periodically with information (in a form established by the Secretary in consultation with the States) concerning individuals with respect to whom death certificates (or equivalent documents maintained by the States or subdivisions) have been officially filed with them; and

(B) there will be (i) a comparison of such information on such individuals with information on such individuals in the records being used in the administration of this chapter, (ii) validation of the results of such comparisons, and (iii) corrections in such records to accurately reflect the status of such individuals.

(2) Each State (or political subdivision thereof) which furnishes the Secretary with information on records of deaths in the State or subdivision under this subsection may be paid by the Secretary from amounts available for administration of this chapter the reasonable costs (established by the Secretary in consultations with the States) for transcribing and transmitting such information to the Secretary.

(3) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a Federal or State agency other than under this chapter, the Secretary shall to the extent feasible provide such information through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals if—

(A) under such arrangement the agency provides reimbursement to the Secretary for the reasonable cost of carrying out such arrangement, and

(B) such arrangement does not conflict with the duties of the Secretary under paragraph (1).

(4) The Secretary may enter into similar agreements with States to provide information for their use in programs wholly funded by the States if the requirements of subparagraphs (A) and (B) of paragraph (3) are met.

(5) The Secretary may use or provide for the use of such records as may be corrected under this section, subject to such safeguards as the Secretary determines are necessary or appropriate to protect the information from unauthorized use or disclosure, for statistical and research activities conducted by Federal and State agencies.

(6) Information furnished to the Secretary under this subsection may not be used for any purpose other than the purpose described in this subsection and is exempt from disclosure under section 552 of title 5 and from the requirements of section 552a of such title.

(7) The Secretary shall include information on the status of the program established under this section and impediments to the effective implementation of the program in the 1984 report required under section 904 of this title.

(Aug. 14, 1935, ch. 531, title II, § 205, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1368; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1950, ch. 809, title I, §§ 101(b)(2), 108(a)–(c), 109(b), 64 Stat. 488, 518, 523; July 18, 1952, ch. 945, § 5(b), 66 Stat. 775; Sept. 1, 1954, ch. 1206, title I, § 101(c)(3), 68 Stat. 1054; Aug. 1, 1956, ch. 836, title I, §§ 107(b), 111(a), 117, 70 Stat. 829, 831, 834; Aug. 1, 1956, ch. 837, title IV, § 402(b), 70 Stat. 871; June 11, 1960, Pub. L. 86–507, § 1(35), 74 Stat. 202; Sept. 13, 1960, Pub. L. 86–778, title I, §§ 102(f)(2), 103(j)(2)(E), title VII, § 702(a), 74 Stat. 933, 938, 993; Sept. 21, 1961, Pub. L. 87–293, title II, § 202(b)(3), 75 Stat. 626; July 30, 1965, Pub. L. 89–97, title III, §§ 308(d)(9)(10), 330, 79 Stat. 379, 401, Jan. 2, 1968, Pub. L. 90–248, title I, § 171(a), 81 Stat. 876; Oct. 15, 1970, Pub. L. 91–452, title II, § 236, 84 Stat. 930; Oct. 30, 1972, Pub. L. 92–603, title I, § 137, 86 Stat. 1364; Oct. 16, 1974, Pub. L. 93–445, title III, §§ 302(a), 303, 88 Stat. 1358; Jan. 2, 1976, Pub. L. 94–202, § 4, 89 Stat. 1136; Oct. 4, 1976, Pub. L. 94–455, title XII, § 1211(b), 89 Stat. 1711; Dec. 20, 1977, Pub. L. 95–216, title III, § 353(f)(2), 91 Stat. 1554; Nov. 6, 1978, Pub. L. 95–600, title VII, § 703(j)(14)(B), 92 Stat. 2942; June 9, 1980, Pub. L. 96–265, title III, §§ 305(a), 307, 94 Stat. 457, 458; Jan. 12, 1983, Pub. L. 97–455, § 4(a), 96 Stat. 2499; Apr. 20, 1983, Pub. L. 98–21, title III, §§ 301(d), 309(i), 336, 345(a), 97 Stat. 111, 117, 130, 137; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2661(h)(1), (2), 2663(a)(4), (j)(4), 98 Stat. 1157, 1162, 1171; Oct. 9, 1984, Pub. L. 98–460, § 16(a), 98 Stat. 1809.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in subsecs. (c)(5)(D) and (l), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsecs. (c)(5)(D), (l), and (o), is title I of Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Such title I completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45.

AMENDMENTS

1984—Subsec. (c)(5)(D). Pub. L. 98-369, § 2663(a)(4)(A), added "of 1937 or 1974" after "Railroad Retirement Act" in two places.

Subsec. (c)(5)(I). Pub. L. 98-369, § 2663(a)(4)(B), added "or section 7(b)(7) of the Railroad Retirement Act of 1974".

Subsec. (e). Pub. L. 98-369, § 2663(a)(4)(C), substituted "an order" for "on order".

Subsec. (h). Pub. L. 98-369, § 2663(a)(4)(D), substituted "section 1331 or 1346 of title 28" for "section 24 of the Judicial Code of the United States".

Subsec. (i). Pub. L. 98-369, § 2663(a)(4)(E), substituted "the Fiscal Service of the Department of the Treasury" for "the Division of Disbursement of the Treasury Department".

Subsec. (j). Pub. L. 98-460 designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (*l*). Pub. L. 98-369, § 2663(j)(4), substituted "Department of Health and Human Services" for "Federal Security Agency".

Subsec. (p)(1). Pub. L. 98-369, § 2663(a)(4)(F), substituted "section 3122 of the Internal Revenue Code of 1954" for "section 1420(e) of the Internal Revenue Code of 1939".

Subsec. (r)(4). Pub. L. 98-369, § 2661(h)(1), substituted "subparagraphs (A) and (B) of paragraph (3)" for "paragraph (3)(A) and (B)".

Subsec. (r)(7). Pub. L. 98-369, § 2661(h)(2), substituted "this Act" for "the Act" which was translated as "this title".

1983—Subsec. (b). Pub. L. 98-21, §§ 301(d)(1), 309(i)(1), in par. (1) inserted "divorced husband," after "husband,", "surviving divorced husband," after "widower,", and "surviving divorced father," after "surviving divorced mother,".

Subsec. (c)(1)(C). Pub. L. 98-21, §§ 301(d)(2), 309(i)(2), inserted "surviving divorced husband," after "wife," and "surviving divorced father," after "surviving divorced mother,".

Subsec. (c)(2)(D). Pub. L. 98-21, § 345(a), added subpar. (D).

Subsec. (r). Pub. L. 98-21, § 336, added subsec. (r).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 16(d) of Pub. L. 98-460 provided that: "The amendments made by this section [amending sections 405, 408, 1383, and 1383a of this title] shall become effective on the date of the enactment of this Act [Oct. 9, 1984], and, in the case of the amendments made by subsection (c) [amending sections 408 and 1383a of this title], shall apply with respect to violations occurring on or after such date."

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by sections 301(d) and 309(i) of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

Section 345(b) of Pub. L. 98-21 provided that: "The amendment made by this section [enacting subsec. (c)(2)(D) of this section] shall apply with respect to all new and replacement social security cards issued more than 193 days after the date of the enactment of this Act [Apr. 20, 1983]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 406, 408, 415, 416, 418, 421, 423, 424a, 602, 1320a-7, 1320c-4, 1320c-5, 1383, 1395y, 1395ff, 1395ii, 1395mm, 1395*oo*, 1396i, 1396q of this title; title 5 section 8503; title 19 section 2312; title 26 sections 1402, 6109; title 30 section 923.

§ 407. Assignment; amendment of section

(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, § 335(a), 97 Stat. 130.)

CODIFICATION

In subsec. (b), "April 20, 1983" was substituted for "the date of the enactment of this section", which was translated as meaning the date of enactment of this subsection, as the probable intent of Congress.

AMENDMENTS

1983—Pub. L. 98-21 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 335(c) of Pub. L. 98-21 provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to benefits payable or rights existing under the Social Security Act [this chapter] on or after the date of the enactment of this Act [Apr. 20, 1983]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 659, 1383 of this title; title 26 sections 86, 871, 6334; title 30 section 923.

§ 408. Penalties

Whoever—

[*See main edition for text of* (a) *to* (h)]

shall be guilty of a felony and upon conviction thereof shall be fined not more than $5,000 or imprisoned for not more than five years, or both.

Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

Any individual or entity convicted of a felony under this section or under section 1383a(b) of this title may not be certified as a payee under section 405(j) of this title.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(5), 98 Stat. 1162; Oct. 9, 1984, Pub. L. 98-460, § 16(c)(2), 98 Stat. 1811.)

Amendments

1984—Pub. L. 98-460 added provisions imposing a penalty of $25,000 or imprisonment for not more than five years, or both, on any person or other entity convicted for a second or subsequent violation of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title, and also granting the court discretion, in any case, including a first offense, involving a willful misuse of funds, to require full or partial restitution, and prohibiting the certification of any individual or entity convicted of a felony under this section or under section 1383a(b) of this title.

Subsecs. (f) to (h). Pub. L. 98-369 realigned margins of subsecs. (f) to (h).

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98-460, set out as a note under section 405 of this title.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Section Referred to in Other Sections

This section is referred to in section 1383a of this title; title 30 section 923.

§ 409. "Wages" defined

For the purposes of this subchapter, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this subchapter under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

[*See main edition for text of* (*a*)]

(b) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (1) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term "wages" only payments which are received under a workmen's compensation law), or (2) medical or hospitalization expenses in connection with sickness or accident disability, or (3) death;

(c) Repealed. Pub. L. 98-21, title III, § 324(c)(3)(B), Apr. 20, 1983, 97 Stat. 125;

[*See main edition for text of* (*d*)]

(e) Any payment made to, or on behalf of, an employee or his beneficiary (1) from or to a trust exempt from tax under section 165(a) of the Internal Revenue Code of 1939 at the time of such payment or, in the case of a payment after 1954, under sections 401 and 501(a) of the Internal Revenue Code of 1954, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (2) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1939 or, in the case of a payment after 1954 and prior to 1963, the requirements of section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1954, or (3) under or to an annuity plan which, at the time of any such payment after 1962, is a plan described in section 403(a) of the Internal Revenue Code of 1954, or (4) under or to a bond purchase plan which, at the time of any such payment after 1962, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code of 1954 (as in effect before July 18, 1984), or (5) under or to an annuity contract described in section 403(b) of the Internal Revenue Code of 1954, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise), or (6) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3) of such Code), or (7) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subsection to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(2)(B)(ii)], or (8) under a simplified employee pension (as defined in section 408(k) of the Internal Revenue Code of 1954) if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of such Code for such payment;

[*See main edition for text of (f) to (h)*]

(i) Repealed. Pub. L. 98-21, title III, § 324(c)(3)(B), Apr. 20, 1983, 97 Stat. 125;

[*See main edition for text of (j) to (l)*]

(m) Any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(1) upon or after the termination of an employee's employment relationship because of (A) death, or (B) retirement for disability, and

[*See main edition for text of (2)*]

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

[*See main edition for text of (n) and (o)*]

(p)(1) Remuneration paid by an organization exempt from income tax under section 501 of the Internal Revenue Code of 1954 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100;

(2) Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue Code of 1954 (relating to amounts received under qualified group legal services plans);

(q) Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129 of the Internal Revenue Code of 1954;

(r) The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the Internal Revenue Code of 1954; or

(s) Any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132 of the Internal Revenue Code of 1954.

Nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1954 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this subchapter.

For purposes of this subchapter, in the case of domestic service described in subsection (g)(2) of this section, any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this subchapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (g)(2) of this section.

For purposes of this subchapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(*l*)(1) of this title are applicable, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only his basic pay as described in chapter 3 and section 1009 of title 37.

For purposes of this subchapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(*o*) of this title are applicable, (1) the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only amounts certified as payable pursuant to section 5(c) or 6(1) of the Peace Corps Act [22 U.S.C. 2504(c) or 2505(1)], and (2) any such amount shall be deemed to have been paid to such individual at the time the service, with respect to which it is paid, is performed.

For purposes of this subchapter, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1954 or (if no statement including such tips is so furnished) at the time received.

For purposes of this subchapter, in any case where an individual is a member of a religious order (as defined in section 3121(r)(2) of the Internal Revenue Code of 1954) performing service in the exercise of duties required by such order, and an election of coverage under section 3121(r) of such Code is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.

For purposes of this subchapter, in the case of an individual performing service under the provisions of section 294 of title 28 (relating to assignment of retired justices and judges to active duty), the term "wages" shall, subject to the provisions of subsection (a) of this section, include any payment under section 371(b) of such title 28 which is received during the period of such service.

Nothing in any of the foregoing provisions of this section (other than subsection (a) of this section) shall exclude from the term "wages"—

(1) Any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1954) to the extent not included in gross income by reason of section 402(a)(8) of such Code, or

(2) Any amount which is treated as an employer contribution under section 414(h)(2) of such Code where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

Any amount deferred under a nonqualified deferred compensation plan (within the meaning of section 3121(v)(2)(C) of the Internal Revenue Code of 1954) shall be taken into account for purposes of this subchapter as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of the preceding sentence (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this subchapter.

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 101(c)(1), title III, §§ 324(c)(1)-(3), 327(a)(2), (b)(2), 328(b), 97 Stat. 70, 124, 125, 127, 128; July 18, 1984, Pub. L. 98-369, div. A, title IV, § 491(d)(39), title V, § 531(d)(1)(B), div. B, title VI, §§ 2661(i), 2663(a)(6), 98 Stat. 851, 884, 1157, 1162.)

References in Text

Section 405(a) of the Internal Revenue Code of 1954, referred to in subsec. (e), was repealed by Pub. L. 98-369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848.

The Internal Revenue Code of 1954, referred to in text, is classified to Title 26, Internal Revenue Code.

Amendments

1984—Pub. L. 98-369, § 531(d)(1)(B)(i), inserted in introductory text "(including benefits)" before "paid in any medium".

Subsec. (a)(5) to (9). Pub. L. 98-369, § 2663(a)(6)(A)(i), realigned margins of pars. (5) to (9).

Subsec. (e). Pub. L. 98-369, § 2663(a)(6)(A)(v), realigned margin of subsec. (e).

Subsec. (e)(4). Pub. L. 98-369, § 491(d)(39), inserted "(as in effect before July 18, 1984)" after "section 405(a) of the Internal Revenue Code of 1954".

Subsec. (e)(7). Pub. L. 98-369, § 2661(i)(1), struck out the semicolon after "Act of 1974".

Subsecs. (f), (k) to (p). Pub. L. 98-369, § 2663(a)(6)(A)(v), realigned margins of subsecs. (f) and (k) to (p).

Subsec. (p). Pub. L. 98-369, § 2663(a)(6)(A)(ii)-(iv), redesignated the subsec. (p) enacted by Pub. L. 95-216 as par. (1) and the subsec. (p) enacted by Pub. L. 95-472 as par. (2), and substituted a semicolon for a period in par. (1) as so redesignated.

Subsecs. (q), (r). Pub. L. 98-369, § 2663(a)(6)(A)(v), realigned margins of subsecs. (q) and (r).

Subsec. (s). Pub. L. 98-369, § 531(d)(1)(B)(ii), added subsec. (s).

Pub. L. 98-369, § 2663(a)(6)(B), in the undesignated par. relating to the meaning of "wages" in the case of a member of a uniformed service to which section 410(*l*)(1) of this title is applicable, substituted "chapter 3 and section 1009 of title 37" for "section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act".

Pub. L. 98-369, § 2661(i)(2), in the undesignated par. relating to employer contributions as not being excluded from the term "wages", added "where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)".

1983—Subsec. (b). Pub. L. 98-21, § 324(c)(3)(A), struck out cl. (1) which read "retirement", and redesignated cls. (2) to (4) as (1) to (3), respectively.

Subsec. (c). Pub. L. 98-21, § 324(c)(3)(B), struck out subsec. (c) which related to any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (e)(5) to (7). Pub. L. 98-21, § 324(c)(2), added cls. (5) to (7).

Subsec. (e)(8). Pub. L. 98-21, § 328(b), added cl. (8).

Subsec. (i). Pub. L. 98-21, § 324(c)(3)(B), struck out subsec. (i) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained age 62, if he did not work for the employer in the period for which such payment was made, and provided for this subsection that the term "sick pay" included remuneration for service in the employ of a State, a political subdivision (as defined in section 418(b)(2) of this title) of a State, or an instrumentality of two or more States, paid to an employee thereof for a period during which he was absent from work because of sickness.

Subsec. (m)(1)(C). Pub. L. 98-21, § 324(c)(3)(C), struck out subpar. (C) which related to retirement after attaining an age specified in the plan referred to in paragraph (2) or in a pension plan of the employer.

Subsec. (r). Pub. L. 98-21, § 327(a)(2), added subsec. (r).

Pub. L. 98-21, § 327(b)(2), added, immediately following subsec. (r), provision that nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1954 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this subchapter.

Pub. L. 98-21, § 324(c)(1), added, at end of section, two undesignated pars. specifying the inclusion of certain employer contributions as "wages" and directing that any amount deferred under a nonqualified deferred compensation plan be taken into account under certain conditions but not treated as wages thereafter for purposes of this subchapter.

Pub. L. 98-21, § 101(c)(1), added, at end of section, undesignated par. defining wages for purposes of this subchapter in the case of an individual performing service under the provisions of section 294 of title 28 (relating to assignment of retired justices and judges to active duty) to include payments under section 371(b) of title 28 that is received during the period of such service.

Effective Date of 1984 Amendment

Amendment by section 491(d)(39) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of Title 26, Internal Revenue Code.

Amendment by section 531(d)(1)(B) of Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of Title 26.

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(c)(1) of Pub. L. 98-21 effective with respect to services performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 324 of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

Amendment by section 327(a)(2) of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, see section 327(d)(1) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 327(b)(2) of Pub. L. 98-21 applicable to remuneration (other than amounts excluded under 26 U.S.C. 119) paid after Mar. 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid, see section 327(d)(2) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 328 of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, see section 328(d)(1) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by Pub. L. 97-34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97-34, set out as a note under section 21 of Title 26, Internal Revenue Code.

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

Notwithstanding section 101(d) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note above, the amendment of this section by section 101(c)(1) of Pub. L. 98-21 is applicable only with respect to remuneration paid after Dec. 31, 1985, with remuneration paid prior to Jan. 1, 1986, under section 371(b) of Title 28, Judiciary and Judicial Procedure, to an individual performing service under section 294 of Title 28 not to be included in the term "wages" for purposes of this section or section 3121(a) of Title 26, Internal Revenue Code, see section 4 of Pub. L. 98-118, set out as a note under section 3121 of Title 26.

§ 410. Definitions relating to employment

For the purposes of this subchapter—

(a) Employment

The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(*l*)(8) of the Internal Revenue Code of 1954) of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(*l*) of such Code, with respect to such affiliate, or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 433 of this title; except that, in the case of service performed after 1950, such term shall not include—

(1) Service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

[*See main edition for text of (2) to (4)*]

(5) Service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) would be excluded from the term "employment" for purposes of this subchapter if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who—

(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—

(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5 or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute of Taiwan as provided under section 3310 of title 22, then the service performed for that Institute shall be considered service described in subparagraph (A),

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A), and

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 450i(a)(2) of title 25 applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);

except that this paragraph shall not apply with respect to—

(C) service performed as the President or Vice President of the United States,

(D) service performed—

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5,

(ii) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107(a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Claims Court, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress, or

(G) Any other service in the legislative branch of the Federal Government if such service—

(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5 or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5 or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);

(6) Service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

[See main edition for text of (7)]

(8)(A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1954 is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) Service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under section 3121(w) of the Internal Revenue Code of 1954, other than service in an unrelated trade or business (within the meaning of section 513(a) of such Code);

(9) Service performed by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1954;

(10) Service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1954 if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 418(c)(5) of this title are covered under the agreement between the Secretary and such State entered into pursuant to section 418 of this title;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

[See main edition for text of (11) to (18)]

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 1101(a)(15) of title 8, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be; or

[See main edition for text of (20); (b) to (k)]

(*l*) Service in the uniformed services

[See main edition for text of (1)]

(2) The term "active duty" means "active duty" as described in paragraph (21) of section 101 of title 38, except that it shall also include "active duty for training" as described in paragraph (22) of such section.

(3) The term "inactive duty training" means "inactive duty training" as described in paragraph (23) of such section 101.

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 231b(i) of title 45. The Railroad Retirement Board shall notify the Secretary with respect to all such service which is so creditable.

[See main edition for text of (B)]

(m) Member of a uniformed service

The term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

[See main edition for text of (1) to (4)]

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military, naval, or air service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Military Selective Service Act [50 App. U.S.C. 451 et seq.], has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

[See main edition for text of (n) and (o)]

(p) Medicare qualified Federal employment

For purposes of sections 426 and 426-1 of this title, the term "medicare qualified Federal employment" means any service which would constitute "employment" as defined in subsection (a) of this section but for the application of the provisions of subsection (a)(5) of this section.

[See main edition for text of (q)]

(Aug. 14, 1935, ch. 531, title II, § 210, as added Aug. 10, 1946, ch. 951, title II, § 201, 60 Stat. 979, and amended, Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 494; Oct. 31, 1949, ch. 792, title V, § 506(a), formerly § 505(a), as added July 12, 1951, ch. 223, 65 Stat. 120, and renumbered Oct. 3, 1961, Pub. L. 87-345, § 3, 75 Stat. 761; Sept. 1, 1954, ch. 1206, title I, § 101(a)(4), (5), (b), (c)(1), (2), (e), (f), (m), 68 Stat. 1052, 1061; Aug. 1, 1956, ch. 836, title I, §§ 104(a), (b), (c)(1), 105(b), 121(c), 70 Stat. 824, 828, 839; Aug. 1, 1956, ch. 837, title IV, § 402(a), 70 Stat. 870; Aug. 28, 1958, Pub. L. 85-840, title III, § 311(a), 312(a), 72 Stat. 1035; June 25, 1959, Pub. L. 86-70, § 32(c)(2), 73 Stat. 149; Aug. 18, 1959, Pub. L. 86-168, title I, § 104(h), title II, § 202(a), 73 Stat. 387, 389; July 12, 1960, Pub. L. 86-624,

§ 30(c)(2), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86-778, title I, §§ 103(c)-(f), (j)(2)(A), (B), 104(a), 74 Stat. 936, 937, 942; Sept. 21, 1961, Pub. L. 87-256, § 110(e)(2), 75 Stat. 537; Sept. 22, 1961, Pub. L. 87-293, title II, § 202(b)(1), 75 Stat. 626; July 30, 1965, Pub. L. 89-97, title III, §§ 311(a)(3), (4), 317(a), 79 Stat. 380, 381, 388; Jan. 2, 1968, Pub. L. 90-248, title I, § 123(a), title IV, § 403(a), 81 Stat. 844, 931; Oct. 30, 1972, Pub. L. 92-603, title I, §§ 123(a)(1), 128(a), 129(a)(1), 86 Stat. 1354, 1358, 1359; Oct. 16, 1974, Pub. L. 93-445, title III, § 311, 88 Stat. 1359; Oct. 4, 1976, Pub. L. 94-455, title XII, § 1207(e)(2)(A), 90 Stat. 1707; Oct. 19, 1976, Pub. L. 94-563, § 1(a), 90 Stat. 2655; Dec. 20, 1977, Pub. L. 95-216, title III, § 351(a)(1), (3)(B), 91 Stat. 1549; Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(j)(14)(C), 92 Stat. 2942; Sept. 3, 1982, Pub. L. 97-248, title II, §§ 269(b), 278(b)(1), 96 Stat. 552, 560; Jan. 12, 1983, Pub. L. 97-448, title III, § 309(b)(23), 96 Stat. 2410; Apr. 20, 1983, Pub. L. 98-21, title I, §§ 101(a), 102(a), title III, §§ 321(b), 322(a)(1), 323(a)(2), 97 Stat. 67, 70, 118, 120, 121; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2601(a), 2603(a)(1), 2661(j), 2663(a)(7), (j)(3)(A)(i), 98 Stat. 1122, 1128, 1157, 1162, 1170; Dec. 26, 1985, Pub. L. 99-221, § 3(b), 99 Stat. 1735.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in text, is classified to Title 26, Internal Revenue Code.

The Civil Service Retirement and Disability Fund, referred to in subsec. (a)(5)(B)(ii), (G), is provided for in section 8348 of Title 5, Government Organization and Employees.

The Military Selective Service Act, referred to in subsec. (m)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50 App., War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50 App. and Tables.

AMENDMENTS

1985—Subsec. (a)(5)(B)(i)(V). Pub. L. 99-221 added subcl. (V).

1984—Subsec. (a). Pub. L. 98-369, § 2661(j), struck out the second comma after "such affiliate".

Subsec. (a)(1). Pub. L. 98-369, § 2663(a)(7)(A), struck out "(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (B)".

Subsec. (a)(5)(B). Pub. L. 98-369, § 2601(a)(1), in amending subpar. (B) generally, substituted "(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous," for "(i) has been continuously in the employ of the United States or an instrumentality thereof since December 31, 1983 (and for this purpose an individual who returns to the performance of such service after being separated therefrom following a previous period of such service shall nevertheless be considered upon such return as having been continuously in the employ of the United States or an instrumentality thereof, regardless of whether the period of such separation began before, on, or after December 31, 1983, if the period of such separation does not exceed 365 consecutive days),", added subcls. (II) to (IV), and reenacted cl. (ii).

Subsec. (a)(5)(C) to (F). Pub. L. 98-369, § 2601(a)(2)(A), (B), in provisions following "except that this paragraph shall not apply with respect to—" redesignated cls. (i), (ii), (iii), and (iv) as subpars. (C), (D), (E), and (F), respectively, and redesignated former subcls. (I), (II), and (III) as cls. (i), (ii), and (iii), respectively, of the redesignated subpar. (D).

Subsec. (a)(5)(G). Pub. L. 98-369, § 2601(a)(2)(A), (C), in provisions following "except that this paragraph shall not apply with respect to—" redesignated former cl. (v) as subpar. (G), and in subpar. (G) as so redesignated, designated the existing provisions of subpar. (G) as the introductory language and the first phrase of cl. (i) and added the remainder of cl. (i) following "chapter 38 of title 5", cls. (ii) and (iii), and the provisions following cl. (iii).

Subsec. (a)(7)(D). Pub. L. 98-369, § 2663(a)(7)(B), realigned margins of subpar. (D).

Subsec. (a)(8). Pub. L. 98-369, § 2603(a)(1), designated existing provisions as subpar. (A), in subpar. (A) as so designated substituted "this subparagraph" for "this paragraph", and added subpar. (B).

Subsec. (a)(9). Pub. L. 98-369, § 2663(a)(7)(C), substituted "section 3231 of the Internal Revenue Code of 1954" for "section 1532 of the Internal Revenue Code of 1939".

Subsec. (a)(10)(B). Pub. L. 98-369, § 2663(j)(3)(A)(i), struck out "of Health, Education, and Welfare" after "Secretary".

Subsec. (a)(19). Pub. L. 98-369, § 2663(a)(7)(D), struck out the comma after "; or".

Subsec. (*l*)(2). Pub. L. 98-369, § 2663(a)(7)(E), substituted "paragraph (21) of section 101 of title 38" for "section 102 of the Servicemen's and Veterans' Survivor Benefits Act" and "paragraph (22) of such section" for "such section".

Subsec. (*l*)(3). Pub. L. 98-369, § 2663(a)(7)(F), substituted "paragraph (23) of such section 101" for "such section 102".

Subsec. (*l*)(4)(A). Pub. L. 98-369, § 2663(j)(3)(A)(i), struck out "of Health, Education, and Welfare" after "Secretary".

Subsec. (m). Pub. L. 98-369, § 2663(a)(7)(G)(i), (ii), in provisions preceding par. (1), substituted "a reserve component as defined in section 101(27) of title 38" for "a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act" and added reference to the National Oceanic and Atmospheric Administration Corps.

Subsec. (m)(5). Pub. L. 98-369, § 2663(a)(7)(G)(iii), substituted "military, naval, or air" for "military or naval" wherever appearing.

Subsec. (m)(5)(B). Pub. L. 98-369, § 2663(a)(7)(G)(iv), substituted "Military Selective Service Act" for "Universal Military Training and Service Act".

1983—Subsec. (a). Pub. L. 98-21, § 322(a)(1), added cl. (C) and struck out "either" before "A" in provisions preceding par. (1).

Pub. L. 98-21, § 321(b), amended cl. (B) in provisions preceding par. (1) generally, substituting reference to section 3121(*l*)(8) of the Internal Revenue Code of 1954 for reference to section 3121(*l*) of such Code "an American employer" for "a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954)", and "affiliate" for "subsidiary" after "with respect to such".

Pub. L. 98-21, § 323(a)(2), substituted "a citizen or resident of the United States" for "a citizen of the United States" in cl. (B) in provisions preceding par. (1).

Subsec. (a)(5). Pub. L. 98-21, § 101(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, by virtue of any provision of law which specifically refers to such section in granting such exemption;".

Subsec. (a)(6). Pub. L. 98-21, § 101(a)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

"(A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

"(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

"(i) service performed in the employ of a corporation which is wholly owned by the United States;

"(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

"(iii) service performed in the employ of a State, county, or community committee under the Production and Marketing Administration;

"(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

"(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

"(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

"(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

"(ii) in the legislative branch;

"(iii) in a penal institution of the United States by an inmate thereof;

"(iv) by any individual as an employee included under section 5351(2) of title 5, other than as a medical or dental intern or a medical or dental resident in training;

"(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

"(vi) by any individual to whom subchapter III of chapter 83 of title 5 does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);".

Subsec.(a)(8). Pub. L. 98-21, § 102(a), struck out the subpar. (A) designation, struck out subpar. (B) which had related to service performed by employees of nonprofit organizations, and substituted "this paragraph" for "this subparagraph".

Subsec. (p). Pub. L. 98-21, § 101(a)(2), deleted designations for pars. (1) and (2) and deleted par. (1) which related to application of the provisions of subparagraph (A), (B), or (C)(i), (ii), or (vi) of subsection (a)(6) of this section.

Effective Date of 1985 Amendment

Section 3(c) of Pub. L. 99-221 provided that: "The amendments made by subsection (b) [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code] apply to any return to the performance of service in the employ of the United States, or of an instrumentality thereof, after 1983."

Effective Date of 1984 Amendment

Section 2601(f) of Pub. L. 98-369 provided that: "Except as provided in subsection (d) [set out as a Qualification and Requalification of Federal Employees for Benefits note below], the amendments made by subsections (a) and (b) [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code] (and provisions of subsection (e) [set out as a Services Performed for Nonprofit Organizations by Federal Employees note below]) shall be effective with respect to service performed after December 31, 1983."

Section 2603(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 410 and 411 of this title and sections 1402 and 3121 of Title 26 and enacting provisions set out as a note under section 3121 of Title 26] shall apply to service performed after December 31, 1983."

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendment

Amendment by section 101(a) of Pub. L. 98-21 effective with respect to service performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 102(a) of Pub. L. 98-21 effective with respect to service performed after Dec. 31, 1983, see section 102(c) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

Amendment by section 321 of Pub. L. 98-21 applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98-21, set out as a note under section 406 of Title 26.

Amendment by section 322 of Pub. L. 98-21, effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

Amendment by section 323(a)(2) of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, see section 323(c)(1) of Pub. L. 98-21, set out as a note under 3121 of Title 26.

Federal Legislative Branch Employees Who Contribute Reduced Amounts by Reason of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983

Section 2601(c) of Pub. L. 98-369 provided that: "For purposes of section 210(a)(5)(G) of the Social Security Act [42 U.S.C. 410(a)(5)(G)] and section 3121(b)(5)(G) of the Internal Revenue Code of 1954 [26 U.S.C. 3121(b)(5)(G)], an individual shall not be considered to be subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), if he is contributing a reduced amount by reason of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98-168, title II, Nov. 29, 1983, 97 Stat.

1106, set out as a note under section 8331 of Title 5, Government Organization and Employees]."

QUALIFICATION AND REQUALIFICATION OF FEDERAL EMPLOYEES FOR BENEFITS

Section 2601(d) of Pub. L. 98–369 provided that:

"(1) Any individual who—

"(A) was subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983 (as determined for purposes of section 210(a)(5)(G) of the Social Security Act [42 U.S.C. 410(a)(5)(G)]), and

"(B)(i) received a lump-sum payment under section 8342(a) of such title 5, or under the corresponding provision of the law establishing the other retirement system described in subparagraph (A), after December 31, 1983, and prior to June 15, 1984, or received such a payment on or after June 15, 1984, pursuant to an application which was filed in accordance with such section 8342(a) or the corresponding provision of the law establishing such other retirement system prior to that date, or

"(ii) otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code, for a period after December 31, 1983, to which section 210(a)(5)(g)(iii) of the Social Security Act [42 U.S.C. 410(a)(5)(G)(iii)] applies,

shall, if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) after the date on which he last ceased to be subject to such subchapter but prior to, or within 30 days after, the date of the enactment of this Act [July 18, 1984], requalify for the exemption from social security coverage and taxes under section 210(a)(5) of the Social Security Act and section 3121(b)(5) of the Internal Revenue Code of 1954 [26 U.S.C. 3121(b)(5)] as if the cessation of coverage under title 5 had not occurred.

"(2) An individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) who is not in the employ of the United States or an instrumentality thereof on the date of the enactment of this Act [July 18, 1984] may requalify for such exemptions in the same manner as under paragraph (1) if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) within 30 days after the date on which he first returns to service in the legislative branch after such date of enactment, if such date (on which he returns to service) is within 365 days after he was last in the employ of the United States or an instrumentality thereof.

"(3) If an individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) does not again become subject to subchapter III of chapter 83 of title 5 (or effectively apply for coverage under such subchapter) prior to the date of the enactment of this Act or within the relevant 30-day period as provided in paragraph (1) or (2), social security coverage and taxes by reason of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1954 shall, with respect to such individual's service in the legislative branch of the Federal Government, become effective with the first month beginning after such 30-day period.

"(4) The provisions of paragraphs (1) and (2) shall apply only for purposes of reestablishing an exemption from social security coverage and taxes, and do not affect the amount of service to be credited to an individual for purposes of title 5, United States Code."

SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS BY FEDERAL EMPLOYEES

Section 2601(e) of Pub. L. 98–369 provided that:

"(1) For purposes of section 210(a)(5) of the Social Security Act [42 U.S.C. 410(a)(5)] (as in effect in January 1983 and as in effect on and after January 1, 1984) and section 3121(b)(5) of the Internal Revenue Code of 1954 [26 U.S.C. 3121(b)(5)] (as so in effect), service performed in the employ of a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1954 [26 U.S.C. 501(c)(3)] by an employee who is required by law to be subject to subchapter III of chapter 83 of title 5, United States Code, with respect to such service, shall be considered to be service performed in the employ of an instrumentality of the United States.

"(2) For purposes of section 203 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [section 203 of Pub. L. 98–168, set out as a note under section 8331 of Title 5, Government Organization and Employees], service described in paragraph (1) which is also 'employment' for purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.], shall be considered to be 'covered service'."

ACCRUED FEDERAL RETIREMENT ENTITLEMENTS; REDUCTION PROHIBITED

Section 101(e) of Pub. L. 98–21 provided that: "Nothing in this Act [see Short Title of 1983 Amendment note set out under section 1305 of this title] shall reduce the accrued entitlements to future benefits under the Federal Retirement System of current and retired Federal employees and their families."

§ 411. Definitions relating to self-employment

For the purposes of this subchapter—

(a) Net earnings from self-employment

The term "net earnings from self-employment" means the gross income, as computed under subtitle A of the Internal Revenue Code of 1954, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of the Internal Revenue Code of 1954, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) There shall be excluded any gain or loss (A) which is considered under subtitle A of the Internal Revenue Code of 1954 as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1954 applies to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in section 172 of the Internal Revenue Code of 1954 shall not be allowed;

[*See main edition for text of* (*5*) *to* (*9*)]

(10) The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1954 shall not apply;

(11) In lieu of the deduction provided by section 164(f) of the Internal Revenue Code of 1954 (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer's net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 of such Code for such year;

(12) There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) of the Internal Revenue Code of 1954 to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services; and

(13) With respect to remuneration for services which are treated as services in a trade or business under subsection (c)(2)(G) of this section—

(A) no deduction for trade or business expenses provided under the Internal Revenue Code of 1954 (other than the deduction under paragraph (11) of this subsection) shall apply;

(B) the provisions of subsection (b)(2) of this section shall not apply; and

(C) if the amount of such remuneration from an employer for the taxable year is less than $100, such remuneration from that employer shall not be included in self-employment income.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 410(f) of this title—

[See main edition for text of (i) and (ii)]

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954 applies) is not more than $2,400, his distributive share of income described in section 702(a)(8) of the Internal Revenue Code of 1954, derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954 applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(8) of such Code, derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in such section 702(a)(8) derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

[See main edition for text of (v) and (vi)]

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (g) of this section, or by a partnership of which an individual is a member on a regular basis as defined in subsection (g) of this section, but only if such individual's net earnings from self-employment in the taxable year as determined without regard to this sentence are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed $1,600.

(b) Self-employment income

The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 433 of this title) during any taxable year beginning after 1950; except that such term shall not include—

[*See main edition for text of* (*1*) *and* (*2*)]

An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purpose of this subsection, be considered to be a nonresident alien individual.

(c) Trade or business

The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1954, except that such term shall not include—

[*See main edition for text of* (*1*)]

(2) The performance of service by an individual as an employee, other than—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary pursuant to section 418 of this title,

(F) service described in section 410(a)(20) of this title, and

(G) service described in section 410(a)(8)(B) of this title;

(3) The performance of service by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1954;

[*See main edition for text of* (*4*) *to* (*6*)]

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under section 1402(e) of the Internal Revenue Code of 1954 is effective with respect to him.

(d) Partnership and partner

The term "partnership" and the term "partner" shall have the same meaning as when used in subchapter K of chapter 1 of the Internal Revenue Code of 1954.

(e) Taxable year

The term "taxable year" shall have the same meaning as when used in subtitle A of the Internal Revenue Code of 1954; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1954, in which case his taxable year for the purposes of this subchapter shall be the same as his taxable year under subtitle A of the Internal Revenue Code of 1954.

[*See main edition for text of* (*f*) *and* (*g*)]

(h) Option dealers and commodity dealers

(1) In determining the net earnings from self-employment of any options dealer or commodities dealer—

(A) notwithstanding subsection (a)(3)(A) of this section, there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

(B) the deduction provided by section 1202 of the Internal Revenue Code of 1954 shall not apply.

(2) For purposes of this subsection—

(A) The term "options dealer" has the meaning given such term by section 1256(g)(8) of the Internal Revenue Code of 1954.

(B) The term "commodities dealer" means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) The term "section 1256 contracts" has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1954.

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, §§ 322(b)(1), 323(b)(2), 97 Stat. 121; July 18, 1984, Pub. L. 98-369, div. A, title I, § 102(c)(2), div. B, title VI, §§ 2603(c)(1), (d)(1), 2663(a)(8), 98 Stat. 622, 1129, 1163.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in text, is classified to Title 26, Internal Revenue Code.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2663(a)(8)(A), substituted "subtitle A of the Internal Revenue Code of 1954" for "chapter 1 of the Internal Revenue Code of 1939", "such subtitle" for "such chapter", and "section 702(a)(8) of the Internal Revenue Code of 1954" for "section 183 of the Internal Revenue Code of 1939".

Pub. L. 98-369, § 2663(a)(8)(D), in provisions following the numbered pars., substituted "702(a)(8)" for "702(a)(9)" in cl. (iii) and in two places in cl. (iv).

Subsec. (a)(3). Pub. L. 98-369, § 2663(a)(8)(B), substituted "subtitle A of the Internal Revenue Code of 1954" for "chapter 1 of the Internal Revenue Code of 1939" and inserted "or" before "(C)".

Subsec. (a)(4). Pub. L. 98-369, § 2663(a)(8)(C), substituted "section 172 of the Internal Revenue Code of 1954" for "section 23(s) of the Internal Revenue Code of 1939".

Subsec. (a)(13). Pub. L. 98-369, § 2603(d)(1), added par. (13).

Subsec. (b)(1)(D), (G) to (I). Pub. L. 98-369, § 2663(a)(8)(E), realigned margins of subpars. (D) and (G) to (I).

Subsec. (c). Pub. L. 98-369, § 2663(a)(8)(F), substituted "section 162 of the Internal Revenue Code of 1954" for "section 23 of the Internal Revenue Code of 1939" in provisions preceding par. (1).

Subsec. (c)(2)(G). Pub. L. 98-369, § 2603(c)(1), added subpar. (G).

Subsec. (c)(3). Pub. L. 98-369, § 2663(a)(8)(G), substituted "section 3231 of the Internal Revenue Code of 1954" for "section 1532 of the Internal Revenue Code of 1939".

Subsec. (d). Pub. L. 98-369, § 2663(a)(8)(H), substituted "subchapter K of chapter 1 of the Internal Revenue Code of 1954" for "supplement F of chapter 1 of the Internal Revenue Code of 1939".

Subsec. (e). Pub. L. 98-369, § 2663(a)(8)(I), substituted "subtitle A of the Internal Revenue Code of 1954" for "chapter 1 of the Internal Revenue Code of 1939" in three places.

Subsec. (h). Pub. L. 98-369, § 102(c)(2), added subsec. (h).

1983—Subsec. (a)(10). Pub. L. 98-21, § 323(b)(2)(A), substituted "The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1954 shall not apply" for "In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply".

Pub. L. 98-21, § 323(b)(2)(B), temporarily amended par. (10) by substituting "In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply" for "In the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) of the Internal Revenue Code of 1954 shall not apply". See Effective and Termination Dates of 1983 Amendment note below.

Subsec. (a)(11), (12). Pub. L. 98-21, § 124(c)(3), added par. (11) and redesignated former par. (11) as (12).

Subsec. (b). Pub. L. 98-21, § 322(b)(1), which directed that the phrase ", except as provided by an agreement under section 433 of this title" be inserted after "nonresident alien individual" was executed by inserting that phrase the first time those words appeared, in provisions preceding par. (1), and not the second time those words appeared, in provisions following par. (2), as the probable intent of Congress.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(c)(2) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, except as otherwise provided, see section 102(f)(3), (g) of Pub. L. 98-369, set out as a note under section 1256 of Title 26, Internal Revenue Code.

Amendment by section 2603 of Pub. L. 98-369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98-369, set out as a note under section 410 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Enactment of subsec. (a)(11) and redesignation of former subsec. (a)(11) as (a)(12) by section 124(c)(3) of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 322 of Pub. L. 98-21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 3121 of Title 26.

Amendment of subsec. (a)(10) by section 323(b)(2)(A) of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, see section 323(c)(2) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 1402 of Title 26.

Section 323(b)(2)(B) of Pub. L. 98-21 provided in part that the amendment of subsec. (a)(10) of this section by section 323(b)(2)(B) of Pub. L. 98-21 is effective with respect to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984.

§ 413. Quarter and quarter of coverage

(a) Definitions

For the purposes of this subchapter—

(1) The term "quarter", and the term "calendar quarter", mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2)(A) The term "quarter of coverage" means—

[See main edition for text of (i) and (ii)]

(B) Notwithstanding the provisions of subparagraph (A)—

[See main edition for text of (i)]

(ii) if the wages paid to an individual in any calendar year equal $3,000 in the case of a calendar year before 1951, or $3,600 in the case of a calendar year after 1950 and before 1955, or $4,200 in the case of a calendar year after 1954 and before 1959, or $4,800 in the case of a calendar year after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965 and before 1968, or $7,800 in the case of a calendar year after 1967 and before 1972, or $9,000 in the case of the calendar year 1972, or $10,800 in the case of the calendar year 1973, or $13,200 in the case of the calendar year 1974, or an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 and before 1978 with respect to which such contribution and benefit base is effective, each quarter of such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

[See main edition for text of (iii) to (vii)]

If in the case of an individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954 and before 1978, the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title are not met after assignment of quarters of coverage to quarters in such year as provided in clause (iv) of the preceding sentence, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die prior to January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 414(a)(3) of this title are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(9), 98 Stat. 1164.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 2663(a)(9)(A), substituted "mean" for "means".

Subsec. (a)(2)(B)(ii). Pub. L. 98-369, § 2663(a)(9)(B), substituted "equal $3,000" for "equal to $3,000".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 414. Insured status for purposes of old-age and survivors insurance benefits

EMPLOYEES OF NONPROFIT ORGANIZATIONS AS FULLY INSURED INDIVIDUALS

Pub. L. 98-21, title I, § 102(e), Apr. 20, 1983, 97 Stat. 71, provided that:

"(1) If any individual—

"(A) on January 1, 1984, is age 55 or over, and is an employee of an organization described in section 210(a)(8)(B) of the Social Security Act [42 U.S.C. 410(a)(8)(B)] (A) which does not have in effect (on that date) a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 [26 U.S.C. 3121(k)] and (B) to the employees of which social security coverage is extended on January 1, 1984, solely by reason of the enactment of this section [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under section 3121 of Title 26], and

"(B) after December 31, 1983, acquires the number of quarters of coverage (within the meaning of section 213 of the Social Security Act [42 U.S.C. 413]) which is required for purposes of this subparagraph under paragraph (2),

then such individual shall be deemed to be a fully insured individual (as defined in section 214 of the Social Security Act [42 U.S.C. 414]) for all of the purposes of title II of such Act [this subchapter].

"(2) The number of quarters of coverage which is required for purposes of subparagraph (B) of paragraph (1) shall be determined as follows:

"In the case of an individual who on January 1, 1984, is—	The number of quarters of coverage so required shall be—
age 60 or over	6
age 59 or over but less than age 60	8
age 58 or over but less than age 59	12
age 57 or over but less than age 58	16
age 55 or over but less than age 57	20."

§ 415. Computation of primary insurance amount

For the purposes of this subchapter—

(a) Primary insurance amount

(1) [*See main edition for text of* (*A*)]

(B)(i) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the calendar year 1979, the amount established for purposes of clause (i) and (ii) of subparagraph (A) shall be $180 and $1,085, respectively.

[*See main edition for text of* (*ii*)]

(iii) Each amount established under clause (ii) for any calendar year shall be rounded to the nearest $1, except that any amount so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

(C) [*See main edition for text of* (*i*)]

(ii) For purposes of clause (i), the term "years of coverage" with respect to any individual means the number (not exceeding 30) equal to the sum of (I) the number (not exceeding 14 and disregarding any fraction) determined by dividing (a) the total of the wages credited to such individual (including wages deemed to be paid prior to 1951 to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] prior to 1951 which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid prior to 1951 to such individual under section 431 of this title) for years after 1936 and before 1951 by (b) $900, plus (II) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(B)(ii) of this section) and in each of which he is credited with wages (including wages deemed to be paid to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid to such individual under section 429 of this title) and self-employment income of not less than 25 percent of the maximum amount which, pursuant to subsection (e) of this section, may be counted for such year, or of not less than 25 percent of the maximum amount which could be so counted for such year (in the case of a year after 1977) if section 430 of this title as in effect immediately prior to December 20, 1977, had remained in effect without change.

[*See main edition for text of* (*D*), (*2*) *to* (*6*)]

(7)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, who—

(i) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(ii) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subparagraph (C), but excluding a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C. 231 et seq., 228a et seq.]) which is based in whole or in part upon his or her earnings for service which did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter (hereafter in this paragraph and in subsection (d)(5) of this section referred to as "noncovered service"), the primary insurance amount of that individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be computed or recomputed under subparagraph (B) with respect to the initial month in which the individual becomes eligible for such benefits.

(B)(i) If paragraph (1) of this subsection would apply to such an individual (except for subparagraph (A) of this paragraph), there shall first be computed an amount equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that for purposes of such computation the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii). There shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the monthly periodic payment which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which the individual is entitled (or is deemed to be entitled) for the initial month of his or her eligibility for old-age or disability insurance benefits. The individual's primary insurance amount shall be the larger of the two amounts computed under this subparagraph (before the application of subsection (i) of this section) and shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this subchapter.

(ii) For purposes of clause (i), the percent specified in this clause is—

(I) 80.0 percent with respect to individuals who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62) in 1986;

(II) 70.0 percent with respect to individuals who so become eligible in 1987;

(III) 60.0 percent with respect to individuals who so become eligible in 1988;

(IV) 50.0 percent with respect to individuals who so become eligible in 1989; and

(V) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.

(C)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly payment (as determined by the Secretary), and such equivalent monthly payment shall constitute a monthly periodic payment for purposes of this paragraph.

(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a survivor's benefit to any other individual, the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subsection (d)(5) of this section) by the amount of such reduction.

(iii) If an individual to whom subparagraph (A) applies is eligible for a periodic payment beginning with a month that is subsequent to the month in which he or she becomes eligible for old-age or disability insurance benefits, the amount of that payment (for purposes of subparagraph (B)) shall be deemed to be the amount to which he or she is, or is deemed to be, entitled (subject to clauses (i), (ii), and (iv) of this subparagraph) in such subsequent month.

(iv) For purposes of this paragraph, the term "periodic payment" includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(D) This paragraph shall not apply in the case of an individual who has 30 years or more of coverage (as defined in paragraph (1)(C)(ii)). In the case of an individual who has more than 25 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (B)(ii) shall (if such percent is smaller than the percent specified in whichever of the following clauses applies) be deemed to be—

(i) 80 percent, in the case of an individual who has 29 of such years of coverage;

(ii) 70 percent, in the case of an individual who has 28 of such years;

(iii) 60 percent, in the case of an individual who has 27 of such years; and

(iv) 50 percent, in the case of an individual who has 26 of such years.

(E) This paragraph shall not apply in the case of an individual who on January 1, 1984—

(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983; or

(ii) is an employee of a nonprofit organization which (on December 31, 1983) did not have in effect a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act, unless social security coverage had previously extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Primary insurance amount under 1939 Act

[*See main edition for text of* (*1*) *to* (*4*)]

(5) In the case of an individual whose primary insurance amount is not computed under paragraph (1) of subsection (a) of this section by reason of paragraph (4)(B)(ii) of that subsection, who—

(A) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986, and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(B) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subsection (a)(7)(C) of this section, but excluding a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C. 231 et seq., 228a et seq.]) which is based (in whole or in part) upon his or her earnings in noncovered service, the primary insurance amount of such individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be the primary insurance amount computed or recomputed under this subsection (without regard to this paragraph and before the application of subsection (i) of this section) reduced by an amount equal to the smaller of—

(i) one-half of the primary insurance amount (computed without regard to this paragraph and before the application of subsection (i) of this section), or

(ii) one-half of the portion of the monthly periodic payment (or payment determined under subsection (a)(7)(C) of this section) which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which that individual is entitled (or is deemed to be entitled) for the initial month of his or her eligibility for old-age or disability insurance benefits.

This paragraph shall not apply in the case of any individual to whom subsection (a)(7) of this section would not apply by reason of subparagraph (E) or the first sentence of subparagraph (D) thereof.

[*See main edition for text of* (*e*)]

(f) Recomputation of benefits

[*See main edition for text of* (*1*)]

(2)(A) If an individual has wages or self-employment income for a year after 1978 for any part of which he is entitled to old-age or disability insurance benefits, the Secretary shall, at such time or times and within such period as he may by regulation prescribe, recompute the individual's primary insurance amount for that year.

[*See main edition for text of* (*B*) *to* (*D*), (*3*) *and* (*4*)]

(5) In the case of a man who became entitled to old-age insurance benefits and died before the month in which he attained retirement age (as defined in section 416(*l*) of this title), the Secretary shall recompute his primary insurance amount as provided in subsection (a) of this section as though he became entitled to old-age insurance benefits in the month in which he died; except that (i) his computation base years referred to in subsection (b)(2) of this section shall include the year in which he died, and (ii) his elapsed years referred to in subsection (b)(3) of this section shall not include the year in which he died or any year thereafter. Such recomputation of such primary insurance amount shall be effective for and after the month in which he died.

[*See main edition for text of* (*6*) *to* (*8*)]

(9)(A) In the case of an individual who becomes entitled to a periodic payment determined under subsection (a)(7)(A) of this section (including a payment determined under subsection (a)(7)(C) of this section) in a month subsequent to the first month in which he or she becomes entitled to an old-age or disability insurance benefit, and whose primary insurance amount has been computed without regard to either such subsection or subsection (d)(5) of this section, such individual's primary insurance amount shall be recomputed (notwithstanding paragraph (4) of this subsection), in accordance with either such subsection or subsection (d)(5) of this section, as may be applicable, effective with the first month of his or her concurrent entitlement to such benefit and such periodic payment.

(B) If an individual's primary insurance amount has been computed under subsection (a)(7) or (d)(5) of this section, and it becomes necessary to recompute that primary insurance amount under this subsection—

(i) so as to increase the monthly benefit amount payable with respect to such primary insurance amount (except in the case of the individual's death), such increase shall be determined as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(5) of this section, or

(ii) by reason of the individual's death, such primary insurance amount shall be recomputed without regard to (and as though it had never been computed with regard to) subsection (a)(7) or (d)(5) of this section.

[*See main edition for text of* (*g*)]

(h) Service of certain Public Health Service Officers

(1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, remuneration paid for service to which the provisions of section 410(*l*)(1) of this title are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this subchapter, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Secretary that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of title 5 on the basis of such service.

[*See main edition for text of* (*2*)]

(i) Cost-of-living increases in benefits

(1) For purposes of this subsection—

(A) the term "base quarter" means (i) the calendar quarter ending on September 30 in each year after 1982, or (ii) any other calendar quarter in which occurs the effective month of a general benefit increase under this subchapter;

(B) the term "cost-of-living computation quarter" means a base quarter, as defined in subparagraph (A)(i), with respect to which the applicable increase percentage is 3 percent or more; except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective;

(C) the term "applicable increase percentage" means—

(i) with respect to a base quarter or cost-of-living computation quarter in any calendar year before 1984, or in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is 15.0 percent or more, or in any calendar year after 1988 for which the OASDI fund ratio is 20.0 percent or more, the CPI increase percentage; and

(ii) with respect to a base quarter or cost-of-living computation quarter in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is less than 15.0 percent, or in any calendar year after 1988 for which the OASDI fund ratio is less than 20.0 percent, the CPI increase percentage or the wage increase percentage, whichever (with respect to that quarter) is the lower;

(D) the term "CPI increase percentage", with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the Consumer Price Index for that quarter (as prepared by the Department of Labor) exceeds such index for the most recent prior calendar quarter which was a base quarter under subparagraph (A)(ii) or, if later, the most recent cost-of-living computation quarter under subparagraph (B);

(E) the term "wage increase percentage", with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the SSA average wage index for the year immediately preceding such calendar year exceeds such index for the year immediately preceding the most recent prior calendar year which included a base quarter under subparagraph (A)(ii) or, if later, which included a cost-of-living computation quarter;

(F) the term "OASDI fund ratio", with respect to any calendar year, means the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Fund from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title, to

(ii) the total amount which (as estimated by the Secretary) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during such calendar year for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account;

(G) the term "SSA average wage index", with respect to any calendar year, means the average of the total wages reported to the Secretary of the Treasury or his delegate as determined for purposes of subsection (b)(3)(A)(ii) of this section; and

(H) the Consumer Price Index for a base quarter, a cost-of-living computation quarter, or any other calendar quarter shall be the arithmetical mean of such index for the 3 months in such quarter.

(2)(A)(i) The Secretary shall determine each year beginning with 1975 (subject to the limitation in paragraph (1)(B)) whether the base quarter (as defined in paragraph (1)(A)(i)) in such year is a cost-of-living computation quarter.

(ii) If the Secretary determines that the base quarter in any year is a cost-of-living computation quarter, he shall, effective with the month of December of that year as provided in subparagraph (B), increase—

[*See main edition for text of* (*I*) *to* (*III*)]

The increase shall be derived by multiplying each of the amounts described in subdivisions (I), (II), and (III) (including each of those amounts as previously increased under this subparagraph) by the applicable increase percentage; and any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10. Any increase under this subsection in a primary insurance amount determined under subparagraph (C)(i) of subsection (a)(1) of this section shall be applied after the initial determination of such primary insurance amount under that subparagraph (with the amount of such increase, in the case of an individual who becomes eligible for old-age or disability insurance benefits or dies in a calendar year after 1979, being determined from the range of possible primary insurance amounts published by the Secretary under the last sentence of subparagraph (D)).

(iii) In the case of an individual who becomes eligible for an old-age or disability insurance benefit, or who dies prior to becoming so eligible, in a year in which there occurs an increase provided under clause (ii), the individual's primary insurance amount (without regard to the time of entitlement to that benefit) shall be increased (unless otherwise so increased under another provision of this subchapter and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)) by the amount of that increase and subsequent applicable increases, but only with respect to benefits payable for months after November of that year.

(B) The increase provided by subparagraph (A) with respect to a particular cost-of-living computation quarter shall apply in the case of monthly benefits under this subchapter for months after November of the calendar year in which occurred such cost-of-living computation quarter, and in the case of lump-sum death payments with respect to deaths occurring after November of such calendar year.

(C) [*See main edition for text of* (i) *and* (ii)]

(iii) The Secretary shall determine and promulgate the OASDI fund ratio for the current calendar year and the SSA wage index for the preceding calendar year before November 1 of the current calendar year, based upon the most recent data then available, and shall include a statement of such fund ratio and wage index (and of the effect such ratio and the level of such index may have upon benefit increases under this subsection) in any notification made under clause (ii) and any determination published under subparagraph (D).

[*See main edition for text of* (D), (3)]

(4) This subsection as in effect in December 1978, and as amended by sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983, shall continue to apply to subsections (a) and (d) of this section, as then in effect, for purposes of computing the primary insurance amount of an individual to whom subsection (a) of this section, as in effect after December 1978, does not apply (including an individual to whom subsection (a) of this section does not apply in any year by reason of paragraph (4)(B) of that subsection (but the application of this subsection in such cases shall be modified by the application of subdivision (I) in the last sentence of paragraph (4) of that subsection)), except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase "increased to the next higher multiple of $0.10" shall be deemed to read "decreased to the next lower multiple of $0.10". For purposes of computing primary insurance amounts and maximum family benefits (other than primary insurance amounts and maximum family benefits for individuals to whom such paragraph (4)(B) applies), the Secretary shall publish in the Federal Register revisions of the table of benefits contained in subsection (a) of this section, as in effect in December 1978, as required by paragraph (2)(D) of this subsection as then in effect.

(5)(A) If—

(i) with respect to any calendar year the "applicable increase percentage" was determined under clause (ii) of paragraph (1)(C) rather than under clause (i) of such paragraph, and the increase becoming effective under paragraph (2) in such year was accordingly determined on the basis of the wage increase percentage rather than the CPI increase percentage (or there was no such increase becoming effective under paragraph (2) in that year because the wage increase percentage was less than 3 percent), and

(ii) for any subsequent calendar year in which an increase under paragraph (2) becomes effective the OASDI fund ratio is greater than 32.0 percent,

then each of the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii), as increased under paragraph (2) effective with the month of December in such subsequent calendar year, shall be further increased (effective with such month) by an additional percentage, which shall be determined under subparagraph (B) and shall apply as provided in subparagraph (C). Any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

(B) The applicable additional percentage by which the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii) are to be further increased under subparagraph (A) in the subsequent calendar year involved shall be the amount derived by—

(i) subtracting (I) the compounded percentage benefit increases that were actually paid under paragraph (2) and this paragraph from (II) the compounded percentage benefit increases that would have been paid if all increases under paragraph (2) had been made on the basis of the CPI increase percentage,

(ii) dividing the difference by the sum of the compounded percentage in subdivision (I) and 100 percent, and

(iii) multiplying such quotient by 100 so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent),

with the compounded increases referred to in subdivisions (I) and (II) being measured—

(iv) in the case of amounts described in subdivision (I) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which monthly benefits described in such subdivision were first increased on the basis of the wage increase percentage and ending with the year before such subsequent calendar year, and

(v) in the case of amounts described in subdivisions (II) and (III) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which the individual whose primary insurance amount is increased under such subdivision (II) became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection, or died before becoming so eligible, and ending with the year before such subsequent calendar year;

except that if the Secretary determines in any case that the application (in accordance with subparagraph (C)) of the additional percentage as computed under the preceding provisions of this subparagraph would cause the OASDI fund ratio to fall below 32.0 percent in the calendar year immediately following such subsequent year, he shall reduce such applicable additional percentage to the extent necessary to ensure that the OASDI fund ratio will remain at or above 32.0 percent through the end of such following year.

(C) Any applicable additional percentage increase in an amount described in subdivision (I), (II), or (III) of paragraph (2)(A)(ii), made under this paragraph in any calendar year, shall thereafter be treated for all the purposes of this chapter as a part of the increase made in such amount under paragraph (2) for that year.

(Aug. 14, 1935, ch. 531, title II, § 215, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 506, and amended July 18, 1952, ch. 945, §§ 2(a), (b)(1), 3(c), 6(a), (b), 66 Stat. 767, 768, 770, 771, 776; Sept. 1, 1954, ch. 1206, title I, §§ 102 (a)–(d), (e) (1)–(4), 104(d), 106(c), 68 Stat. 1062, 1078, 1079; Aug. 1, 1956, ch. 836, title I, §§ 103(c) (4), (5), 109(a), 115 (a)–(c), 70 Stat. 818, 830, 832; Aug. 28, 1958, Pub. L. 85–840, title I, §§ 101(a)–(d), 102(d), title II, § 205(m), 72 Stat. 1013, 1020, 1025; Apr. 8, 1960, Pub. L. 86–415, § 7, 74 Stat. 35; Sept. 13, 1960, Pub. L. 86–778, title I, § 103(j)(2)(C), title II, § 211(n), title III, §§ 303(a)–(e), 304(a), 74 Stat. 937, 958, 960, 966; June 30, 1961, Pub. L. 87–64, title I, §§ 101(a), 102(d), 75 Stat. 131, 135; July 30, 1965, Pub. L. 89–97, title III, §§ 301(a), (b), 302(a)–(d), 303(e), 304(k), 320(a)(4), 79 Stat. 361, 363–365, 367, 370, 393; Jan. 2, 1968, Pub. L. 90–248, title I, §§ 101(a), (c), (d), 108(a)(4), 155(a)(1)–(6), title IV, § 403(b), 81 Stat. 824, 827, 834, 864, 865, 931; Dec. 30, 1969, Pub. L. 91–172, title X, § 1002(a), (c), (d), 83 Stat. 737, 740; Mar. 17, 1971, Pub. L. 92–5, title II, §§ 201(a), (c), (d), 203(a)(4), 85 Stat. 6, 9, 10; July 1, 1972, Pub. L. 92–336, title II, §§ 201(a), (c)–(f), 202(a)(1), (3), 203(a)(4), 86 Stat. 406, 410–412, 416, 418; Oct. 30, 1972, Pub. L. 92–603, title I, §§ 101(a), (c)–(e), 104(b), 134, 142(b), (c), 144(a)(1), 86 Stat. 1333, 1334, 1340, 1362, 1368, 1369; July 9, 1973, Pub. L. 93–66, title II, § 203(a)(4), 87 Stat. 153; Dec. 31, 1973, Pub. L. 93–233, §§ 1(h)(1), 2(a), (d), 3(a)–(h), 5(a)(4), 87 Stat. 948, 952, 953; Dec. 20, 1977, Pub. L. 95–216, title I, § 103(d), title II, § 201, 91 Stat. 1514, 1519; June 9, 1980, Pub. L. 96–265, title I, §§ 101(b)(3), (4), 102(a), 94 Stat. 442, 443; Oct. 19, 1980, Pub. L. 96–473, § 6(d), 94 Stat. 2265; Aug. 13, 1981, Pub. L. 97–35, title XXII, §§ 2201(a), (b)(1)–(9), (c)(1)–(5), 2206(a), (b)(5)–(7), 95 Stat. 830, 831, 838; Dec. 29, 1981, Pub. L. 97–123, § 2(a)–(d), 95 Stat. 1660; Apr. 20, 1983, Pub. L. 98–21, title I, §§ 111(a)(1)–(3), (6), (b)(1), (2), (c), 112(a)–(d), 113(a)–(c), title II, § 201(c)(1)(C), 97 Stat. 72–76, 78, 109; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2661(k), 2663(a)(10), 98 Stat. 1157, 1164.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in subsecs. (a)(1)(C)(ii), (7)(A) and (d)(1)(C), (5), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsecs. (a)(1)(C)(ii), (7)(A), (d)(5), is title I of Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Such title I completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45.

Section 101 of the Social Security Amendments of 1983, referred to in subsec. (a)(7)(E)(i), is section 101 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 67, which amended sections 409 and 410 of this title and section 3121 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under section 410 of this title and section 3121 of Title 26.

Section 3121(k) of the Internal Revenue Code of 1954, referred to in subsec. (a)(7)(E)(ii), is classified to section 3121(k) of Title 26.

Section 102 of that Act, referred to in subsec. (a)(7)(E)(ii), is section 102 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 70, which amended section 410 of this title and section 3121 of Title 26 and enacted provisions set out as notes under section 414 of this title and section 3121 of Title 26.

Sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983, referred to in subsec. (i)(4), are sections 111(a)(6), 111(b)(2), and 112 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 72, 73, which amended subsec. (i) of this section and enacted provisions set out as notes below. See 1983 Amendment notes below.

AMENDMENTS

1984—Subsec. (a)(1)(B)(i). Pub. L. 98–369, § 2663(a)(10)(A)(i), substituted "for such benefits" for "of such benefits".

Subsec. (a)(1)(B)(iii). Pub. L. 98–369, § 2663(a)(10)(A)(ii), substituted "amount" for "amounts" after "except that any".

Subsec. (a)(1)(C)(ii). Pub. L. 98–369, § 2663(a)(10)(A)(iii), substituted "section 217" for "scetion 217" after "deemed to be paid to such individual under".

Subsec. (a)(4)(B). Pub. L. 98–369, § 2663(a)(10)(B), realigned margins of subpar. (B).

Subsec. (a)(7)(B)(ii)(I). Pub. L. 98–369, § 2661(k)(1), substituted "who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62)" for "who initially become eligible for old-age or disability insurance benefits".

Subsec. (a)(7)(C)(ii). Pub. L. 98–369, § 2661(k)(2), substituted "survivor's" for "survivors".

Subsec. (f)(2)(A). Pub. L. 98–369, § 2663(a)(10)(C), substituted "primary insurance amount" for "primary insurance account".

Subsec. (f)(9)(B)(i). Pub. L. 98–369, § 2661(k)(3), substituted "as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(5)" for "as though such primary insurance amount had initially been computed without regard to subsection (a)(7) or (d)(5)".

Subsec. (h)(1). Pub. L. 98-369, § 2663(a)(10)(D)(ii), substituted "Director of the Office of Personnel Management" for "Civil Service Commission".

Subsec. (i)(5)(A). Pub. L. 98-369, § 2661(k)(4), added provision that any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

Subsec. (i)(5)(B)(iii). Pub. L. 98-369, § 2661(k)(5)(A), substituted "so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent)" for "and rounding to the nearest one-tenth of 1 percent".

Subsec. (i)(5)(B)(iv), (v). Pub. L. 98-369, § 2661(k)(5)(B), (C), substituted "ending with the year before such subsequent calendar year" for "ending with such subsequent calendar year" in cls. (iv) and (v) and "became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection" for "initially became eligible for an old-age or disability insurance benefit" in cl. (v).

1983—Subsec. (a)(7). Pub. L. 98-21, § 113(a), added par. (7).

Subsec. (d)(5). Pub. L. 98-21, § 113(b), added par. (5).

Subsec. (f)(5). Pub. L. 98-21, § 201(c)(1)(C), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65".

Subsec.(f)(9). Pub. L.98-21, § 113(c), added par. (9).

Subsec. (i)(1)(A). Pub. L. 98-21, § 111(b)(1), substituted "September 30" for "March 31" and "1982" for "1974".

Pub. L. 98-21, § 111(b)(2), amended subpar. (A), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting "September 30" for "March 31" and "1982" for "1974".

Subsec. (i)(1)(B). Pub. L. 98-21, § 112(a)(1), substituted "with respect to which the applicable increase percentage is 3 percent or more" for "in which the Consumer Price Index prepared by the Department of Labor exceeds, by not less than 3 per centum, such Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this subchapter".

Subsec. (i)(1)(C) to (H). Pub. L. 98-21, § 112(a)(3), (4), added subpars. (C) to (G) and redesignated former subpar. (C) as (H).

Subsec. (i)(2)(A)(ii). Pub. L. 98-21, § 112(b), in provisions immediately following subcl. (iii), substituted "by the applicable increase percentage" for "by the same percentage (rounded to the nearest one-tenth of 1 percent) as the percentage by which the Consumer Price Index for that cost-of-living computation quarter exceeds such index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter under paragraph (1)(B)".

Pub. L. 98-21, § 111(a)(1), substituted "December" for "June" in provisions preceding subcl. (I).

Pub. L. 98-21, § 111(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in the provisions preceding subpar. (A)(ii)(I) "December" for "June".

Subsec. (i)(2)(A)(iii). Pub. L. 98-21, § 111(a)(2), substituted "November" for "May".

Subsec. (i)(2)(B). Pub. L. 98-21, § 111(a)(3), substituted "November" for "May" in two places.

Pub. L. 98-21, § 111(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in subpar. (B) "November" for "May" in two places.

Subsec. (i)(2)(C)(iii). Pub. L. 98-21, § 112(d)(1), added cl. (iii).

Subsec. (i)(4). Pub. L. 98-21, § 112(d)(2), inserted reference to the amendments made by section 112 of the Social Security Amendments of 1983.

Pub. L. 98-21, § 111(c), inserted reference to the amendments made by section 111(a)(6) and 111(b)(2) of the Social Security Amendments of 1983.

Subsec. (i)(5). Pub. L. 98-21, § 112(c), added par. (5).

Effective Date of 1984 Amendment

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendment

Amendment by section 111(a) of Pub. L. 98-21 applicable with respect to cost-of-living increases determined under subsec. (i) of this section for years after 1982, see section 111(a)(8) of Pub. L. 98-21, set out as a note under section 402 of this title.

Section 111(b)(3) of Pub. L. 98-21 provided that: "The amendments made by this subsection [amending subsec. (i)(1)(A) of this section] shall apply with respect to cost-of-living increases determined under section 2151(i) of the Social Security Act [subsec. (i) of this section] for years after 1983."

Section 112(e) of Pub. L. 98-21 provided that: "The amendments made by the preceding provisions of this section [amending subsec. (i) of this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1983."

Cost-of-Living Increases; Cost-of-Living Computation Quarter Determinations

Pub. L. 98-604, § 1, Oct. 30, 1984, 98 Stat. 3161, provided:

"That (a) in determining whether the base quarter ending on September 30, 1984, is a cost-of-living computation quarter for the purposes of the cost-of-living increases under sections 215(i) and 1617 of the Social Security Act [42 U.S.C. 415(i) and 1382f], the phrase 'is 3 percent or more' appearing in section 215(i)(1)(B) of such Act shall be deemed to read 'is greater than zero' (and the phrase 'exceeds, by not less than 3 per centum, such Index' appearing in section 215(i)(1)(B) of such Act as in effect in December 1978 shall be deemed to read 'exceeds such Index').

"(b) For purposes of section 215(i) of such Act [42 U.S.C. 415(i)], the provisions of subsection (a) shall not constitute a 'general benefit increase'."

"Base Quarter" in Calendar Year 1983

Section 111(d) of Pub. L. 98-21 provided that: "Notwithstanding any provision to the contrary in section 215(i) of the Social Security Act [subsec. (i) of this section], the 'base quarter' (as defined in paragraph (1)(A)(i) of such section) in the calendar year 1983 shall be a 'cost-of-living computation quarter' within the meaning of paragraph (1)(B) of such section (and shall be deemed to have been determined by the Secretary of Health and Human Services to be a 'cost-of-living computation quarter' under paragraph (2)(A) of such section) for all of the purposes of such Act [this chapter] as amended by this section and by other provisions of this Act, without regard to the extent by which the Consumer Price Index has increased since the last prior cost-of-living computation quarter which was established under such paragraph (1)(B)."

Combined Balance in Trust Funds Used in Determining OASDI Fund Ratio With Respect to Calendar Year 1984

Section 112(f) of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title VI, § 2662(b), July 18, 1984, 98 Stat. 1159, provided that: "Notwithstanding anything to the contrary in section 215(i)(1)(F) of the Social Security Act [subsec. (i)(1)(F) of this section] (as added by subsection (a)(4) of this section), the combined balance in the Trust Funds which is to be used in determining the 'OASDI fund ratio' with respect to the calendar year 1984 under such section shall be the estimated combined balance in such Funds as of the close of that year (rather than as of its beginning), including the taxes transferred under section 201(a) of such Act [42 U.S.C. 401(a)] on the first day of the year following that year."

Section Referred to in Other Sections

This section is referred to in sections 402, 403, 413, 417, 423, 424a, 427, 428, 430, 431, 674, 1382f, 1382g, 1395r of this title; title 26 section 415; title 38 section 3112; title 45 sections 231b, 231c.

§ 416. Additional definitions

For the purposes of this subchapter—

(a) Spouse; surviving spouse

(1) The term "spouse" means a wife as defined in subsection (b) of this section or a husband as defined in subsection (f) of this section.

(2) The term "surviving spouse" means a widow as defined in subsection (c) of this section or a widower as defined in subsection (g) of this section.

[See main edition for text of (b) and (c)]

(d) Divorced spouses; divorce

[See main edition for text of (1) to (3)]

(4) The term "divorced husband" means a man divorced from an individual, but only if he had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(5) The term "surviving divorced husband" means a man divorced from an individual who has died, but only if he had been married to the individual for a period of 10 years immediately before the divorce became effective.

(6) The term "surviving divorced father" means a man divorced from an individual who has died, but only if (A) he is the father of her son or daughter, (B) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of 18, (C) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of 18, or (D) he was married to her at the time both of them legally adopted a child under the age of 18.

(7) The term "surviving divorced parent" means a surviving divorced mother as defined in paragraph (3) of this subsection or a surviving divorced father as defined in paragraph (6).

(8) The terms "divorce" and "divorced" refer to a divorce a vinculo matrimonii.

[See main edition for text of (e)]

(f) Husband

The term "husband" means the husband of an individual, but only if (1) he is the father of her son or daughter, (2) he was married to her for a period of not less than one year immediately preceding the day on which his application is filed, or (3) in the month prior to the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 402 of this title, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (C) he was entitled to, or upon application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45. For purposes of clause (2), a husband shall be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of his marriage to her. For purposes of subparagraph (C) of section 402(c)(1) of this title, a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.

(g) Widower

The term "widower" (except when used in the first sentence of section 402(i) of this title) means the surviving husband of an individual, but only if (1) he is the father of her son or daughter, (2) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (3) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (4) he was married to her at the time both of them legally adopted a child under the age of eighteen, (5) he was married to her for a period of not less than nine months immediately prior to the day on which she died, or (6) in the month before the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 402 of this title, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (C) he was entitled to, or on application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45.

(h) Determination of family status

[See main edition for text of (1) and (2)]

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2) of this subsection, shall nevertheless be deemed to be the child of such insured individual if:

(A) in the case of an insured individual entitled to old-age insurance benefits (who was not, in the month preceding such entitlement, entitled to disability insurance benefits)—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter,

and such acknowledgment, court decree, or court order was made not less than one year before such insured individual became entitled to old-age insurance benefits or attained retirement age (as defined in subsection (*l*) of this section), whichever is earlier; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the mother or father of the applicant and was living with or contributing to the support of the applicant at the time such applicant's application for benefits was filed;

(B) in the case of an insured individual entitled to disability insurance benefits, or who was entitled to such benefits in the month preceding the first month for which he or she was entitled to old-age insurance benefits—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter,

and such acknowledgment, court decree, or court order was made before such insured individual's most recent period of disability began; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the mother or father of the applicant and was living with or contributing to the support of that applicant at the time such applicant's application for benefits was filed;

(C) in the case of a deceased individual—

(i) such insured individual—

(I) had acknowledged in writing that the applicant is his or her son or daughter,

(II) had been decreed by a court to be the mother or father of the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his or her son or daughter,

and such acknowledgment, court decree, or court order was made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to have been the mother or father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.

For purposes of subparagraphs (A)(i) and (B)(i), an acknowledgement, court decree, or court order shall be deemed to have occurred on the first day of the month in which it actually occurred.

(i) Disability; period of disability

(1) Except for purposes of sections 402(d), 402(e), 402(f), 423, and 425 of this title, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (2)(C), (3), (4), (5), and (6) of section 423(d) of this title shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this subchapter shall be construed as authorizing the Secretary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2) [*See main edition for text of* (*A*)]

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains retirement age (as defined in subsection (*l*) of this section). In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.

[*See main edition for text of* (*C*)]

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains retirement age (as defined in subsection (*l*) of this section), or (ii) the month preceding (I) the termination month (as defined in section 423(a)(1) of this title), or, if earlier (II) the first month for which no benefit is payable by reason of section 423(e) of this title, where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section. The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).

[*See main edition for text of* (*E*)]

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

[*See main edition for text of* (*i*)]

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before January 1968—

[*See main edition for text of* (*I*) *to* (*III*)]

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time such determination is made.

[*See main edition for text of* (*G*)]

(3) The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) of this subsection are satisfied by an individual with respect to any quarter only if—

(A) he would have been a fully insured individual (as defined in section 414 of this title) had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such quarter; and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or

(ii) if such quarter ends before he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of clause (ii), had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with such quarter are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in paragraph (1)). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage.

[*See main edition for text of* (*j*) *and* (*k*)]

(*l*) Retirement age

(1) The term "retirement age" means—

(A) with respect to an individual who attains early retirement age (as defined in paragraph (2)) before January 1, 2000, 65 years of age;

(B) with respect to an individual who attains early retirement age after December 31, 1999, and before January 1, 2005, 65 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age;

(C) with respect to an individual who attains early retirement age after December 31, 2004, and before January 1, 2017, 66 years of age;

(D) with respect to an individual who attains early retirement age after December 31, 2016, and before January 1, 2022, 66 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age; and

(E) with respect to an individual who attains early retirement age after December 31, 2021, 67 years of age.

(2) The term "early retirement age" means age 62 in the case of an old-age, wife's, or husband's insurance benefit, and age 60 in the case of a widow's or widower's insurance benefit.

(3) The age increase factor for any individual who attains early retirement age in a calendar year within the period to which subparagraph (B) or (D) of paragraph (1) applies shall be determined as follows:

(A) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2000 through 2004, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2000 and ending with December of the year in which the individual attains early retirement age.

(B) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2017 through 2021, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2017 and ending with December of the year in which the individual attains early retirement age.

(Aug. 14, 1935, ch. 531, title II, § 216, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 510, and amended July 18, 1952, ch. 945, § 3(d), 66 Stat. 771; Sept. 1, 1954, ch. 1206, title I, § 106(d), 68 Stat. 1080; Aug. 1, 1956, ch. 836, title I, §§ 102(a), (d)(12), 103(c)(6), 70 Stat. 809, 815, 818; July 17, 1957, Pub. L. 85-109, § 1, 71 Stat. 308; Aug. 30, 1957, Pub. L. 85-238, § 3(h), 71 Stat. 519; Aug. 28, 1958, Pub. L. 85-840, title II, §§ 201, 203, 204(a), title III, §§ 301(a)(2), (b)(2), (c)(2), (d), (e), 302(a), 305(b), 72 Stat. 1020, 1021, 1026-1028, 1030; Sept. 13, 1960, Pub. L. 86-778, title II, §§ 207(a)-(c), 208(a)-(c), title IV, §§ 402(e), 403(c), title VII, § 703, 74 Stat. 950-952, 968, 969, 994; June 30, 1961, Pub. L. 87-64, title I, §§ 102(b)(2)(D), (c)(1), (2)(B), (3)(C), 105, 75 Stat. 134, 135, 139; Oct. 13, 1964, Pub. L. 88-650, § 1(a)-(c), 78 Stat. 1075; July 30, 1965, Pub. L. 89-97, title III, §§ 303(a)(1), (b)(1), (2), 304(*l*), 306(c)(13), 308(c), (d)(2)(B), 328(b), 334(a)-(d), 339(a), 344(a), 79 Stat. 366, 367, 370, 373, 377, 378, 400, 404, 405, 409, 412; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 104(d)(2), 105(a), 111(a), 150(a), 156(a)-(d), 158(d), 172(a), (b), 81 Stat. 832, 837, 860, 866, 869, 877; Oct. 30, 1972, Pub. L. 92-603, title I, §§ 104(g), 113(a), 115(b), 116(d), 117(a), 118(b), 145(a), 86 Stat. 1341, 1347, 1349-1351, 1370; Oct. 16, 1974, Pub. L. 93-445, title III, § 304, 88 Stat. 1358; Dec. 20, 1977, Pub. L. 95-216, title III, § 337(a), 91 Stat. 1548; June 9, 1980, Pub. L. 96-265, title III, §§ 303(b)(2)(B), 306(b), 94 Stat. 453, 457; Oct. 19, 1980, Pub. L. 96-473, § 5(a)(2), 94 Stat. 2265; Aug. 13, 1981, Pub. L. 97-35, title XXII, §§ 2202(a)(2), 2203(b)(2), (c)(2), (d)(3), (4), 95 Stat. 835-837; Apr. 20, 1983, Pub. L. 98-21, title II, § 201(a), (c)(1)(D), title III, §§ 301(c)(1), 303, 304(c), 306(c), 309(j), (k), 332(a), 333(a), 97 Stat. 107, 109, 111, 112, 114, 117, 129; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2661(*l*), 2662(c)(1), 2663(a)(11), 98 Stat. 1158, 1159, 1164; Oct. 9, 1984, Pub. L. 98-460, §§ 2(b), 4(a)(2), 98 Stat. 1796, 1800.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-369, § 2661(*l*)(1), added provision that for purposes of subparagraph (C) of section 402(c)(1) of this title, a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.

Subsec. (h)(3). Pub. L. 98-369, § 2663(a)(11)(A), made technical amendment to directory language of Pub. L. 97-35, § 2203(d)(4). See 1981 Amendment Note below.

Subsec. (h)(3)(A)(i). Pub. L. 98-369, § 2661(*l*)(2), substituted "subsection (*l*) of this section" for "section 416(*l*) of this title".

Subsec. (i)(1). Pub. L. 98-460, § 4(a)(2), inserted "(2)(C)," after "(2)(A),".

Subsec. (i)(2)(B). Pub. L. 98-369, § 2661(*l*)(3), substituted "subsection (*l*) of this section" for "section 416(*l*) of this title".

Pub. L. 98-369, § 2662(c)(1), made clarifying amendment to Pub. L. 98-21, § 201(c)(1)(D). See 1983 Amendment note below.

Subsec. (i)(2)(D). Pub. L. 98-460, § 2(b), added "The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling)."

Pub. L. 98-369, § 2661(*l*)(3), substituted "subsection (*l*) of this section" for "section 416(*l*) of this title".

Subsec. (i)(2)(F)(ii). Pub. L. 98-369, § 2663(a)(11)(B), substituted a dash for a comma after "before January 1968" in provisions preceding subcl. (I).

1983—Subsec. (a). Pub. L. 98-21, § 304(c), added subsec. (a).

Subsec. (d)(4), (5). Pub. L. 98-21, § 301(c)(1), added pars. (4) and (5). Former par. (4) redesignated (6).

Subsec. (d)(6). Pub. L. 98-21, § 306(c), added par. (6) and redesignated former par. (6) as (8).

Pub. L. 98-21, § 301(c)(1), redesignated former par. (4) as (6).

Subsec. (d)(7). Pub. L. 98-21, § 306(c), added par. (7).

Subsec. (d)(8). Pub. L. 98-21, § 306(c), redesignated former par. (6) as (8).

Subsec. (f)(3)(A). Pub. L. 98-21, § 309(j), added reference to subsec. (c) of section 402 of this title.

Subsec. (g)(6)(A). Pub. L. 98-21, § 309(k), added reference to subsec. (c) of section 402 of this title.

Subsec. (h)(3). Pub. L. 98-21, § 333(a), substituted "subparagraphs (A)(i) and (B)(i)" for "subparagraph (A)(i)" in provisions following subpar. (C)(ii).

Subsec. (h)(3)(A)(i). Pub. L. 98-21, § 201(c)(1)(D), substituted "retirement age (as defined in subsection (*l*) of this section)" for "age 65".

Subsec. (h)(3)(A)(i)(I). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(A)(i)(II). Pub. L. 98-21, § 303(a), added "mother or" before "father".

Subsec. (h)(3)(A)(i)(III). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(A)(ii). Pub. L. 98-21, § 303(a), (b), added "mother or" before "father" and substituted "such applicant's application for benefits was filed" for "such insured individual became entitled to benefits or attained retirement age (as defined in subsection (*l*) of this section), whichever first occurred".

Pub. L. 98-21, § 201(c)(1)(D), substituted "retirement age (as defined in subsection (*l*) of this section)" for "age 65".

Subsec. (h)(3)(B). Pub. L. 98-21, § 303(d)(2), substituted "he or she" for "he" in provisions preceding cl. (i).

Subsec. (h)(3)(B)(i)(I). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(B)(i)(II). Pub. L. 98-21, § 303(a), added "mother or" before "father".

Subsec. (h)(3)(B)(i)(III). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(B)(ii). Pub. L. 98-21, § 303(c), substituted "such applicant's application for benefits was filed" for "such period of disability began".

Pub. L. 98-21, § 303(a), added "mother or" before "father".

Subsec. (h)(3)(C)(i)(I). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(C)(i)(II). Pub. L. 98-21, § 303(a), added "mother or" before "father".

Subsec. (h)(3)(C)(i)(III). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(C)(ii). Pub. L. 98-21, § 303(a), added "mother or" before "father".

Subsec. (i)(2)(B). Pub. L. 98-21, § 201(c)(1)(D), as amended by Pub. L. 98-369, § 2662(c)(1), substituted "retirement age (as defined in subsection (*l*) of this section)" for "the age of 65".

Subsec. (i)(2)(D). Pub. L. 98-21, § 201(c)(1)(D), substituted "retirement age (as defined in subsection (*l*) of this section)" for "age 65".

Subsec. (i)(3)(B)(iii). Pub. L. 98-21, § 332(a), added cl. (iii).

Subsec. (*l*). Pub. L. 98-21, § 201(a), added subsec. (*l*).

1981—Subsec. (h)(3). Pub. L. 97-35, § 2203(d)(4), as amended by Pub. L. 98-369, § 2663(a)(11)(A), inserted provision that for purposes of subpar. (A)(i), an acknowledgement, court decree, or court order be deemed to have occurred on the first day of the month in which it actually occurred.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 2(b) of Pub. L. 98-460 applicable to determinations made by the Secretary on or after Oct. 9, 1984, with certain enumerated exceptions and qualifications, see section 2(d) of Pub. L. 98-460, set out as a note under section 423 of this title.

Amendment by section 4(a)(2) of Pub. L. 98-460 applicable with respect to determinations made on or after the first day of the first month beginning after 30 days after Oct. 9, 1984, see section 4(c) of Pub. L. 98-460, set out as a note under section 423 of this title.

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 301, 303, 304, 306, and 309 of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

Section 332(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending sections 416 and 423 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [42 U.S.C. 423], and for disability determinations under section 216(i) of such Act [subsec. (i) of this section], filed after the date of the enactment of this Act [Apr. 20, 1983], except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for months before the month following the month of enactment of this Act."

Section 333(b) of Pub. L. 98-21 provided that: "The amendment made by subsection (a) [amending subsec. (h)(3) of this section] shall be effective on the date of the enactment of this Act [Apr. 20, 1983]."

RETROACTIVE BENEFITS

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98-460 which amended subsec. (i)(2)(D) of this section, see section 2(f) of Pub. L. 98-460, set out as a note under section 423 of this title.

PROMULGATION OF REGULATIONS

For provisions requiring the Secretary of Health and Human Services to prescribe regulations necessary to implement amendment to subsec. (i)(2)(D) of this section by section 2(b) of Pub. L. 98-460 not later than 180 days after Oct. 9, 1984, see section 2(g) of Pub. L. 98-460, set out as a note under section 423 of this title.

STUDY OF EFFECT OF RAISING RETIREMENT AGE ON THOSE UNLIKELY TO BENEFIT FROM IMPROVEMENTS IN LONGEVITY

Section 201(d) of Pub. L. 98-21 provided that: "The Secretary shall conduct a comprehensive study and analysis of the implications of the changes made by this section [amending sections 402, 403, 415, 416, and 423 of this title] in retirement age in the case of those individuals (affected by such changes) who, because they are engaged in physically demanding employment or because they are unable to extend their working careers for health reasons, may not benefit from improvements in longevity. The Secretary shall submit to the Congress no later than January 1, 1986, a full report on the study and analysis. Such report shall include any recommendations for legislative changes, including recommendations with respect to the provision of protection against the risks associated with early retirement due to health considerations, which the Secretary finds necessary or desirable as a result of the findings contained in this study."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 403, 413, 414, 415, 417, 421, 422, 423, 428, 429, 431, 1382c, 1395ii of this title; title 5 section 8311; title 30 section 902; title 45 sections 231a, 231b, 231c, 231d, 231e, 231q.

§ 417. Benefits for veterans

(a) Determination of benefits

[*See main edition for text of* (*1*)]

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Secretary, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

(b) Determination of insurance status

[*See main edition for text of* (*1*)]

(2) Upon an application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary shall make a decision without regard to paragraph (1)(B) of this subsection unless he has been notified by the Veterans' Administration that pension or compensation is determined to be payable by the Veterans' Administration by reason of the death of such veteran. The Secretary shall

thereupon report such decision to the Veterans' Administration. If the Veterans' Administration in any such case has made an adjudication or thereafter makes an adjudication that any pension or compensation is payable under any law administered by it, it shall notify the Secretary and the Secretary shall certify no further benefits for payment, or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection. Any payments theretofore certified by the Secretary on the basis of paragraph (1) of this subsection to any individual, not exceeding the amount of any accrued pension or compensation payable to him by the Veterans' Administration, shall (notwithstanding the provisions of section 3101 of title 38) be deemed to have been paid to him by such Administration on account of such accrued pension or compensation. No such payment certified by the Secretary, and no payment certified by him for any month prior to the first month for which any pension or compensation is paid by the Veterans' Administration shall be deemed by reason of this subsection to have been an erroneous payment.

[*See main edition for text of* (*c*) *and* (*d*)]

(e) Determination based on wages and self-employment

(1) For purposes of determining entitlement to and the amount of any monthly benefit or lump-sum death payment payable under this subchapter on the basis of wages and self-employment income of any veteran (as defined in paragraph (4) of this subsection), and for purposes of section 416(i)(3) of this title, such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to January 1, 1957. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

[*See main edition for text of* (*A*) *and* (*B*)]

The provisions of clause (B) of this paragraph shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to subsection (f) of section 415 of this title) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this title. In the case of monthly benefits under this subchapter for months after December 1956 (and any lump-sum death payment under this subchapter with respect to a death occurring after December 1956) based on the wages and self-employment income of a veteran who performed service (as a member of a uniformed service) to which the provisions of section 410(*l*)(1) of this title are applicable, wages which would, but for the provisions of clause (B) of this paragraph, be deemed under this subsection to have been paid to such veteran with respect to his active military or naval service performed after December 1950 shall be deemed to have been paid to him with respect to such service notwithstanding the provisions of such clause, but only if the benefits referred to in such clause which are based (in whole or in part) on such service are payable solely by the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, National Oceanic and Atmospheric Administration Corps, or Public Health Service.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Secretary shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service on or after July 25, 1947, and prior to January 1, 1957, shall, at the request of the Secretary, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

[*See main edition for text of* (*4*)]

(f) Right to annuity; waiver

(1) In any case where a World War II veteran (as defined in subsection (d)(2) of this section) or a veteran (as defined in subsection (e)(4) of this section) has died or shall hereafter die, and his or her surviving spouse or child is entitled under subchapter III of chapter 83 of title 5 to an annuity in the computation of which his or her active military or naval service was included, clause (B) of subsection (a)(1) of this section or clause (B) of subsection (e)(1) of this section shall not operate (solely by reason of such annuity) to make such subsection inapplicable in the case of any monthly benefit under section 402 of this title which is based on his or her wages and self-employment income; except that no such surviving spouse or child shall be entitled under section 402 of this title to any monthly benefit in the computation of which

such service is included by reason of this subsection (A) unless such surviving spouse or child after December 1956 waives his or her right to receive such annuity, or (B) for any month prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Secretary that (by reason of such waiver) no further annuity will be paid to such surviving spouse or child under such subchapter III on the basis of such veteran's military or civilian service. Any such waiver shall be irrevocable.

(2) Whenever a surviving spouse waives his or her right to receive such annuity such waiver shall constitute a waiver on his or her own behalf; a waiver by a legal guardian or guardians, or, in the absence of a legal guardian, the person (or persons) who has the child in his or her care, of the child's right to receive such annuity shall constitute a waiver on behalf of such child. Such a waiver with respect to an annuity based on a veteran's service shall be valid only if the surviving spouse and all children, or, if there is no surviving spouse, all the children, waive their rights to receive annuities under subchapter III of chapter 83 of title 5 based on such veteran's military or civilian service.

(g) Appropriation to trust funds

(1) Within thirty days after April 20, 1983, the Secretary shall determine the amount equal to the excess of—

(A) the actuarial present value as of April 20, 1983, of the past and future benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under this subchapter and subchapter XVIII of this chapter, together with associated administrative costs, resulting from the operation of this section (other than this subsection) and section 410 of this title as in effect before the enactment of the Social Security Amendments of 1950, over

(B) any amounts previously transferred from the general fund of the Treasury to such Trust Funds pursuant to the provisions of this subsection as in effect immediately before Arpil 20, 1983.

Such actuarial present value shall be based on the relevant actuarial assumptions set forth in the report of the Board of Trustees of each such Trust Fund for 1983 under sections 401(c) and 1395i(b) of this title. Within thirty days after April 20, 1983, the Secretary of the Treasury shall transfer the amount determined under this paragraph with respect to each such Trust Fund to such Trust Fund from amounts in the general fund of the Treasury not otherwise appropriated.

(2) The Secretary shall revise the amount determined under paragraph (1) with respect to each such Trust Fund in 1985 and each fifth year thereafter, as determined appropriate by the Secretary from data which becomes available to him after the date of the determination under paragraph (1) on the basis of the amount of benefits and administrative expenses actually paid from such Trust Fund under this subchapter or subchapter XVIII of this chapter and the relevant actuarial assumptions set forth in the report of the Board of Trustees of such Trust Fund for such year under section 401(c) or 1395i(b) of this title. Within 30 days after any such revision, the Secretary of the Treasury, to the extent provided in advance in appropriation Acts, shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of the Treasury determines necessary to take into account such revision.

[*See main edition for text of* (*h*)]

(Aug. 14, 1935, ch. 531, title II, § 217, as added Aug. 28, 1950, ch. 809, title I, § 105, 64 Stat. 512, and amended July 18, 1952, ch. 945, § 5(a), (d)(1), 66 Stat. 773, 775; Aug. 14, 1953, ch. 483, § 1, 67 Stat. 580; Sept. 1, 1954, ch. 1206, title I, § 106(e), 68 Stat. 1081; Aug. 9, 1955, ch. 685, § 1, 69 Stat. 621; Aug. 1, 1956, ch. 837, title IV, §§ 404(a), (b), 406, 70 Stat. 872, 875; Aug. 28, 1958, Pub. L. 85-840, title III, § 314(a), (b), 72 Stat. 1036; Sept. 2, 1958, Pub. L. 85-857, § 13(i)(2), 72 Stat. 1265; Sept. 13, 1960, Pub. L. 86-778, title I, § 103(j)(2)(c), 74 Stat. 937; July 30, 1965, Pub. L. 89-97, title III, § 322, 79 Stat. 396; Jan. 2, 1968, Pub. L. 90-248, title IV, § 403(c), 81 Stat. 932; Apr. 21, 1976, Pub. L. 94-273, §§ 2(23), 16, 90 Stat. 376, 379; Dec. 20, 1977, Pub. L. 95-216, title II, 205(c), 91 Stat. 1529; Aug. 13, 1981, Pub. L. 97-35, title XXII, § 2201(c)(7), 95 Stat. 832; Dec. 29, 1981, Pub. L. 97-123, § 2(g), 95 Stat. 1661; Apr. 20, 1983, Pub. L. 98-21, title I, § 151(a), title III, § 308, 97 Stat. 103, 115; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(12), (j)(3)(A)(ii), 98 Stat. 1164, 1170.)

REFERENCES IN TEXT

The Social Security Act Amendments of 1950, referred to in subsec. (g)(1)(A), is act Aug. 28, 1950, ch. 809, 64 Stat. 477, as amended. For complete classification of this Act to the Code, see Short Title of 1950 Amendment note set out under section 1305 of this title and Tables.

AMENDMENTS

1984—Subsecs. (a)(2), (3), (b)(2). Pub. L. 98-369, § 2663(j)(3)(A)(ii), struck out "of Health, Education, and Welfare" after "Secretary" wherever appearing.

Subsec. (d). Pub. L. 98-369, § 2663(a)(12)(A), realigned margins of subsec. (d).

Subsec. (e)(1). Pub. L. 98-369, § 2663(a)(12)(B), added reference to the National Oceanic and Atmospheric Administration.

Subsec. (e)(2), (3). Pub. L. 98-369, § 2663(j)(3)(A)(ii), struck out "of Health, Education, and Welfare" after "Secretary" wherever appearing.

Subsec. (f)(1). Pub. L. 98-369, § 2663(a)(12)(C), substituted "Director of the Office of Personnel Management" for "Civil Service Commission".

Pub. L. 98-369, § 2663(j)(3)(A)(ii), struck out "of Health, Education, and Welfare" after "Secretary".

1983—Subsec. (f). Pub. L. 98-21, § 308(2), substituted "his or her" for "his" and "her" wherever appearing, except in cl. (A) of par. (1).

Pub. L. 98-21, § 308(1), substituted "surviving spouse" for "widow" wherever appearing.

Subsec. (g). Pub. L. 98-21, § 151(a), amended subsec. generally, substituting provisions relating to determination of amounts to be appropriated to trust funds and to revisions of such amounts for provisions which had formerly required that, in September of 1965, 1970, and 1975, and in October 1980 and in every fifth October thereafter up to and including October 2010, the Secretary determine the amount which, if paid in equal installments at the beginning of each fiscal year in the period beginning (A) with July 1, 1965, in the case of the first such determination, and (B) with the beginning of the first fiscal year commencing after the determination in the case of all other such determinations, and ending with the close of September 30, 2015, would accumulate, with interest compounded annually, to an amount equal to the amount needed to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of September 30, 2015, as he estimated they would otherwise be in at the close of that date if section 410 of this title as in effect prior to the Social Security Act Amendments of 1950, and this section, had not been enacted, with the interest to be used in determining such amount to be the rate determined under section 401(d) of this title for public-debt obligations which were or could have been issued for purchase by the Trust Funds in the June preceding the September in which the determinations in 1965, 1970, and 1975 were made and in the September preceding the October in which all other determinations were made.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 308 of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 213, 405, 415 of this title; title 33 section 857; title 45 section 231b.

§ 418. Voluntary agreements for coverage of State and local employees

(a) Purpose of agreement

(1) The Secretary shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

[*See main edition for text of (2); (b)*]

(c) Services covered

[*See main edition for text of (1) to (3)*]

(4) The Secretary shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) of this subsection is applicable (whether or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3) of this section.

[*See main edition for text of (5) to (8)*]

(d) Positions covered by retirement systems

[*See main edition for text of (1) and (2)*]

(3) Notwithstanding paragraph (1) of this subsection, an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) of this subsection but not including positions excluded by or pursuant to paragraph (5)), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary that the following conditions have been met:

[*See main edition for text of (A) to (E)*]

An employee shall be deemed an "eligible employee" for purposes of any referendum with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an "eligible employee" if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this subchapter to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

[*See main edition for text of (4) to (6)*]

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) of this subsection shall be deemed to have been made, in the case of a division or part (created under subparagraph (C) of paragraph (6) of this subsection or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Secretary that—

[*See main edition for text of* (*A*) *to* (*D*)]

For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or pursuant to paragraph (5) of this subsection shall not be considered a member of the retirement system.

[*See main edition for text of* (*8*)]

(e) Payments and reports by States; limitation on States' liability for contributions

(1) Each agreement under this section shall provide—

(A) that the State will pay to the Secretary of the Treasury—

(i) on the last day of each calendar month, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 with respect to the period which includes the first fifteen days of such calendar month if the services for which wages were paid in such period to employees covered by the agreement constituted employment as defined in section 3121 of such Code, and

(ii) on the fifteenth day of the calendar month following such calendar month, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of such Code with respect to the period beginning with the sixteenth day of such calendar month and ending with the last day of such calendar month if the services for which wages were paid in such period to employees covered by the agreement constituted employment as defined in section 3121 of such Code; and

[*See main edition for text of* (*B*), (*2*); (*f*)]

(g) Duration of agreement

No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after April 20, 1983.

(h) Deposits in trust fund; adjustments

[*See main edition for text of* (*1*)]

(2) If more or less than the correct amount due under an agreement made pursuant to this section is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be prescribed by regulations of the Secretary.

(3) If an overpayment cannot be adjusted under paragraph (2) of this subsection, the amount thereof and the time or times it is to be paid shall be certified by the Secretary to the Managing Trustee, and the Managing Trustee, through the Fiscal Service of the Treasury Department and prior to any action thereon by the General Accounting Office, shall make payment in accordance with such certification. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary.

(i) Regulations

Regulations of the Secretary to carry out the purposes of this section shall be designed to make the requirements imposed on States pursuant to this section the same, so far as practicable, as those imposed on employers pursuant to this subchapter and chapter 21 and subtitle F of the Internal Revenue Code of 1954.

(j) Failure to make payments

In case any State does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Secretary may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this chapter. Amounts so deducted shall be deemed to have been paid to the State under such other provision of this chapter. Amounts equal to the amounts deducted under this subsection are hereby appropriated to the Trust Funds in the ratio in which amounts are deposited in such Funds pursuant to subsection (h)(1) of this section.

(k) Instrumentalities of two or more States

(1) The Secretary may, at the request of any instrumentality of two or more States, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

[*See main edition for text of* (*2*) *and* (*3*)]

(*l*) Delegation of functions

The Secretary is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of his functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

[*See main edition for text of* (*m*) *and* (*n*)]

(*o*) Certain employees of the State of Utah

Notwithstanding the provisions of subsection (d) of this section, the agreement with the State of Utah entered into pursuant to this section may be modified pursuant to subsection (c)(4) of this section so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College, Central Utah Vocational School, Salt Lake Area Vocational School, Center for the Adult Blind, Union High School (Roosevelt, Utah), Utah High School Activities Association, State Industrial School, State

Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any of such coverage groups after an effective date specified therein, except that in no case may any such date be earlier than December 31, 1950. Coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

(p) Policemen and firemen in certain States

[*See main edition for text of* (*1*)]

(2) A State, not otherwise listed by name in paragraph (1), shall be deemed to be a State listed in such paragraph for the purpose of extending coverage under this subchapter to service in firemen's positions covered by a retirement system, if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary that the overall benefit protection of the employees in such positions would be improved by reason of the extension of such coverage to such employees. Notwithstanding the provisions of the second sentence of such paragraph (1), such firemen's positions shall be deemed a separate retirement system and no other positions shall be included in such system.

[*See main edition for text of* (*q*) *to* (*u*)]

(Aug. 14, 1935, ch. 531, title II, § 218, as added Aug. 28, 1950, ch. 809, title I, § 106, 64 Stat. 514, and amended June 28, 1952, ch. 483, 66 Stat. 285; Aug. 15, 1953, ch. 504, § 1, 67 Stat. 587; Sept. 1, 1954, ch. 1206, title I, § 101(a)(5), (6), (h)(1)-(8), (i)(1), (2), (j), 68 Stat. 1055, 1059; Aug. 1, 1956, ch. 836, title I, §§ 103(f), (g), 104(e), (g), 70 Stat. 823, 825, 826; Aug. 30, 1957, Pub. L. 85-226, §§ 1-3, 71 Stat. 511, 512; Aug. 30, 1957, Pub. L. 85-227, § 1, 71 Stat. 512; Aug. 30, 1957, Pub. L. 85-229, 71 Stat. 513; Aug. 27, 1958, Pub. L. 85-787, §§ 1, 2, 72 Stat. 939; Aug. 28, 1958, Pub. L. 85-798, §§ 2, 3, 72 Stat. 964, 965; Aug. 28, 1958, Pub. L. 85-840, title III, § 315(a), (b), (c)(1), 72 Stat. 1038-1040; Sept. 16, 1959, Pub. L. 86-284, § 2, 73 Stat. 566; July 12, 1960, Pub. L. 86-624, § 30(e), (f), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86-778, title I, §§ 102(a), (b)(1), (c)(1), (2), (d), (e), (f)(1), (g), (*l*), 103(i), (j)(2)(G), 74 Stat. 928-930, 934, 936-938; June 30, 1961, Pub. L. 87-64, title I, §§ 106, 107, 75 Stat. 139, 140; Oct. 24, 1962, Pub. L. 87-878, § 2, 76 Stat. 1202; July 2, 1964, Pub. L. 88-350, § 2, 78 Stat. 240; July 23, 1964, Pub. L. 88-382, 78 Stat. 335; July 30, 1965, Pub. L. 89-97, title I, § 108(b), title III, §§ 314, 315, 79 Stat. 338, 385; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 116(a)-(b)(2), (c), (d), 117, 119(a), 120(a), 121, 122(d), 81 Stat. 840-844; Aug. 13, 1968, Pub. L. 90-486, § 7, 82 Stat. 759; Oct. 30, 1972, Pub. L. 92-603, title I, § 126, 86 Stat. 1358; Dec. 31, 1974, Priv. L. 93-107, § 2, 88 Stat. 2386; Dec. 20, 1977, Pub. L. 95-216, title III, §§ 319-321, 353(b), 91 Stat. 1541, 1553; June 9, 1980, Pub. L. 96-265, title V, § 503(a), 94 Stat. 470; Apr. 20, 1983, Pub. L. 98-21, title I, § 103(a), title III, §§ 325(a), 342(a), 97 Stat. 71, 126, 136; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(13), (j)(2)(A)(ii), (3)(A)(iii), 98 Stat. 1164, 1170.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in text, is classified to Title 26, Internal Revenue Code.

AMENDMENTS

1984—Subsecs. (a)(1), (c)(4), (d)(3), (7), (h)(2), (3). Pub. L. 98-369, § 2663(j)(3)(A)(iii), struck out "of Health, Education, and Welfare" after "Secretary" wherever appearing.

Subsec. (i). Pub. L. 98-369, § 2663(j)(3)(A)(iii), struck out "of Health, Education, and Welfare" after "Secretary".

Pub. L. 98-369, § 2663(a)(13), substituted "chapter 21 and subtitle F of the Internal Revenue Code of 1954" for "subchapter A or E of chapter 9 of the Internal Revenue Code of 1939".

Subsecs. (j), (k)(1), (*l*), (p)(2). Pub. L. 98-369, § 2663(j)(3)(A)(iii), struck out "of Health, Education, and Welfare" after "Secretary" wherever appearing.

Subsecs. (q)(4)(B), (6)(B), (r)(1). Pub. L. 98-369, § 2663(j)(2)(A)(ii), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare" wherever appearing.

1983—Subsec. (e)(1)(A). Pub. L. 98-21, § 342(a), amended subpar. (A) generally, designating existing provisions as cl. (i), and in (i) as so designated, substituting "on the last day of each calendar month" for "within the thirty-day period immediately following the last day of each calendar month" and adding "with respect to the period which includes the first fifteen days of such calendar month" before "if the services", and adding cl. (ii).

Subsec. (g). Pub. L. 98-21, § 103(a), amended subsec. (g) generally, substituting provision that no agreement under this section may be terminated on or after April 20, 1983, for provision that had authorized the termination of agreements of States with the Secretary conditioned upon the giving of advance notice.

Subsec. (*o*). Pub. L. 98-21, § 325(a), added provision that coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 103(b) of Pub. L. 98-21 provided that: "The amendment made by subsection (a) [amending subsec. (g) of this section] shall apply to any agreement in effect under section 218 of the Social Security Act [this section] on the date of the enactment of this Act [April 20, 1983], without regard to whether a notice of termination is in effect on such date, and to any agreement or modification thereof which may become effective under such section 218 after that date."

Section 325(b) of Pub. L. 98-21 provided that: "The amendment made by subsection (a) [amending subsec. (*o*) of this section] shall apply with respect to name changes made before, on, or after the date of the enactment of this section [April 20, 1983]."

Section 342(b) of Pub. L. 98-21 provided that: "The amendments made by this section [amending subsec. (e)(1)(A) of this section] shall apply to calendar months beginning after December 31, 1983."

TREATMENT OF CERTAIN CREDITS AS AMOUNTS DEPOSITED IN SOCIAL SECURITY TRUST FUNDS PURSUANT TO AGREEMENT

Section 123(b)(4) of Pub. L. 98-21 provided that: "For purposes of subsection (h) of section 218 of the Social Security Act [subsec. (h) of this section] (relating to deposits in social security trust funds of amounts received under section 218 agreements), amounts allowed as a credit pursuant to subsection (d) of section 3510 of the Internal Revenue Code of 1954 [26 U.S.C. 3510(d)] (relating to credit for remuneration paid during 1984 which is covered under an agreement under section 218 of the Social Security Act) shall be treated as amounts received under such an agreement."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 405, 405a, 410, 411, 424a of this title; title 26 sections 1402, 3121, 6413, 6511.

§ 421. Disability determinations

(a) State agencies

(1) In the case of any individual, the determination of whether or not he is under a disability (as defined in section 416(i) or 423(d) of this title) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Secretary in writing that it wishes to make such disability determinations commencing with such month as the Secretary and the State agree upon, but only if (A) the Secretary has not found, under subsection (b)(1)(C) of this section, that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and (B) the State has not notified the Secretary, under subsection (b)(2) of this section, that it does not wish to make such determinations. If the Secretary once makes the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Secretary may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

[*See main edition for text of* (2)]

(b) Determinations by Secretary

(1)(A) Upon receiving information indicating that a State agency may be substantially failing to make disability determinations in a manner consistent with regulations and other written guidelines issued by the Secretary, the Secretary shall immediately conduct an investigation and, within 21 days after the date on which such information is received, shall make a preliminary finding with respect to whether such agency is in substantial compliance with such regulations and guidelines. If the Secretary finds that an agency is not in substantial compliance with such regulations and guidelines, the Secretary shall, on the date such finding is made, notify such agency of such finding and request assurances that such agency will promptly comply with such regulations and guidelines.

(B)(i) Any agency notified of a preliminary finding made pursuant to subparagraph (A) shall have 21 days from the date on which such finding was made to provide the assurances described in subparagraph (A).

(ii) The Secretary shall monitor the compliance with such regulations and guidelines of any agency providing such assurances in accordance with clause (i) for the 30-day period beginning on the day after the date on which such assurances have been provided.

(C) If the Secretary determines that an agency monitored in accordance with clause (ii) of subparagraph (B) has not substantially complied with such regulations and guidelines during the period for which such agency was monitored, or if an agency notified pursuant to subparagraph (A) fails to provide assurances in accordance with clause (i) of subparagraph (B), the Secretary shall, within 60 days after the date on which a preliminary finding was made with respect to such agency under subparagraph (A), (or within 90 days after such date, if, at the discretion of the Secretary, such agency is granted a hearing by the Secretary on the issue of the noncompliance of such agency) make a final determination as to whether such agency is substantially complying with such regulations and guidelines. Such determination shall not be subject to judicial review.

(D)(i) If the Secretary makes a final determination pursuant to subparagraph (C) with respect to any agency that the agency is not substantially complying with such regulations and guidelines, the Secretary shall, as soon as possible but not later than 180 days after the date of such final determination, make the disability determinations referred to in subsection (a)(1) of this section, complying with the requirements of paragraph (3) to the extent that such compliance is possible within such 180-day period. In order to carry out this subparagraph, the Secretary shall, as the Secretary finds necessary, exceed any applicable personnel ceilings and waive any applicable hiring restrictions. In addition, to the extent feasible within the 180-day period after the final determination, the Secretary, in conjunction with the Secretary of Labor, shall assure the statutory protections of State agency employees not hired by the Secretary.

(ii) During the 180-day period specified in clause (i), the Secretary shall take such actions as may be necessary to assure that any case with respect to which a determination referred to in subsection (a)(1) of this section was made by an agency, during the period for which such agency was not in substantial compliance with the applicable regulations and guidelines, was decided in accordance with such regulations and guidelines.

[*See main edition for text of* (2)]

(3)(A) Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Secretary of the disability determination function from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process for the Secretary shall, notwithstanding any other provision of law, have a preference over any other individual in filling an appropriate employment position with the Secretary (subject to any system established by the Secretary for determining hiring priority among such employees of the State agency) unless any such employee is the administrator, the deputy administrator, or assistant administrator (or his equivalent) of the State agency, in which case the Secretary may accord such priority to such employee.

(B) Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary shall not make such assumption of the disability determination function until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of such assumption by the Secretary and who will not be hired by the Secretary to perform duties in the disability determination process, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State and local statutes including, but not limited to, (i) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (ii) the continuation of collective-bargaining rights; (iii) the assignment of affected employees to other jobs or to retraining programs; (iv) the protection of individual employees against a worsening of their positions with respect to their employment; (v) the protection of health benefits and other fringe benefits; and (vi) the provision of severance pay, as may be necessary.

[*See main edition for text of* (c)]

(d) Hearings and judicial review

Except as provided in subsection (b)(1)(D) of this section, any individual dissatisfied with any determination under subsection (a), (b), (c), or (g) of this section shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.

(e) State's right to cost from Trust Funds

Each State which is making disability determinations under subsection (a)(1) under[1] this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Secretary, the cost to the State of making disability determinations under subsection (a)(1) of this section. The Secretary shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the General Accounting Office, shall make payment from the Trust Funds at the time or times fixed by the Secretary, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 401 of this title (but taking into account any refunds under subsection (f) of this section) to insure that the Federal Disability Insurance Trust Fund is charged with all expenses incurred which are attributable to the administration of section 423 of this title and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

[*See main edition for text of* (*f*) *and* (*g*)]

(h) Evaluation of mental impairments by qualified medical professionals

An initial determination under subsection (a), (c), (g), or (i) of this section that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Secretary has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.

(i) Review of disability cases to determine continuing eligibility; permanent disability cases; appropriate number of cases reviewed; reporting requirements

[*See main edition for text of* (*1*) *to* (*3*)]

(4) In any case in which the Secretary initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Secretary shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.

(j) Rules and regulations; consultative examinations

The Secretary shall prescribe regulations which set forth, in detail—

(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

(2) standards for the type of referral to be made; and

(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.

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[1] So in original. Probably should be "of".

(k) Establishment of uniform standards for determination of disability

(1) The Secretary shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 416(i) or 423(d) of this title.

(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(14), 98 Stat. 1164; Oct. 9, 1984, Pub. L. 98-460, §§ 6(a), 8(a), 9(a)(1), 10(a), 17(a), 98 Stat. 1802, 1804, 1805, 1811.)

AMENDMENTS

1984—Subsec. (a)(1)(A). Pub. L. 98-460, § 17(a)(2), substituted "subsection (b)(1)(C) of this section" for "subsection (b)(1) of this section".

Subsec. (b)(1). Pub. L. 98-460, § 17(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "If the Secretary finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with his regulations and other written guidelines, the Secretary shall, not earlier than 180 days following his finding, and after he has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section."

Subsec. (b)(3). Pub. L. 98-460, § 17(a)(3), substituted "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary" for "The Secretary" in subpars. (A) and (B).

Subsec. (d). Pub. L. 98-460, § 17(a)(4), substituted "Except as provided in subsection (b)(1)(D) of this section, any individual" for "Any individual".

Subsec. (e). Pub. L. 98-369 substituted "Federal Disability Insurance Trust Fund is charged" for "Federal Disability Trust Fund is charged".

Subsec. (h). Pub. L. 98-460, § 8(a), added subsec. (h).

Subsec. (i)(4). Pub. L. 98-460, § 6(a), added par. (4).

Subsec. (j). Pub. L. 98-460, § 9(a)(1), added subsec. (j).

Subsec. (k). Pub. L. 98-460, § 10(a), added subsec. (k).

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Section 8(c) of Pub. L. 98-460 provided that: "The amendments made by this section [amending sections 421 and 1382c of this title] shall apply to determinations made after 60 days after the date of the enactment of this Act [Oct. 9, 1984]."

Section 17(b) of Pub. L. 98-460 provided that: "The amendments made by subsection (a) of this section [amending subsecs. (a)(1), (b)(1), (3), and (d) of this section] shall become effective on the date of the enactment of this Act [Oct. 9, 1984] and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987."

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

Section 5 of Pub. L. 98-460 provided that:

"(a) The Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall revise the criteria embodied under the category 'Mental Disorders' in the 'Listing of Impairments' in effect on the date of the enactment of this Act [Oct. 9, 1984] under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

"(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act [42 U.S.C. 421(i)], or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act [42 U.S.C. 1381 et seq.], with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

"(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act [Oct. 9, 1984], or

"(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term 'continuing eligibility review', when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

"(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act [42 U.S.C. 1382h]) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) and (f) of such Act [42 U.S.C. 402(e), (f)]).

"(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] after the date of the enactment of this Act [Oct. 9, 1984] and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

"(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

"(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act [Oct. 9, 1984], and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication."

INSTITUTION OF NOTIFICATION SYSTEM

Section 6(c) of Pub. L. 98-460 provided that: "The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) [amending sections 421 and 1383b of this title] as soon as is practicable after the date of the enactment of this Act [Oct. 9, 1984]."

DEMONSTRATION PROJECTS; OPPORTUNITY FOR PERSONAL APPEARANCE PRIOR TO DISABILITY DETERMINATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Section 6(d), (e), of Pub. L. 98-460 provided that:

"(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act [42 U.S.C. 421(i)] is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act [42 U.S.C. 405(b)(2)]. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act [42 U.S.C. 1381 et seq.]. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

"(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act [42 U.S.C. 421(a), (c), (g)], and prior to initial disability determinations on applications for benefits under title XVI of such Act [42 U.S.C. 1381 et seq.]. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986."

PROMULGATION OF REGULATIONS

Section 9(a)(2) of Pub. L. 98-460 provided that: "The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act [42 U.S.C. 421(j)] not later than 180 days after the date of the enactment of this Act [Oct. 9, 1984]."

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

Section 15 of Pub. L. 98-460 provided that: "The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act [Oct. 9, 1984], which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act [42 U.S.C. 421(i)]. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act [42 U.S.C. 421(i)]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 423, 425, 1382c, 1383b of this title; title 7 section 2012; title 30 section 923.

§ 422. Rehabilitation services

(a) Referral for rehabilitation services

It is declared to be the policy of the Congress that disabled individuals applying for a determination of disability, and disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits, shall be promptly referred to the State agency or agencies administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.] for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.

(b) Deductions on account of refusal to accept rehabilitation services

(1) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits under sections 402 and 423 of this title for any month in which such individual, if a child who has attained the age of eighteen and is entitled to child's insurance benefits, a widow, widower, surviving divorced wife, or surviving divorced husband who has not attained age 60, or an individual entitled to disability insurance benefits, refuses without good cause to accept rehabilitation services available to him under a State plan approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.]. Any individual who is a member or adherent of any recognized church or religious sect which teaches its members or adherents to rely solely, in the treatment and cure of any physical or mental impairment, upon prayer or spiritual means through the application and use of the tenets or teachings of such church or sect, and who, solely because of his adherence to the teachings or tenets of such church, or sect, refuses to accept rehabilitation services available to him under a State plan approved under title I of the Rehabilitation Act of 1973, shall, for the purposes of the first sentence of this subsection, be deemed to have done so with good cause.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled or from any mother's or father's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or such mother's or father's insurance benefit or benefits under section 402 of this title for any month in which such child or person entitled to mother's or father's insurance benefits is married to an individual who is entitled to disability insurance benefits and in which such individual refuses to accept rehabilitation services and a deduction, on account of such refusal, is imposed under paragraph (1)

of this subsection. If both this paragraph and paragraph (3) of this subsection are applicable to a child's insurance benefit for any month, only an amount equal to such benefit shall be deducted.

(3) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to disability insurance benefits, to which a wife, divorced wife, husband, divorced husband, or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 402 of this title for any month in which the individual, on the basis of whose wages and self-employment income such benefit was payable, refuses to accept rehabilitation services and deductions, on account of such refusal, are imposed under paragraph (1) of this subsection.

(4) The provisions of paragraph (1) shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time elementary or secondary school student (as defined and determined under section 402(d) of this title).

[*See main edition for text of* (*c*)]

(d) **Cost of rehabilitation services from trust funds**

(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

[*See main edition for text of* (*A*) *to* (*D*)]

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], (i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 425(b) of this title (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulated by him.

[*See main edition for text of* (*2*) *to* (*5*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, § 309(*l*)-(n), 97 Stat. 117; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(15), 98 Stat. 1165; Oct. 9, 1984, Pub. L. 98-460, § 11(a), 98 Stat. 1805.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsecs. (a), (b)(1), and (d)(1), (5), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title I of the Rehabilitation Act of 1973 is classified generally to subchapter I (§ 720 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

AMENDMENTS

1984—Subsecs. (a), (b)(1). Pub. L. 98-369, § 2663(a)(15)(A), substituted "title I of the Rehabilitation Act of 1973" for "the Vocational Rehabilitation Act".

Subsec. (b)(3). Pub. L. 98-369, § 2663(a)(15)(B), substituted "equals" for "equal".

Subsec. (b)(4). Pub. L. 98-369, § 2663(a)(15)(C), substituted "full-time elementary or secondary school student" for "full-time student".

Subsec. (d)(1). Pub. L. 98-460, § 11(a), in provisions following subpar. (D) struck out "into substantial gainful activity" after "rehabilitating such individuals", designated existing provisions as cl. (i), added cls. (ii) and (iii), and substituted "of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation," for "of such individuals to substantial gainful activity" after cl. (iii).

1983—Subsec. (b)(1). Pub. L. 98-21, § 309(*l*), substituted ", surviving divorced wife, or surviving divorced husband" for "or surviving divorced wife".

Subsec. (b)(2). Pub. L. 98-21, § 309(m), added "or father's" after "mother's" wherever appearing.

Subsec. (b)(3). Pub. L. 98-21, § 309(n), added "divorced husband," after "husband,".

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 11(c) of Pub. L. 98-460 provided that: "The amendments made by this section [amending sections 422 and 1382d of this title] shall apply with respect to individuals who receive benefits as a result of section 225(b) or section 1631(a)(6) of the Social Security Act [42 U.S.C. 425(b), 1383(a)(6)], or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted [Oct. 1984]."

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

§ 423. Disability insurance benefit payments

(a) Disability insurance benefits

(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1) of this section),

(B) has not attained retirement age (as defined in section 416(*l*) of this title),

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d) of this section)

shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c)(2) of this section) in which he becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 416(i) of this title) which ceased, within the 60-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains retirement age (as defined in section 416(*l*) of this title), or, subject to subsection (e) of this section, the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) of this section except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 402 of this title to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which he died.

[*See main edition for text of (2); (b)*]

(c) Definitions; insured status; waiting period

For purposes of this section—

(1) An individual shall be insured for disability insurance benefits in any month if—

[*See main edition for text of (A)*]

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or

(ii) if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of section 416(i)(3)(B)(ii) of this title, had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with the quarter in which such month occurs are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage.

[*See main edition for text of (2)*]

(d) "Disability" defined

[*See main edition for text of (1)*]

(2) For purposes of paragraph (1)(A)—

(A) An individual (except a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 402(e) or (f) of this title) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) A widow, surviving divorced wife, widower, or surviving divorced husband shall not be determined to be under a disability (for purposes of section 402(e) or (f) of this title) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.

(C) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

[*See main edition for text of* (*3*) *and* (*4*)]

(5)(A) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require. An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability. Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Secretary under this paragraph shall be entitled to payment from the Secretary for the reasonable cost of providing such evidence.

(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Secretary shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.

[*See main edition for text of* (*6*); (*e*)]

(f) Standard of review for termination of disability benefits

A recipient of benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(1) substantial evidence which demonstrates that—

(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(B)(i) the individual is now able to engage in substantial gainful activity, or

(ii) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or

(2) substantial evidence which—

(A) consists of new medical evidence and (in a case to which clause (ii)(II) does not apply) a new assessment of the individual's residual functional capacity, and demonstrates that—

(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(ii)(I) the individual is now able to engage in substantial gainful activity, or

(II) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or

(B) demonstrates that—

(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(ii) the requirements of subclause (I) or (II) of subparagraph (A)(ii) are met; or

(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

(A) the individual is able to engage in substantial gainful activity, or

(B) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this subchapter or subchapter XVIII of this chapter based on an individual's disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband), cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this subchapter is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.

(g) Continued payment of disability benefits during appeal

(1) In any case where—

[*See main edition for text of* (*A*) *to* (*C*)]

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits,,[4] the payment of any other benefits under this subchapter based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under subchapter XVIII of this chapter based on such individual's disability, continued for an additional period beginning with the first month beginning after January 12, 1983, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1988.

[*See main edition for text of* (*2*)]

(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

[*See main edition for text of* (*A*)]

(B) prior to January 1, 1988.

(h) Payments to prisoners

For provisions relating to limitation on payments to prisoners, see section 402(x) of this title.

(As amended Apr. 20, 1983, Pub. L. 98–21, title II, § 201(c)(1)(E), (3), title III, §§ 309(*o*), 332(b), 339(b), 97 Stat. 109, 117, 129, 134; Oct. 11, 1983, Pub. L. 98–118, § 2, 97 Stat. 803; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2661(m), 2662(c)(2), (i), 2663(a)(16), 98 Stat. 1158–1160, 1165; Oct. 9, 1984, Pub. L. 98–460, §§ 2(a), 3(a)(1), 4(a)(1), 7(a), 9(b)(1), 98 Stat. 1794, 1799, 1800, 1803, 1805.)

Amendments

1984—Subsec. (a)(1)(B). Pub. L. 98–369, § 2662(c)(2), made a clarifying amendment to Pub. L. 98–21, § 201(c)(3). See 1983 Amendment note below.

Subsec. (c)(1)(B). Pub. L. 98–369, § 2661(m), realigned margins of subpar. (B).

Subsec. (d)(2)(A). Pub. L. 98–369, § 2663(a)(16), substituted "An individual" for "an individual".

Subsec. (d)(2)(C). Pub. L. 98–460, § 4(a)(1), added subpar. (C).

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[4] So in original.

Subsec. (d)(5). Pub. L. 98-460, § 9(b)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 98-460, § 3(a)(1), added provisions requiring, in making determinations as to whether an individual is under a disability, that subjective statements as to pain or other symptoms alleged to be disabling be supplemented by, and considered together with, objective medical evidence of those symptoms showing the existence of a medical impairment resulting from anatomical, physiological, or psychological abnormalities.

Subsec. (f). Pub. L. 98-460, § 2(a), amended subsec. (f) generally, substituting provisions relating to the standard of review for termination of disability benefits for provisions relating to suspension of benefits for inmates of penal institutions.

Subsec. (g)(1). Pub. L. 98-460, § 7(a)(1), in provisions following subpar. (C) substituted reference to benefits under this subchapter for reference to benefits under this chapter, added references to the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, substituted reference to benefits under subchapter XVIII of this chapter based on such individual's disability for reference to benefits under subchapter XVIII of this chapter, and substituted "June 1988" for "June 1984" in cl. (iii).

Subsec. (g)(3)(B). Pub. L. 98-460, § 7(a)(2), substituted "January 1, 1988" for "December 7, 1983".

Subsec. (h). Pub. L. 98-369, § 2662(i), amended Pub. L. 98-21, § 339(b) resulting in the addition of subsec. (h) of this section. See 1983 Amendment note below.

1983—Subsec. (a)(1). Pub. L. 98-21, § 201(c)(1)(E), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65".

Subsec. (a)(1)(B). Pub. L. 98-21, § 201(c)(3), as amended by Pub. L. 98-369, § 2662(c)(2), substituted "retirement age (as defined in section 416(*l*) of this title)" for "the age of sixty-five".

Subsec. (c)(1)(B)(iii). Pub. L. 98-21, § 332(b), added cl. (iii).

Subsec. (d)(2). Pub. L. 98-21, § 309(*o*), substituted "widower, or surviving divorced husband" for "or widower" wherever appearing.

Subsec. (f). Pub. L. 98-21, § 339(b), before amendment by Pub. L. 98-369, § 2662(i), struck out subsec. (f) relating to suspension of benefits for inmates of penal institutions. See note below for subsec. (h).

Subsec. (g)(3)(B). Pub. L. 98-118 substituted "December 7, 1983" for "October 1, 1983".

Subsec. (h). Pub. L. 98-21, § 339(b), as amended by Pub. L. 98-369, § 2662(i), added subsec. (h).

Effective Date of 1984 Amendments

Section 2(d) of Pub. L. 98-460 provided that:

"(1) The amendments made by this section [amending sections 416, 423, and 1382c of this title and enacting provisions set out as notes under section 423 of this title] shall apply only as provided in this subsection.

"(2) The amendments made by this section shall apply to—

"(A) determinations made by the Secretary on or after the date of the enactment of this Act [Oct. 9, 1984];

"(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act [Oct. 9, 1984] and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act [42 U.S.C. 405] and regulations of the Secretary;

"(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

"(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act [Oct. 9, 1984].

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

"(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq., 1395 et seq.]—

"(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

"(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

"(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act [42 U.S.C. 405] and regulations issued by the Secretary in conformity with such section.

"(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

"(6) For purposes of this subsection, the term 'action relating to medical improvement' means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq., 1395 et seq.] based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability."

Section 3(a)(3) of Pub. L. 98-460 provided that: "The amendments made by paragraphs (1) and (2) [amending sections 423 and 1382c of this title] shall apply to determinations made prior to January 1, 1987."

Section 4(c) of Pub. L. 98-460 provided that: "The amendments made by this section [amending sections

416, 423, and 1382c of this title] shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act [Oct. 9, 1984]."

Section 9(b)(2) of Pub. L. 98-460 provided that: "The amendments made by this subsection [amending subsec. (d)(5) of this section] shall apply to determinations made on or after the date of the enactment of this Act [Oct. 9, 1984]."

Amendment by sections 2661 and 2662 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendment

Amendment by section 309(*o*) of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

Amendment by section 332(b) of Pub. L. 98-21 effective with respect to applications for disability insurance benefits under this section filed after Apr. 20, 1983, except that no monthly benefits under this subchapter shall be payable or increased by reason of such amendment for months before the month following April, 1983, see section 332(c) of Pub. L. 98-21, set out as a note under section 416 of this title.

Amendment by section 339(b) of Pub. L. 98-21 applicable with respect to monthly benefits payable for months beginning on or after April 20, 1983, see section 339(c) of Pub. L. 98-21, set out as a note under section 402 of this title.

Election of Payments

Section 2(e) of Pub. L. 98-460 provided that: "Any individual whose case is remanded to the Secretary pursuant to subsection (d) [set out as a note above] or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act [42 U.S.C. 423(g) or 1383(a)(7)], to have payments made beginning with the month in which he makes such election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

"(1) shall be made at least until an initial redetermination is made by the Secretary; and

"(2) shall begin with the payment for the month in which such individual makes such election."

Retroactive Benefits

Section 2(f) of Pub. L. 98-460 provided that: "In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied."

Promulgation of Regulations

Section 2(g) of Pub. L. 98-460 provided that: "The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this section [amending sections 416, 423, and 1382c of this title and enacting provisions set out as notes under section 423 of this title] not later than 180 days after the date of the enactment of this Act [Oct. 9, 1984]."

Commission on Evaluation of Pain

Section 3(b) of Pub. L. 98-460 provided that:

"(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the 'Commission') to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Sciences.

"(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

"(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act [Pub. L. 92-463, set out in the Appendix to Title 5, Government Organization and Employees]) within 60 days after the date of the enactment of this Act [Oct. 9, 1984]. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

"(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

"(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted."

Study and Report to Congressional Committees on Effect of Continued Payment of Disability Benefits During Appeal on Trust Fund Expenditures and the Rate of Appeals

Section 7(c) of Pub. L. 98-460 provided that:

"(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act [42 U.S.C. 423(g)] is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

"(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 402, 403, 405, 409, 415, 416, 421, 422, 424a, 425, 426, 1320b-1, 1382c, 1395p, 1395r, 1395s, 1437a, 6862 of this title; title 26 section 3121; title 30 sections 902, 922, 923; title 45 sections 231a, 231b, 231c, 231f.

§ 424a. Reduction of disability benefits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403, 415 of this title; title 26 sections 86, 6050F; title 30 section 922.

§ 425. Benefits based on disability

(a) Suspension of benefits

If the Secretary, on the basis of information obtained by or submitted to him, believes that an individual entitled to benefits under section 423 of this title, or that a child who has attained the age of eighteen and is entitled to benefits under section 402(d) of this title, or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower or surviving divorced husband who has not attained age 60 and is entitled to benefits under section 402(f) of this title, may have ceased to be under a disability, the Secretary may suspend the payment of benefits under such section 402(d), 402(e), 402(f) or 423 of this title until it is determined (as provided in section 421 of this title) whether or not such individual's disability has ceased or until the Secretary believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 421(b) of this title, the Secretary shall promptly notify the appropriate State of his action under this subsection and shall request a prompt determination of whether such individual's disability has ceased. For purposes of this subsection, the term "disability" has the meaning assigned to such term in section 423(d) of this title. Whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of this subsection shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 402(d) of this title).

[*See main edition for text of* (*b*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, § 309(p), 97 Stat. 117.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-21 added "or surviving divorced husband" after "widower".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment of sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98-460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1984, see section 11(c) of Pub. L. 98-460, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 422 of this title.

§ 426. Entitlement to hospital insurance benefits

[*See main edition for text of* (*a*)]

(b) Individuals under 65 years

Every individual who—

[*See main edition for text of* (*1*) *and* (*2*)]

shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and ending (subject to the last sentence of this subsection) with the month following the month in which notice of termination of such entitlement to benefits or status as a qualified railroad retirement beneficiary described in paragraph (2) is mailed to him, or if earlier, with the month before the month in which he attains age 65. In applying the previous sentence in the case of an individual described in paragraph (2)(C), the "twenty-fifth month of his entitlement" refers to the first month after the twenty-fourth month of entitlement to specified benefits referred to in paragraph (2)(C) and "notice of termination of such entitlement" refers to a notice that the individual would no longer be determined to be entitled to such specified benefits under the conditions described in that paragraph. For purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 422(c)(4)(A) of this title, and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under this subchapter or as a qualified railroad retirement beneficiary had such individual been unable to engage in substantial gainful activity, but not in excess of 24 such months.

[*See main edition for text of* (*c*) *and* (*d*)]

(e) Benefits for widows and widowers

(1) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of widows and widowers described in paragraph (2)(A)(iii) thereof—

(A) the term "age 60" in sections 402(e)(1)(B)(ii), 402(e)(4), 402(f)(1)(B)(ii), and 402(f)(5) of this title shall be deemed to read "age 65"; and

[*See main edition for text of* (*B*), (*2*)]

(3) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section, any disabled widow aged 50 or older who is entitled to mother's insurance benefits (and who would have been entitled to widow's insurance benefits by reason of disability if she had filed for such widow's benefits), and any disabled widower aged 50 or older who is entitled to father's insurance benefits (and who would have been entitled to widower's insurance benefits by reason of disability if he had filed for such widower's benefits), shall, upon application for such hospital insurance benefits be deemed to have filed for such widow's or widower's insurance benefits.

[*See main edition for text of* (*4*); (*f*) *to* (*h*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 131(a)(3)(H), (b)(3)(G), title III, § 309(q)(1), 97 Stat. 93, 117; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(17), 98 Stat. 1165.)

References in Text

Parts A and C of subchapter XVIII of this chapter, referred to in text, are classified to section 1395c et seq. and 1395x et seq., respectively, of this title.

Amendments

1984—Subsec. (b). Pub. L. 98-369 substituted "part A" for "part (A)" in provisions following par. (2)(C).

1983—Subsec. (e)(1)(A). Pub. L. 98-21, § 131(a)(3)(H), (b)(3)(G), substituted reference to section 402(e)(4), (f)(5) of this title for reference to section 405(e)(5), (f)(6) of this title.

Subsec. (e)(3). Pub. L. 98-21, § 309(q)(1), amended par. (3) generally, adding provisions relating to any disabled widower and striking out provision that a disabled widow, upon furnishing proof of such disability prior to July 1, 1974, under such procedures as the Secretary prescribed, would be deemed to have been entitled to such widow's benefits as of the time she would have been entitled to such widow's benefits if she had filed a timely application therefor.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendments

Amendment by section 131 of Pub. L. 98-21 effective with respect to monthly benefits payable under this subchapter for months after December 1983, and in the case of an individual who was not entitled to a monthly benefit of the type involved under this subchapter for December 1983, no benefit shall be paid under this subchapter by reason of such amendments unless proper application for such benefit is made, see section 131(d) of Pub. L. 98-21 set out as a note under section 402 of this title.

Amendment by section 309(q)(1) of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

Time in Which To Furnish Proof of Disability for Hospital Benefits

Section 309(q)(2) of Pub. L. 98-21 provided that: "For purposes of determining entitlement to hospital insurance benefits under section 226(e)(3) of such Act [subsec. (e)(3) of this section], as amended by paragraph (1), an individual becoming entitled to such hospital insurance benefits as a result of the amendment made by such paragraph shall, upon furnishing proof of his or her disability within twelve months after the month in which this Act is enacted [April, 1983], under such procedures as the Secretary of Health and Human Services may prescribe, be deemed to have been entitled to the widow's or widower's benefits referred to in such section 226(e)(3), as so amended, as of the time such individual would have been entitled to such widow's or widower's benefits if he or she had filed a timely application therefor."

§ 427. Transitional insured status for purposes of old-age and survivors benefits

(a) Determination of entitlement to benefits under section 402(a) to (c) of this title

In the case of any individual who attains the age of 72 before 1969 but who does not meet the requirements of section 414(a) of this title, the 6 quarters of coverage referred to in paragraph (1) of section 414(a) of this title shall, instead, be 3 quarters of coverage for purposes of determining entitlement of such individual to benefits under section 402(a) of this title, and of the spouse to benefits under section 402(b) or section 402(c) of this title, but, in the case of such spouse, only if he or she attains the age of 72 before 1969 and only with respect to spouse's insurance benefits under section 402(b) or section 402(c) of this title for and after the month in which he or she attains such age. For each month before the month in which any such individual meets the requirements of section 414(a) of this title, the amount of the old-age insurance benefit shall, notwithstanding the provisions of section 402(a) of this title, be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title and the amount of the spouse's insurance benefit of the spouse shall, notwithstanding the provisions of section 402(b) or section 402(c) of this title, be the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

(b) Determination of entitlement to surviving spouse's benefits under section 402(e) or (f) of this title

In the case of any individual who has died, who does not meet the requirements of section 414(a) of this title, and whose surviving spouse attains age 72 before 1969, the 6 quarters of coverage referred to in paragraph (3) of section 414(a) of this title and in paragraph (1) thereof shall, for purposes of determining the entitlement to surviving spouse's insurance benefits under section 402(e) or section 402(f) of this title, instead be—

(1) 3 quarters of coverage if such surviving spouse attains the age of 72 in or before 1966,

(2) 4 quarters of coverage if such surviving spouse attains the age of 72 in 1967, or

(3) 5 quarters of coverage if such surviving spouse attains the age of 72 in 1968.

The amount of the surviving spouse's insurance benefit for each month shall, notwithstanding the provisions of section 402(e) or section 402(f) of this title (and section 402(m) of this title), be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Deceased individual entitled to benefits by reason of subsec. (a) deemed to meet requirements of subsec. (b)

In the case of any individual who becomes, or upon filing application therefor would become, entitled to benefits under section 402(a) of this title by reason of the application of subsection (a) of this section, who dies, and whose surviving spouse attains the age of 72 before 1969, such deceased individual shall be deemed to meet the requirements of subsection (b) of this section for purposes of determining entitlement of such surviving spouse to surviving spouse's insurance benefits under section 402(e) or section 402(f) of this title.

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, § 304(a), (b), 97 Stat. 112.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-21, § 304(a), substituted "spouse" for "wife", "spouse's" for "wife's", and "he or she" for "she", wherever appearing, substituted "the" for "his" after "402(a) of this title, and of" and preceding "spouse" in two places and preceding "old-age insurance", and inserted "or section 402(c)" after "section 402(b)" wherever appearing.

Subsec. (b). Pub. L. 98-21, § 304(b), substituted "surviving spouse" for "widow" and "surviving spouse's" for "widow's" wherever appearing, substituted "the" for "her" after "determining" and "The amount of", and inserted "or section 402(f)" after "section 402(e)" wherever appearing.

Subsec. (c). Pub. L. 98-21, § 304(b)(1), (2), (4), substituted "surviving spouse" for "widow" wherever appearing and "surviving spouse's" for "widow's", and inserted "or section 402(f)" after "section 402(e)".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21 set out as a note under section 402 of this title.

§ 428. Benefits at age 72 for certain uninsured individuals

(a) Eligibility

Every individual who—

(1) has attained the age of 72,

(2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he or she attained such age,

(3) is a resident of the United States (as defined in subsection (e) of this section), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 410(i) of this title) continuously during the 5 years immediately preceding the month in which he or she files application under this section, and

(4) has filed application for benefits under this section,

shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he or she becomes so entitled to such benefits and ending with the month preceding the month in which he or she dies. No application under this section which is filed by an individual more than 3 months before the first month in which he or she meets the requirements of paragraphs (1), (2), and (3) shall be accepted as an application for purposes of this section.

(b) Amount of benefits

The benefit amount to which an individual is entitled under this section for any month shall be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Reduction for government pension system benefits

(1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefit under a governmental pension system for which he or she is eligible for such month.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) the benefit amount as determined without regard to this subsection.

(3) In the case of a husband or wife both of whom are entitled to benefits under this section for any month, the benefit amount of each spouse, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the other spouse is eligible for such month, over (B) the benefit amount of such other spouse as determined without regard to this subsection.

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental pension system—

(A) such individual shall be deemed to have filed application for such benefits,

(B) to the extent that entitlement depends on an application by such individual's spouse, such spouse shall be deemed to have filed application, and

(C) to the extent that entitlement depends on such individual or his or her spouse having retired, such individual and his or her spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

[*See main edition for text of* (5) *to* (8); (*d*) *to* (*f*)]

(g) Annual reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the Secretary deems necessary on account of—

[*See main edition for text of* (1) *to* (3)]

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

[*See main edition for text of* (*h*)]

(Aug. 14, 1935, ch. 531, title II, § 228, as added Mar. 15, 1966, Pub. L. 89-368, title III, § 302(a), 80 Stat. 67, and amended Jan. 2, 1968, Pub. L. 90-248, title I, § 102(b), title II, § 241(a) 81 Stat. 827, 916; Dec. 30, 1969, Pub. L. 91-172, title X, § 1003(b), 83 Stat. 740; Mar. 17, 1971, Pub. L. 92-5, title II, § 202(b), 85 Stat. 10; July 1, 1972, Pub. L. 92-336, title II, § 201(g)(2), 86 Stat. 411; Dec. 31, 1973, Pub. L. 93-233, §§ 2(b)(1), 18(c), 87 Stat. 952, 968; Apr. 20, 1983, Pub. L. 98-21, title III, § 305(a)–(d), 97 Stat. 113; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2662(e), 2663(j)(3)(A)(iv), 98 Stat. 1159, 1170.)

AMENDMENTS

1984—Subsec. (c)(4)(C). Pub. L. 98-369, § 2662(e), amended directory language of Pub. L. 98-21, § 305(d)(2). See 1983 Amendment note below.

Subsec. (g). Pub. L. 98-369, § 2663(j)(3)(A)(iv), struck out "of Health, Education, and Welfare" after "Secretary".

1983—Subsec. (a). Pub. L. 98-21, § 305(d)(1), substituted "he or she" for "he" wherever appearing.

Subsec. (b). Pub. L. 98-21, § 305(a), substituted "The" for "(1) Except as provided in paragraph (2), the" and struck out par. (2), which had provided that if both husband and wife were entitled or would have been entitled upon application to benefits under this section for any month, the amount of the husband's benefit for such month would be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and the amount of the wife's benefit for such month the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(1). Pub. L. 98-21, § 305(d)(1), substituted "he or she" for "he".

Subsec. (c)(2). Pub. L. 98-21, § 305(b), substituted "(B) the benefit amount as determined without regard to this subsection" for "(B) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title".

Subsec. (c)(3). Pub. L. 98-21, § 305(c), amended par. (3) generally, substituting provisions relating to either a husband or wife for provision that the benefit amount of the wife, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the husband was eligible for such month, over (ii) the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and that the benefit amount of the husband, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the wife was eligible for such month, over (ii) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(4)(C). Pub. L. 98-21, § 305(d)(2), as amended by Pub. L. 98-369, § 2662(e), substituted "his or her" for "his" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2662 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

INCREASES TO TAKE INTO ACCOUNT GENERAL BENEFIT INCREASES

Section 305(e) of Pub. L. 98-21 provided that: "The Secretary shall increase the amounts specified in section 228 of the Social Security Act [this section], as amended by this section, to take into account any general benefit increases (as referred to in section 215(i)(3) of such Act [42 U.S.C. 415(i)(3)]), and any increases under section 215(i) of such Act [26 U.S.C. 415(i)], which have occurred after June 1974 or may hereafter occur."

§ 429. Benefits in case of members of the uniformed services

[*See main edition for text of* (*a*)]

(b) There are authorized to be appropriated to each of the Trust Funds, consisting of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund, for transfer on July 1 of each calendar year to such Trust Fund from amounts in the general fund in the Treasury not otherwise appropriated, an amount equal to the total of the additional amounts which would be appropriated to such Trust Fund for the fiscal year ending September 30 of such calendar year under section 401 or 1395i of this title if the amounts of the additional wages deemed to have been paid for such calendar year by reason of subsection (a) of this section constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1954) for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954. Amounts authorized to be appropriated under this subsection for transfer on

July 1 of each calendar year shall be determined on the basis of estimates of the Secretary of the wages deemed to be paid for such calendar year under subsection (a) of this section; and proper adjustments shall be made in amounts authorized to be appropriated for subsequent transfer to the extent prior estimates were in excess of or were less than such wages so deemed to be paid. Additional adjustments may be made in the amounts so authorized to be appropriated to the extent that the amounts transferred in accordance with clauses (i) and (ii) of section 151(b)(3)(B) of the Social Security Amendments of 1983 with respect to wages deemed to have been paid in 1983 were in excess of or were less than the amount which the Secretary, on the basis of appropriate data, determines should have been so transferred.

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 151(b)(1), 97 Stat. 104; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2661(n), 98 Stat. 1158.)

References in Text

The Internal Revenue Code of 1954, referred to in subsec. (b), is classified generally to Title 26, Internal Revenue Code.

Section 151(b)(3)(B) of the Social Security Amendments of 1983, referred to in subsec. (b), is section 151(b)(3)(B) of Pub. L. 98-21, which is set out as a note below.

Amendments

1984—Subsec. (b). Pub. L. 98-369 added "Additional adjustments may be made in the amounts so authorized to be appropriated to the extent that the amounts transferred in accordance with clauses (i) and (ii) of section 151(b)(3)(B) of the Social Security Amendments of 1983 with respect to wages deemed to have been paid in 1983 were in excess of or were less than the amount which the Secretary, on the basis of appropriate data, determines should have been so transferred."

1983—Subsec. (b). Pub. L. 98-21 amended subsec. (b) generally, substituting provisions relating to authorization of appropriations to each of the Trust Funds for transfer on July 1 of each calendar year for provision that had authorized appropriations to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund annually, as benefits under this subchapter and part A of subchapter XVIII of this chapter were paid after December 1967, such sums as the Secretary determined to be necessary to meet (1) the additional costs, resulting from subsec. (a), of such benefits (including lump-sum death payments), (2) the additional administrative expenses resulting therefrom, and (3) any loss in interest to such trust funds resulting from the payment of such amounts, and that such additional costs would be determined after any increases in such benefits arising from the application of section 417 of this title had been made.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendment

Section 151(b)(2) of Pub. L. 98-21 provided that: "The amendment made by paragraph (1) [amending subsec. (b) of this section] shall be effective with respect to wages deemed to have been paid for calendar years after 1983."

Compensatory Payments to Trust Funds

Section 151(b)(3) of Pub. L. 98-21 provided that:

"(A) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of Health and Human Services shall determine the additional amounts which would have been appropriated to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under sections 201 and 1817 of the Social Security Act [42 U.S.C. 401, 1395i] if the additional wages deemed to have been paid under section 229(a) of the Social Security Act [42 U.S.C. 429(a)] prior to 1984 had constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1954 [26 U.S.C. 3121(b)]) for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 [26 U.S.C. 3101, 3111], and the amount of interest which would have been earned on such amounts if they had been so appropriated.

"(B)(i) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of the Treasury shall transfer to each such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amount determined with respect to such Trust Fund under subparagraph (A), less any amount appropriated to such Trust Fund pursuant to the provisions of section 229(b) of the Social Security Act [42 U.S.C. 429(b)] prior to the date of the determination made under subparagraph (A) with respect to wages deemed to have been paid for calendar years prior to 1984.

"(ii) The Secretary of Health and Human Services shall revise the amount determined under clause (i) with respect to each such Trust Fund within one year after the date of the transfer made to such Trust Fund under clause (i), as determined appropriate by such Secretary from data which becomes available to him after the date of the transfer under clause (i). Within 30 days after any such revision, the Secretary of the Treasury shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of Health and Human Services certifies as necessary to take into account such revision."

§ 430. Adjustment of the contribution and benefit base

(a) Determination and publication by Secretary in Federal Register subsequent to cost-of-living benefit increase; effective date

Whenever the Secretary pursuant to section 415(i) of this title increases benefits effective with the December following a cost-of-living computation quarter, he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the contribution and benefit base determined under subsection (b) or (c) of this section which shall be effective with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.

[See main edition for text of (b)]

(c) Amount of base for period prior to initial cost-of-living benefit increase

For purposes of this section, and for purposes of determining wages and self-employment income under sections 409, 411, 413, and 415 of this title and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of

1954, (1) the "contribution and benefit base" with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1973 and prior to the calendar year with the June of which the first increase in benefits pursuant to section 415(i) of this title becomes effective shall be $13,200 or (if applicable) such other amount as may be specified in a law enacted subsequent to the law which added this section, and (2) the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning)—

(A) in 1978 shall be $17,700,
(B) in 1979 shall be $22,900,
(C) in 1980 shall be $25,900, and
(D) in 1981 shall be $29,700.

For purposes of determining under subsection (b) of this section the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning) in 1982 and subsequent years, the dollar amounts specified in clause (2) of the preceding sentence shall be considered to have resulted from the application of such subsection (b) of this section and to be the amount determined (with respect to the years involved) under that subsection.

[*See main edition for text of* (*d*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 111(a)(5), 97 Stat. 72; Aug. 12, 1983, Pub. L. 98-76, title II, §§ 211(d), 225(a)(4), 97 Stat. 419, 425; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(18), 98 Stat. 1165.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, in last sentence which was repealed by Pub. L. 98-76, substituted "3(a) or 3(f)(3)" for "3(a) or (3)(f)(3)" in the original, which had been translated as "section 231b(a) or (f)(3) of title 45".

1983—Subsec. (a). Pub. L. 98-21 substituted "December" for "June".

Subsec. (c). Pub. L. 98-76, § 225(a)(4), struck out provision that for purposes of determining employee and employer tax liability under sections 3201(a) and 3221(a) of the Internal Revenue Code of 1954, for purposes of determining the portion of the employee representative tax liability under section 3211(a) of such Code which resulted from the application of the 12.75 percent rate specified therein, and for purposes of computing average monthly compensation under section 231b(j) of title 45, except with respect to annuity amounts determined under section 231b(a) or (f)(3) of title 45, clause (2) and the preceding sentence of this subsection shall be disregarded.

Pub. L. 98-76, § 211(d), temporarily substituted "12.75 percent" for "11.75 percent". See Effective and Termination Dates of 1983 Amendments note below.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Amendment by section 211 of Pub. L. 98-76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98-76, set out as a note under section 3201 of Title 26, Internal Revenue Code.

Amendment by section 225(a)(4) of Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of Title 26.

Amendment by Pub. L. 98-21 applicable with respect to cost-of-living increases determined under section 415(i) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 402 of this title.

SOCIAL SECURITY CONTRIBUTION AND BENEFIT BASE

1986—By notice of the Secretary of Health and Human Services, Oct. 29, 1985, 50 F.R. 45559, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1986 is $42,000.

1985—By notice of the Secretary of Health and Human Services, Oct. 29, 1984, 49 F.R. 43775, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1985 is $39,600.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403, 409, 411, 413, 415 of this title; title 26 sections 1402, 3121, 3231, 6413; title 29 section 1322.

§ 431. Benefits for certain individuals interned by United States during World War II

[*See main edition for text of* (*a*)]

(b) Applicability in determining entitlement to and amount of monthly benefits and lump-sum death payments, and period of disability; effect of payment of benefits by other agency or instrumentality of United States

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Upon application for benefits, a recalculation of benefits (by reason of this section), or a lump-sum death payment on the basis of the wages and self-employment income of any individual who was an internee, the Secretary of Health and Human Services shall accept the certification of the Secretary of Defense or his designee concerning any period of time for which an internee is to receive credit under paragraph (1) and shall make a decision without regard to clause (B) of paragraph (2) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the period for which such individual was an internee, a benefit described in clause (B) of paragraph (2) has been determined by such agency or instrumentality to be payable by it. If the Secretary of Health and Human Services has not been so notified, he shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (2) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health and Human Services, and the Secretary shall certify no further benefits for payment or shall recompute the amount of

any further benefits payable, as may be required by this section.

(4) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on any period for which any individual was an internee shall, at the request of the Secretary of Health and Human Services, certify to him, with respect to any individual who was an internee, such information as the Secretary deems necessary to carry out his functions under paragraph (3) of this subsection.

[*See main edition for text of* (c)]

(Aug. 14, 1935, ch. 531, title II, § 231, as added Oct. 30, 1972, Pub. L. 92-603, title I, § 142(a), 86 Stat. 1367, and amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(A)(iii), 98 Stat. 1170.)

AMENDMENTS

1984—Subsec. (b)(3), (4). Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 433. International agreements

[*See main edition for text of* (a) *to* (c)]

(d) Regulations

The Secretary shall make rules and regulations and establish procedures which are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

(e) Reports to Congress; effective date of agreements

[*See main edition for text of* (1)]

(2) Such an agreement shall become effective on any date, provided in the agreement, which occurs after the expiration of the period (following the date on which the agreement is transmitted in accordance with paragraph (1)) during which at least one House of the Congress has been in session on each of 60 days; except that such agreement shall not become effective if, during such period, either House of the Congress adopts a resolution of disapproval of the agreement.

(Aug. 14, 1935, c. 531, title II, § 233, as added Dec. 20, 1977, Pub. L. 95-216, title III, § 317(a), 91 Stat. 1538, and amended Aug. 13, 1981, Pub. L. 97-35, title XXII, § 2201(b)(12), 95 Stat. 831; Apr. 20, 1983, Pub. L. 98-21, title III, § 326(a), 97 Stat. 126; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(3)(A)(v), 98 Stat. 1170.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 struck out "of Health, Education, and Welfare" after "Secretary".

1983—Subsec. (e)(2). Pub. L. 98-21 substituted "during which at least one House of the Congress has been in session on each of 60 days" for "during which each House of the Congress has been in session on each of 90 days".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 326(b) of Pub. L. 98-21 provided that: "The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Apr. 20, 1983]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 410, 411 of this title; title 26 sections 1401, 1402, 3101, 3111, 3121.

SUBCHAPTER III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

§ 502. Payments to States; computation of amounts

[*See main edition for text of* (a)]

(b) Out of the sums appropriated therefor the Secretary of the Treasury shall, upon receiving a certification under subsection (a) of this section, pay, through the Fiscal Service of the Department of the Treasury and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

(Aug. 14, 1935, ch. 531, title III, § 302, 49 Stat. 626; Aug. 10, 1939, ch. 666, title III, § 301, 53 Stat. 1378; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(b)(1), 98 Stat. 1165.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted "the Fiscal Service of the Department of the Treasury" for "the Division of Disbursement of the Treasury Department".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 503. State laws

(a) Provisions required

The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], includes provision for—

[*See main edition for text of* (1) *to* (3)]

(4) The payment of all money received in the unemployment fund of such State

(except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]), immediately upon such receipt, to the Secretary of the Treasury to the credit of the unemployment trust fund [1] established by section 1104 of this title; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]: *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further*, That the amounts specified by section 1103(c)(2) of this title may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices: *Provided further*, That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor; and

[*See main edition for text of (6) to (9); (b)*]

(c) Denial of certification; availability of records to Railroad Retirement Board; cooperation with Federal agencies

The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) that such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes;

(2) that such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law; or

(3) that any interest required to be paid on advances under subchapter XII of this chapter has not been paid by the date on which such interest is required to be paid or has been paid directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund, until such interest is properly paid.

(d) Disclosure of unemployment compensation information; deduction and withholding of amounts owed to State food stamp agencies; reimbursement of administrative costs; non-compliance of State agency

[*See main edition for text of (1)*]

(2)(A) For purposes of this paragraph, the term "unemployment compensation" means any unemployment compensation payable under the State law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law).

(B) The State agency charged with the administration of the State law—

(i) may require each new applicant for unemployment compensation to disclose whether the applicant owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977 [7 U.S.C. 2022(c)(1)]) of food stamp coupons,

(ii) may notify the State food stamp agency to which the uncollected overissuance is owed that the applicant has been determined to be eligible for unemployment compensation if the applicant discloses under clause (i) that the applicant owes an uncollected overissuance and the applicant is determined to be so eligible,

(iii) may deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977 [7 U.S.C. 2022(c)(3)(A)], or

(III) any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(B) of such Act [7 U.S.C. 2022(c)(3)(B)], and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State food stamp agency.

(C) Any amount deducted and withheld under subparagraph (B)(iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State food stamp agency to which the uncollected overissuance is owed as repayment of the individual's uncollected overissuance.

(D) A State food stamp agency to which an uncollected overissuance is owed shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by the State agency under this paragraph that are attributable to repayment of uncollected overissuance to the State food stamp agency to which the uncollected overissuance is owed.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the adminis-

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[1] So in original. Probably should be "Unemployment Trust Fund".

tration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term "State food stamp agency" means any agency described in section 3(n)(1) of the Food Stamp Act of 1977 [7 U.S.C. 2012(n)(1)] which administers the food stamp program established under such Act.

(e) Disclosure of wage information; non-compliance of State agency

[*See main edition for text of* (*1*)]

(2)(A) The State agency charged with the administration of the State law—

(i) shall require each new applicant for unemployment compensation to disclose whether or not such applicant owes child support obligations (as defined in the last sentence of paragraph (1),

[*See main edition for text of* (*ii*) *to* (*iv*)]

Any amount deducted and withheld under clause (iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the State or local child support enforcement agency in satisfaction of his child support obligations.

[*See main edition for text of* (*B*) *and* (*C*), (*3*) *and* (*4*)]

(f) Income and eligibility verification system

The State agency charged with the administration of the State law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(As amended Apr. 20, 1983, Pub. L. 98–21, title V, §§ 515(a), 523(b), 97 Stat. 147, 148; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2651(d), 2663(b)(2)–(5), 98 Stat. 1149, 1165; Dec. 23, 1985, Pub. L. 99–198, title XV, § 1535(b)(3), 99 Stat. 1584.)

References in Text

The Federal Unemployment Tax Act, referred to in subsec. (a), is act Aug. 16, 1954, ch. 736, §§ 3301–3311, 68A Stat. 439, as amended, which is classified generally to chapter 23 (§ 3301 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.

Amendments

1985—Subsec. (d)(2) to (4). Pub. L. 99–198 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1984—Subsec. (a)(4). Pub. L. 98–369, § 2663(b)(2), substituted "section 3305(b)" for "section 1606(b)".

Subsec. (a)(5). Pub. L. 98–369, § 2663(b)(3), substituted "section 3305(b)" for "section 1606(b)" and before last proviso substituted a colon for erroneous punctuation.

Subsec. (c)(1), (2). Pub. L. 98–369, § 2663(b)(4), substituted "that" for "That".

Subsec. (e)(2)(A)(i). Pub. L. 98–369, § 2663(b)(5), substituted "child support obligations" for "child support obligatons".

Subsec. (f). Pub. L. 98–369, § 2651(d), added subsec. (f).

1983—Subsec. (a)(5). Pub. L. 98–21, § 523(b), added provision that nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor.

Subsec. (c)(3). Pub. L. 98–21, § 515(a), added par. (3).

Effective Date of 1984 Amendment

Amendment by section 2651(d) of Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

Amendment by section 2663 of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendment

Amendment by section 523(b) of Pub. L. 98–21 effective Apr. 20, 1983, see section 523(c) of Pub. L. 98–21 set out as a note under section 3304 of Title 26, Internal Revenue Code.

§ 504. Judicial review

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Repealed. Pub. L. 98–620, title IV, § 402(39), Nov. 8, 1984, 98 Stat. 3360

(As amended Nov. 8, 1984, Pub. L. 98–620, title IV, § 402(39), 98 Stat. 3360.)

Amendments

1984—Subsec. (e). Pub. L. 98–620 struck out subsec. (e) which provided that any judicial proceedings under this section were entitled to, and upon request of the Secretary or the State would receive, a preference and be heard and determined as expeditiously as possible.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 632a, 1301, 1306a, 1320b–2, 1320b–6, 3020d, 6862, 9432, 9433, 9452 of this title; title 7 sections 2014, 2015, 2017, 2025, 2029; title 20 sections 2711, 2712; title 29 section 1532.

Part A—Aid to Families With Dependent Children

Part Referred to in Other Sections

This part is referred to in sections 405, 428, 603a, 622, 632a, 644, 645, 651, 652, 653, 654, 657, 658, 666, 670, 671, 672, 673, 1306, 1309, 1311, 1315, 1316, 1318, 1319, 1320b-3, 1320b-6, 1320b-7, 1395v, 1396a, 1396b, 1396d, 8624, 9835 of this title; title 7 sections 2014, 2015, 2017, 2020, 2026; title 8 section 1522; title 26 sections 51, 3304, 6103; title 29 sections 49b, 1603; title 40 App. section 202.

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary; records and reports; treatment of earned income advances

(a) Contents

A State plan for aid and services to needy families with children must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness;

(5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) except as may be otherwise provided in paragraph (8) or (31) and section 615 of this title, provide that the State agency—

(A) shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid;

(B) shall determine ineligible for aid any family the combined value of whose resources (reduced by any obligations or debts with respect to such resources) exceeds $1,000 or such lower amount as the State may determine, but not including as a resource for purposes of this subparagraph (i) a home owned and occupied by such child, relative, or other individual and so much of the family member's ownership interest in one automobile as does not exceed such amount as the Secretary may prescribe, (ii) under regulations prescribed by the Secretary, burial plots (one for each such child, relative, and other individual), and funeral agreements or (iii) for such period or periods of time as the Secretary may prescribe, real property which the family is making a good-faith effort to dispose of, but any aid payable to the family for any such period shall be conditioned upon such disposal, and any payments of such aid for that period shall (at the time of the disposal) be considered overpayments to the extent that they would not have been made had the disposal occurred at the beginning of the period for which the payments of such aid were made; and

(C) may, in the case of a family claiming or receiving aid under this part for any month, take into consideration as income (to the extent the State determines appropriate, as specified in such plan, and notwithstanding any other provision of law)—

(i) an amount not to exceed the value of the family's monthly allotment of food stamp coupons, to the extent such value duplicates the amount for food included in the maximum amount that would be payable under the State plan to a family of the same composition with no other income; and

(ii) an amount not to exceed the value of any rent or housing subsidy provided to such family, to the extent such value duplicates the amount for housing included in the maximum amount that would be payable under the State plan to a family of the same composition with no other income;

(8)(A) provide that, with respect to any month, in making the determination under paragraph (7), the State agency—

(i) shall disregard all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or a part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment;

(ii) shall disregard from the earned income of any child or relative applying for or receiving aid to families with dependent children, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first $75 of the total of such earned income for such month;

(iii) shall disregard from the earned income of any child, relative, or other individual specified in clause (ii), an amount equal to expenditures for care in such month for a dependent child, or an incapacitated individual living in the same home as the dependent child, receiving aid to families with dependent children and requiring such care for such month, to the extent that such amount (for each such dependent child or incapacitated individual) does not exceed $160 (or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in full-time employment or not employed throughout the month);

(iv) shall disregard from the earned income of any child or relative receiving aid to families with dependent children, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, an amount equal to (I) the first $30 of the total of such earned income not disregarded under any other clause of this subparagraph plus (II) one-third of the remainder thereof (but excluding, for purposes of this subparagraph, earned income derived from participation on a project maintained under the programs established by section 632(b)(2) and (3) of this title);

(v) may disregard the income of any dependent child applying for or receiving aid to families with dependent children which is derived from a program carried out under the Job Training Partnership Act (as originally enacted) [29 U.S.C. 1501 et seq.], but only in such amounts, and for such period of time (not to exceed six months with respect to earned income) as the Secretary may provide in regulations;

(vi) shall disregard the first $50 of any child support payments received in such month with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 657(b) of this title); and

(vii) may disregard all or any part of the earned income of a dependent child who is a full-time student and who is applying for aid to families with dependent children, but only if the earned income of such child is excluded for such month in determining the family's total income under paragraph (18);

(B) provide that (with respect to any month) the State agency—

(i) shall not disregard, under clause (ii), (iii), or (iv) of subparagraph (A), any earned income of any one of the persons specified in subparagraph (A)(ii) if such person—

(I) terminated his employment or reduced his earned income without good cause within such period (of not less than thirty days) preceding such month as may be prescribed by the Secretary;

(II) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by the employer, to be a bona fide offer of employment; or

(III) failed without good cause to make a timely report (as prescribed by the State plan pursuant to paragraph (14)) to the State agency of earned income received in such month; and

(ii)(I) shall not disregard—

(a) under subclause (II) of subparagraph (A)(iv), in a case where such subclause has already been applied to the income of the persons involved for four consecutive months while they were receiving aid under the plan, or

(b) under subclause (I) of subparagraph (A)(iv), in a case where such subclause has already been applied to the income of the persons involved for twelve consecutive months while they were receiving aid under the plan,

any earned income of any of the persons specified in subparagraph (A)(ii), if, with respect to such month, the income of the persons so specified was in excess of their need, as determined by the State agency pursuant to paragraph (7) (without regard to subparagraph (A)(iv) of this paragraph), unless the persons received aid under the plan in one or more of the four months preceding such month; and

(II) in the case of the earned income of a person with respect to whom subparagraph (A)(iv) has been applied for four consecutive months, shall not apply the provisions of subclause (II) of such subparagraph to any month after such month, or apply the provisions of subclause (I) of such subparagraph to any month after the eighth month following such month, for so long as he continues to receive aid under the plan, and shall not apply the provisions of either such subclause to any month thereafter until the expiration of an additional period of twelve consecutive months during which he is not a recipient of such aid; and

(C) provide that in implementing this paragraph the term "earned income" shall mean gross earned income, prior to any deductions for taxes or for any other purposes;

(9) provide safeguards which restrict the use or disclosure of information concerning applicants or recipients to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part B, C, or D of this subchapter or under subchapter I, X, XIV, XVI, XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity; and

the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; but such safeguards shall not prevent the State agency or the local agency responsible for the administration of the State plan in the locality (whether or not the State has enacted legislation allowing public access to Federal welfare records) from furnishing a State or local law enforcement officer, upon his request, with the current address of any recipient if the officer furnishes the agency with such recipient's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive felon, that the location or apprehension of such felon is within the officer's official duties, and that the request is made in the proper exercise of those duties;

(10)(A) provide that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall, subject to paragraphs (25) and (26), be furnished with reasonable promptness to all eligible individuals; and

(B) provide that an application for aid under the plan will be effective no earlier than the date such application is filed with the State agency or local agency responsible for the administration of the State plan, and the amount payable for the month in which the application becomes effective, if such application becomes effective after the first day of such month, shall bear the same ratio to the amount which would be payable if the application had been effective on the first day of such month as the number of days in the month including and following the effective date of the application bears to the total number of days in such month;

(11) provide for prompt notice (including the transmittal of all relevant information) to the State child support collection agency (established pursuant to part D of this subchapter) of the furnishing of aid to families with dependent children with respect to a child who has been deserted or abandoned by a parent (including a child born out of wedlock without regard to whether the paternity of such child has been established);

(12) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title;

(13) with respect to families who are required to report monthly to the State agency pursuant to paragraph (14) (and at the option of the State with respect to other families), provide that—

(A) except as provided in subparagraph (B), the State agency (i) will determine a family's eligibility for aid for a month on the basis of the family's income, composition, resources, and other similar relevant circumstances during such month, and (ii) will determine the amount of such aid on the basis of the income and other relevant circumstances in the first or, at the option of the State (but only where the Secretary determines it to be appropriate, in the case of families who are required to report monthly to the State agency pursuant to paragraph (14)), second month preceding such month; and

(B) in the case of the first month, or at the option of the State (but only where the Secretary determines it to be appropriate, in the case of families who are required to report monthly to the State agency pursuant to paragraph (14)), the first and second months, in a period of consecutive months for which aid is payable, the State agency will determine the amount of aid on the basis of the family's income and other relevant circumstances in such first or second month;

(14) with respect to families in the category of recent work history or earned income cases (and at the option of the State with respect to families in other categories), provide (A) that the State agency will require each family to which it furnishes aid to families with dependent children (or to which it would provide such aid but for paragraph (22) or (32)) to report, as a condition to the continued receipt of such aid (or to continuing to be deemed to be a recipient of such aid), each month to the State agency on—

(i) the income received, family composition, and other relevant circumstances during the prior month; and

(ii) the income and resources it expects to receive, or any changes in circumstances affecting continued eligibility or benefit amount, that it expects to occur, in that month (or in future months);

except that (with the prior approval of the Secretary in recent work history and earned income cases) the State may select categories of recipients who may report at specified less frequent intervals upon a determination that to require individuals in such categories to report monthly would result in unwarranted expenditures for administration of this paragraph; and

(B) that, in addition to whatever action may be appropriate based on other reports or information received by the State agency, the State agency will take prompt action to adjust the amount of assistance payable, as may be appropriate, on the basis of the information contained in the report (or upon the failure of the family to furnish a timely report), and will give an appropriate explanatory notice, concurrent with its action, to the family;

(15) provide (A) for the development of a program, for each appropriate relative and dependent child receiving aid under the plan and for each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under paragraph (7), for preventing or reducing the

incidence of births out of wedlock and otherwise strengthening family life, and for implementing such program by assuring that in all appropriate cases (including minors who can be considered to be sexually active) family planning services are offered to them and are provided promptly (directly or under arrangements with others) to all individuals voluntarily requesting such services, but acceptance of family planning services provided under the plan shall be voluntary on the part of such members and individuals and shall not be a prerequisite to eligibility for or the receipt of any other service under the plan; and (B) to the extent that services provided under this paragraph are furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;

(16) provide that where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with respect to the situation it may have;

(17) provide that if a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family, receives in any month an amount of earned or unearned income which, together with all other income for that month not excluded under paragraph (8), exceeds the State's standard of need applicable to the family of which he is a member—

(A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and

(B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A);

except that the State may at its option recalculate the period of ineligibility otherwise determined under subparagraph (A) (but only with respect to the remaining months in such period) in any one or more of the following cases: (i) an event occurs which, had the family been receiving aid under the State plan for the month of the occurrence, would result in a change in the amount of aid payable for such month under the plan, or (ii) the income received has become unavailable to the members of the family for reasons that were beyond the control of such members, or (iii) the family incurs, becomes responsible for, and pays medical expenses (as allowed by the State) in a month of ineligibility determined under subparagraph (A) (which expenses may be considered as an offset against the amount of income received in the first month of such ineligibility);

(18) provide that no family shall be eligible for aid under the plan for any month if, for that month, the total income of the family (other than payments under the plan), without application of paragraph (8), other than paragraph (8)(A)(v), exceeds 185 percent of the State's standard of need for a family of the same composition, except that in determining the total income of the family the State may exclude any earned income of a dependent child who is a full-time student, in such amounts and for such period of time (not to exceed 6 months) as the State may determine;

(19) provide—

(A) that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, employment, and other employment-related activities (including employment search, not to exceed eight weeks in total in each year) with the Secretary of Labor as provided by regulations issued by him, unless such individual is—

(i) a child who is under age 16 or attending, full-time, an elementary, secondary, or vocational (or technical) school;

(ii) a person who is ill, incapacitated, or of advanced age;

(iii) a person so remote from a work incentive project that his effective participation is precluded;

(iv) a person whose presence in the home is required because of illness or incapacity of another member of the household;

(v) the parent or other relative of a child under the age of six who is personally providing care for the child with only very brief and infrequent absences from the child;

(vi) the parent or other caretaker of a child who is deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative is in the home and not excluded by clause (i), (ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this subparagraph, or has been found by the Secretary of Labor to have refused without good cause to participate under a work incentive program or accept employment as described in subparagraph (F) of this paragraph);

(vii) a person who is working not less than 30 hours per week;

(viii) the parent of a child who is deprived of parental support or care by reason of the unemployment of a parent, if the other parent (who is the principal earner, as defined in section 607(d) of this title) is not excluded by the preceding clauses of this subparagraph; or

(ix) a woman who is pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would otherwise be required or within the 3-month period immediately following such month;

and that any individual referred to in clause (v) shall be advised of his or her option to register, if he or she so desires, pursuant to this paragraph, and shall be informed of the child care services (if any) which will be available to him or her in the event he or she should decide so to register;

(B) that aid to families with dependent children under the plan will not be denied by reason of such registration or the individual's certification to the Secretary of Labor under subparagraph (G) of this paragraph, or by reason of an individual's participation on a project under the program established by section 632(b)(2) or (3) of this title;

(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C of this subchapter by appropriate agencies of the State or private organizations of 10 per centum of the cost of such programs, as specified in section 635(b) of this title;

(D) that (i) training incentives authorized under section 634 of this title shall be disregarded in determining the needs of an individual under paragraph (7), and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established by section 632(b)(2) or (3) of this title shall be taken into account;

(E) Repealed. Pub. L. 92-223, § 3(a)(5), Dec. 28, 1971, 85 Stat. 804

(F) that if (and for such period as is prescribed under joint regulations of the Secretary and the Secretary of Labor) any child, relative or individual has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under a work incentive program established by part C of this subchapter with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C, or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment—

(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under paragraph (7), and aid for any dependent child in the family in the form of payments of the type described in section 606(b)(2) of this title (which in such a case shall be without regard to clauses (A) through (D) thereof) or section 672 of this title will be made unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made;

(ii) if the parent who has been designated as the principal earner, for purposes of section 607 of this title, makes such refusal, aid will be denied to all members of the family;

(iii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

(iv) if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under paragraph (7)) if that child makes such refusal; and

(v) if such individual makes such refusal, such individual's needs shall not be taken into account in making the determination under paragraph (7);

(G) that the State agency will have in effect a special program which (i) will be administered by a separate administrative unit (which will, to the maximum extent feasible, be located in the same facility as that utilized for the administration of programs established pursuant to section 632(b)(1), (2), or (3) of this title) and the employees of which will, to the maximum extent feasible, perform services only in connection with the administration of such program, (ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A) of this paragraph (I) in accordance with the order of priority listed in section 633(a) of this title, such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training provided under section 632(b)(1), (2), or (3) of this title, and will, when arrangements have been made to provide necessary supportive services, including child care, certify to the Secretary of Labor those individuals who are ready for employment or training under section 632(b)(1), (2), or (3) of this title, (II) such social and supportive services as are necessary to enable such individuals as determined appropriate by the Secretary of Labor actively to engage in other employment-related (including but not limited to employment search) activities, as well as timely payment for necessary employment search expenses, and (III) for a period deemed appropriate by the Secretary of Labor after such an individual accepts employment, such social and supportive services as are reasonable and necessary to enable him to retain such employment, (iii) will participate in the development of operational and employability plans under section 633(b) of this title; and (iv) provides for purposes of clause (ii) that, when more than one kind of child care is available, the mother may choose the type, but she may not refuse to accept child care services if they are available; and

(H) that an individual participating in employment search activities shall not be referred to employment opportunities which do not meet the criteria for appropriate work and training to which an individual may otherwise be assigned under section 632(b)(1), (2), or (3) of this title;

(20) provide that the State has in effect a State plan for foster care and adoption assistance approved under part E of this subchapter;

(21) provide—

(A) that, for purposes of this part, participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept employment; and

(B)(i) that aid to families with dependent children is not payable to a family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and (ii) that no individual's needs shall be included in determining the amount of aid payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike;

(22) provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of—

(A) an overpayment to an individual who is a current recipient of such aid (including a current recipient whose overpayment occurred during a prior period of eligibility), recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member, except that such recovery shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income (without application of paragraph (8)), is less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income (and, in the case of an individual to whom no payment is made for a month solely by reason of recovery of an overpayment, such individual shall be deemed to be a recipient of aid for such month);

(B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family; and

(C) an underpayment, the corrective payment shall be disregarded in determining the income of the family, and shall be disregarded in determining its resources in the month the corrective payment is made and in the following month;

except that no recovery need be attempted or carried out under subparagraph (B) in any case, other than a case involving fraud on the part of the recipient, where (as determined by the State agency in accordance with criteria for determining cost-effectiveness, and with dollar limitations, which shall be prescribed by the Secretary in regulations) the cost of recovery would equal or exceed the amount of the overpayment involved;

(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted;

(24) provide that if an individual is receiving benefits under subchapter XVI of this chapter, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this subchapter and his income and resources shall not be counted as income and resources of a family under this subchapter;

(25) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title;

(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required—

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed,

(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed; and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 606(b)(2) of this title (without regard to clauses (A) through (D) of such section) unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made;

(27) provide that the State has in effect a plan approved under part D of this subchapter and operates a child support program in substantial compliance with such plan;

(28) provide that, in determining the amount of aid to which an eligible family is entitled, any portion of the amounts collected

in any particular month as child support pursuant to a plan approved under part D of this subchapter, and retained by the State under section 657 of this title, which (under the State plan approved under this part as in effect both during July 1975 and during that particular month) would not have caused a reduction in the amount of aid paid to the family if such amounts had been paid directly to the family, shall be added to the amount of aid otherwise payable to such family under the State plan approved under this part;

(29) Repealed. Pub. L. 98-369, div. B, title VI, § 2651(b)(2), July 18, 1984, 98 Stat. 1149

(30) at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under subsection (d) of this section, of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of the State plan for aid to families with dependent children approved under this part, so as (A) to control and account for (i) all the factors in the total eligibility determination process under such plan for aid (including but not limited to (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of such aid and the relative with whom any child who is such an applicant or recipient is living) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction, (II) checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra- and inter-State, for determination and verification of eligibility and payment pursuant to requirements imposed by other provisions of this chapter), (ii) the costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid, (B) to notify the appropriate officials of child support, food stamp, social service, and medical assistance programs approved under subchapter XIX of this chapter whenever the case becomes ineligible or the amount of aid or services is changed, and (C) to provide for security against unauthorized access to, or use of, the data in such system;

(31) provide that, in making the determination for any month under paragraph (7), the State agency shall take into consideration so much of the income of the dependent child's stepparent living in the same home as such child as exceeds the sum of (A) the first $75 of the total of such stepparent's earned income for such month (or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in fulltime employment or not employed throughout the month), (B) the State's standard of need under such plan for a family of the same composition as the stepparent and those other individuals living in the same household as the dependent child and claimed by such stepparent as dependents for purposes of determining his Federal personal income tax liability but whose needs are not taken into account in making the determination under paragraph (7), (C) amounts paid by the stepparent to individuals not living in such household and claimed by him as dependents for purposes of determining his Federal personal income tax liability, and (D) payments by such stepparent of alimony or child support with respect to individuals not living in such household;

(32) provide that no payment of aid shall be made under the plan for any month if the amount of such payment, as determined in accordance with the applicable provisions of the plan and of this part, would be less than $10, but an individual with respect to whom a payment of aid under the plan is denied solely by reason of this paragraph is deemed to be a recipient of aid but shall not be eligible to participate in a community work experience program;

(33) provide that in order for any individual to be considered a dependent child, a caretaker relative whose needs are to be taken into account in making the determination under paragraph (7), or any other person whose needs should be taken into account in making such a determination with respect to the child or relative, such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 1157(c) of title 8 (or of section 1153(a)(7) of title 8 prior to April 1, 1980), or as a result of the application of the provisions of section 1158 or 1182(d)(5) of title 8);

(34) provide that both the standard of need applied to a family and the amount of aid determined to be payable, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount;

(35) at the option of the State, provide—

(A) that as a condition of eligibility for aid under the State plan of any individual claiming such aid who is required to register pursuant to paragraph (19)(A) (or who would be required to register under paragraph (19)(A) but for clause (iii) thereof), including all such individuals or only such groups, types, or classes thereof as the State agency may designate for purposes of this paragraph, such individual will be required to participate in a program of employment search—

(i) beginning at the time he applies for such aid (or an application including his need is filed) and continuing for a period (prescribed by the State) of not more than eight weeks (but this requirement may not be used as a reason for any delay in making a determination of an individual's eligibility for aid or in issuing a payment to or in behalf of any individual who is otherwise eligible for such aid); and

(ii) at such time or times after the close of the period prescribed under clause (i) as the State agency may determine but not to exceed a total of 8 weeks in any 12 consecutive months;

(B) that any individual participating in a program of employment search under this paragraph will be furnished such transportation and other services, or paid (in advance or by way of reimbursement) such amounts to cover transportation costs and other expenses reasonably incurred in meeting requirements imposed on him under this paragraph, as may be necessary to enable such individual to participate in such program; and

(C) that, in the case of an individual who fails without good cause to comply with requirements imposed upon him under this paragraph, the sanctions imposed by paragraph (19)(F) shall be applied in the same manner as if the individual had made a refusal of the type which would cause the provisions of such paragraph (19)(F) to be applied (except that the State may at its option, for purposes of this paragraph, reduce the period for which such sanctions would otherwise be in effect);

(36) provide, at the option of the State, that in making the determination for any month under paragraph (7), the State agency shall not include as income any support or maintenance assistance furnished to or on behalf of the family which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support and maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy;

(37) provide that, in any case where a family has ceased to receive aid under the plan because (by reason of paragraph (8)(B)(ii)(II)) the provisions of paragraph (8)(A)(iv) no longer apply, such family shall be considered for purposes of subchapter XIX of this chapter to be receiving aid to families with dependent children under such plan for a period of 9 months after the last month for which the family actually received such aid; and the State may at its option extend such period by an additional period of up to 6 months in the case of a family that would be eligible during such additional period to receive aid under the plan (without regard to this paragraph) if such paragraph (8)(A)(iv) applied; and [1]

(38) provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include—

(A) any parent of such child, and

(B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 606(a) of this title, if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 405(j) of this title, in the case of benefits provided under subchapter II of this chapter); and

(39) provide that in making the determination under paragraph (7) with respect to a dependent child whose parent or legal guardian is under the age selected by the State pursuant to section 606(a)(2) of this title, the State agency shall (except as otherwise provided in this part) include any income of such minor's own parents or legal guardians who are living in the same home as such minor and dependent child, to the same extent that income of a stepparent is included under paragraph (31).

The Secretary may waive any of the requirements imposed under or in connection with paragraphs (13) and (14) of this subsection to the extent necessary to make such requirements compatible with the corresponding reporting and budgeting requirements by the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.].

[*See main edition for text of* (*b*)]

(c) Compilation of data; publishing of findings; reports to Congress

The Secretary shall, on the basis of his review of the reports received from the States under paragraph (15) of subsection (a) of this section, compile such data as he believes necessary and from time to time publish his findings as to the effectiveness of the programs developed and administered by the States under such paragraph. The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the programs developed and administered by each State under such paragraph (15).

(d) Payments treated as earned income

(1) For purposes of paragraphs (7) and (8) of subsection (a) of this section, any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1954 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit) shall be considered earned income.

(2) In any case in which such advance payments for a taxable year made by all employers to an individual under section 3507 of such Code exceed the amount of such individual's earned income credit allowable under section 32

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[1] So in original. The word "and" probably should not appear.

of such Code for such year, so that such individual is liable under section 32(g) of such Code for a tax equal to such excess, such individual's benefit amount must be appropriately adjusted so as to provide payment to such individual of an amount equal to the amount of the benefits lost by such individual on account of such excess advance payments.

[*See main edition for text of* (*c*)]

(Aug. 14, 1935, ch. 531, title IV, § 402, 49 Stat. 627; Aug. 10, 1939, ch. 666, title IV, § 401, 53 Stat. 1379; Aug. 28, 1950, ch. 809, title III, pt. 2, § 321, pt. 6, § 361(c), (d), 64 Stat. 549, 558; Aug. 1, 1956, ch. 836, title III, § 312(b), 70 Stat. 849; July 25, 1962, Pub. L. 87-543, title I, §§ 103, 104(a)(2), (3)(A), (B), (5)(A), 106(b), 76 Stat. 185, 188; July 30, 1965, Pub. L. 89-97, title IV, §§ 403(b), 410, 79 Stat. 418, 423; Jan. 2, 1968, Pub. L. 90-248, title II, §§ 201(a), (b), 202(a), (b), 204(b), (e), 205(a), 210(a)(2), 211(a), 213(b), 81 Stat. 877, 879, 881, 890, 892, 895, 896, 898; Dec. 28, 1971, Pub. L. 92-223, § 3(a)(1)-(7), 85 Stat. 803, 804; Oct. 30, 1972, Pub. L. 92-603, title II, § 299E(c), title IV, § 414(a), 86 Stat. 1462, 1492; Jan. 4, 1975, Pub. L. 93-647, §§ 3(a)(1), (2), (8), 101(c)(2)-(5), (8), 88 Stat. 2348, 2349, 2359, 2360; Aug. 9, 1975, Pub. L. 94-88, title II, §§ 202, 207, 208(a), 209, 89 Stat. 434, 436, 437; Dec. 20, 1977, Pub. L. 95-216, title IV, § 403(c), 91 Stat. 1561; Apr. 1, 1980, Pub. L. 96-222, title I, § 101(a)(2)(A), 94 Stat. 195; June 9, 1980, Pub. L. 96-265, title IV, §§ 401(a)-(f), 403(a), 406(b), 94 Stat. 460-462, 465, 466; June 17, 1980, Pub. L. 96-272, title I, § 101(a)(3)(A), title III, § 302(a), 94 Stat. 512, 528; Oct. 19, 1980, Pub. L. 96-473, § 6(f), 94 Stat. 2266; Aug. 13, 1981, Pub. L. 97-35, title XXIII, §§ 2301-2306(a), 2310, 2313(b), (c)(1), 2314, 2315(a), 2316, 2318, 2320(a), (b)(1), 2353(b)(1), (c), 95 Stat. 843-846, 852, 854-857, 872; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 151(a), 152(a), 154(a), 96 Stat. 395, 396; Oct. 13, 1982, Pub. L. 97-300, title V, § 503, 96 Stat. 1398; Jan. 6, 1983, Pub. L. 97-424, title V, § 545(b), 96 Stat. 2198; Apr. 20, 1983, Pub. L. 98-21, title IV, § 404(b), 97 Stat. 140; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2621-2624(a), 2625(a), 2626, 2628, 2629, 2631-2634, 2636, 2639(a), (c), 2640(a), (c), 2642(a), (b), 2651(b)(1), (2), 2663(c)(1), (3)(B), (*l*)(1), 98 Stat. 1134-1137, 1141, 1142, 1144-1146, 1149, 1165, 1166, 1171; Aug. 16, 1984, Pub. L. 98-378, § 9(a)(2), 98 Stat. 1316.)

REFERENCES IN TEXT

Parts B, C, and D of this subchapter, referred to in subsec. (a)(9), (11), (19)(C), (F), (27), and (28), are classified to sections 620 et seq., 630 et seq., and 651 et seq., respectively, of this title.

The Food Stamp Act of 1977, referred to in subsec. (a), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2663(c)(1)(E)(i), (ii), substituted "must—" for "must" preceding par. (1) and restructured and realigned the margins of all subdivisions of subsec. (a).

Pub. L. 98-369, § 2628(c), added "The Secretary may waive any of the requirements imposed under or in connection with paragraphs (13) and (14) of this subsection to the extent necessary to make such requirements compatible with the corresponding reporting and budgeting requirements by the Food Stamp Act of 1977." at end of subsec. (a).

Subsec. (a)(5). Pub. L. 98-369, § 2663(*l*)(1), substituted "Secretary" for "Administrator" in two places.

Pub. L. 98-369, § 2663(c)(1)(E)(iii), struck out "and" after the semicolon.

Subsec. (a)(6). Pub. L. 98-369, § 2663(*l*)(1), substituted "Secretary" for "Administrator" in two places.

Subsec. (a)(7)(B). Pub. L. 98-369, § 2626, designated existing provisions after "for purposes of this subparagraph" as cl. (i) and added cls. (ii) and (iii).

Subsec. (a)(8)(A)(ii). Pub. L. 98-369, § 2622, struck out "(or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in full-time employment or not employed throughout the month)" after "for such month".

Subsec. (a)(8)(A)(iv). Pub. L. 98-369, § 2623(a), inserted "(I)" after "equal to" and "(II)" after "plus".

Subsec. (a)(8)(A)(vi). Pub. L. 98-369, § 2640(c), added cl. (vi).

Subsec. (a)(8)(A)(vii). Pub. L. 98-369, § 2642(b), added cl. (vii).

Subsec. (a)(8)(B)(ii)(I). Pub. L. 98-369, § 2623(b), substituted two lettered subdivisions (a) and (b) in subcl. (I) for ", under subparagraph (A)(iv)," after "shall not disregard" and struck out "and subparagraph (A)(iv) has not already been applied to their income for four consecutive months while they were receiving aid under the plan" after "four months preceding such month".

Subsec. (a)(8)(B)(ii)(II). Pub. L. 98-369, § 2623(c), substituted "shall not apply the provisions of subclause (II) of such subparagraph to any month after such month, or apply the provisions of subclause (I) of such subparagraph to any month after the eighth month following such month, for so long as he continues to receive aid under the plan, and shall not apply the provisions of either such subclause to any month thereafter" for "shall not apply the provisions of subparagraph (A)(iv) for so long as he continues to receive aid under the plan and shall not apply such provisions to any month thereafter".

Subsec. (a)(8)(C). Pub. L. 98-369, § 2625(a), added subpar. (C).

Subsec. (a)(9). Pub. L. 98-369, § 2663(c)(1)(A), substituted "use or disclosure" for "use of disclosure".

Pub. L. 98-369, § 2636, added "; but such safeguards shall not prevent the State agency or the local agency responsible for the administration of the State plan in the locality (whether or not the State has enacted legislation allowing public access to Federal welfare records) from furnishing a State or local law enforcement officer, upon his request, with the current address of any recipient if the officer furnishes the agency with such recipient's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive felon, that the location or apprehension of such felon is within the officer's official duties, and that the request is made in the proper exercise of those duties".

Subsec. (a)(13). Pub. L. 98-369, § 2628(a), substituted "with respect to families who are required to report monthly to the State agency pursuant to paragraph (14) (and at the option of the State with respect to other families), provide that—" for "provide that—" in provisions preceding subpar. (A) and "(but only where the Secretary determines it to be appropriate, in the case of families who are required to report monthly to the State agency pursuant to paragraph (14))" for "but only where the Secretary determines it to be appropriate" in subpars. (A) and (B).

Subsec. (a)(14)(A). Pub. L. 98-369, § 2628(b), substituted "with respect to families in the category of recent work history or earned income cases (and at the option of the State with respect to families in other categories), provide (A) that" for "(A) provide that", "(with the prior approval of the Secretary in recent work history and earned income cases)" for "with the prior approval of the Secretary", and "upon a determination that" for "upon the State's showing to the satisfaction of the Secretary that".

Pub. L. 98-369, § 2663(c)(1)(B), which directed the substitution of "provide (A) that" for "(A) provide that" could not be executed in view of the intervening amendment by Pub. L. 98-369, § 2628(b)(1), which included the same substitution.

Subsec. (a)(15). Pub. L. 98-369, § 2663(c)(1)(E)(iv), substituted "paragraph" for "clause" in subpars. (A) and (B).

Subsec. (a)(17). Pub. L. 98-369, § 2632(b)(1), substituted "a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family," for "a person specified in paragraph (8)(A)(i) or (ii)" in provisions preceding subpar. (A).

Pub. L. 98-369, § 2632(b)(2), substituted "an amount of earned or unearned income" for "an amount of income" in provisions preceding subpar. (A).

Pub. L. 98-369, § 2632(a), added provisions following subpar. (B) relating to instances in which the State may recalculate the period of ineligibility for remaining months in the period.

Subsec. (a)(18). Pub. L. 98-369, § 2621, substituted "185 percent" for "150 percent".

Pub. L. 98-369, § 2642(a), added ", except that in determining the total income of the family the State may exclude any earned income of a dependent child who is a full-time student, in such amounts and for such period of time (not to exceed 6 months) as the State may determine".

Subsec. (a)(19)(A)(ix). Pub. L. 98-369, § 2631, added cl. (ix).

Subsec. (a)(19)(D). Pub. L. 98-369, § 2663(c)(1)(E)(v), substituted "paragraph (7)" for "section 602(a)(7) of this title".

Subsec. (a)(19)(F)(i). Pub. L. 98-369, § 2663(c)(1)(E)(iv), substituted "paragraph" for "clause".

Pub. L. 98-369, § 2663(c)(3)(B)(i), substituted "clauses (A) through (D)" for "clauses (A) through (E)".

Pub. L. 98-369, § 2663(c)(1)(C), substituted "or section 672" for "or section 608".

Pub. L. 98-369, § 2634(a), substituted "will be made unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made" for "will be made".

Subsec. (a)(19)(F)(iv), (v). Pub. L. 98-369, § 2663(c)(1)(E)(iv), substituted "paragraph" for "clause".

Subsec. (a)(19)(G)(iv). Pub. L. 98-369, § 2663(c)(1)(D), struck out the comma before "that".

Subsec. (a)(22). Pub. L. 98-369, § 2633, added "(including a current recipient whose overpayment occurred during a prior period of eligibility)" after "current recipient of such aid" in subpar. (A) and "except that no recovery need be attempted or carried out under subparagraph (B) in any case, other than a case involving fraud on the part of the recipient, where (as determined by the State agency in accordance with criteria for determining cost-effectiveness, and with dollar limitations, which shall be prescribed by the Secretary in regulations) the cost of recovery would equal or exceed the amount of the overpayment involved;" after subpar. (C).

Subsec. (a)(25). Pub. L. 98-369, § 2651(b)(1), in amending par. (25) generally, substituted "provide that information is requested and exchanged for purposes of income an eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title" for "provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan".

Subsec. (a)(26)(B). Pub. L. 98-369, § 2663(c)(3)(B)(ii), substituted "clauses (A) through (D)" for "subparagraphs (A) through (E)".

Pub. L. 98-369, § 2634(b), added "unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made".

Subsec. (a)(27). Pub. L. 98-378, § 9(a)(2), substituted "operates a child support program in substantial compliance with such plan" for "operate a child support program in conformity with such plan".

Subsec. (a)(29). Pub. L. 98-369, § 2651(b)(2), struck out par. (29) which provided that, effective Oct. 1, 1979, certain wage information would be requested and utilized.

Subsec. (a)(36). Pub. L. 98-369, § 2639(a), (c), temporarily added par. (36). Former pars. (36) were struck out. See Effective and Termination Dates of 1983 and 1984 Amendment notes below.

Subsec. (a)(37). Pub. L. 98-369, § 2624(a), added par. (37).

Subsec. (a)(38), (39). Pub. L. 98-369, § 2640(a), added pars. (38) and (39).

Subsec. (c). Pub. L. 98-369, § 2663(c)(1)(F), substituted "paragraph" for "clause" in three places.

Subsec. (d)(1). Pub. L. 98-369, § 2629, substituted "For purposes of paragraphs (7) and (8) of subsection (a) of this section, any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1954 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit) shall be considered earned income" for "For purposes of this part, an individual's 'income' shall also include, to the extent and under the circumstances prescribed by the Secretary, an amount (which shall be treated as earned income for purposes of this part) equal to the earned income advance amount (under section 3507(a) of the Internal Revenue Code of 1954) that is (or, upon the filing of an earned income eligibility certificate, would be) payable to such individual.".

Subsec. (d)(2). Pub. L. 98-369, § 2663(c)(1)(G), substituted "section 32" and "section 32(g)" for "section 43" and "section 43(g)", respectively.

1983—Subsec. (a)(36). Pub. L. 98-21 temporarily amended par. (36) by substituting "shall not include as income any support or maintenance assistance furnished to or on behalf of the family which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support and maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which" for "shall not include as income any assistance received to assist in meeting the costs of home energy, including both heating and cooling, which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) (A) is based on need for such assistance, and (B)" after "the State agency". See Effective and Termination Dates of 1983 Amendments note below.

Effective and Termination Dates of 1984 Amendments

Section 9(c) of Pub. L. 98-378 provided that: "The amendments made by this section [amending sections 602, 603, and 652 of this title] shall be effective on and after October 1, 1983."

Section 2624(b) of Pub. L. 98-369 provided that:

"(1) The amendments made by this section [enacting subsec. (a)(37) of this section] shall apply with respect to months beginning on or after October 1, 1984.

"(2) Such amendments shall apply with respect to families which ceased to receive aid under the applicable State plan (for the reason stated in section 402(a)(37) of the Social Security Act as added by subsection (a) of this section [subsec. (a)(37) of this section]) before October 1, 1984, as well as with respect to families which cease to receive aid (for that reason) on or after that date; but any family which ceased to receive such aid before that date, in order to be eligible to be treated as receiving aid under the plan for any period after ceasing to receive such aid (as provided for in such section 402(a)(37))—

"(A) must make its application for such treatment no later than the end of the sixth month after the month in which final regulations governing the application of such section 402(a)(37) are promulgated by the Secretary of Health and Human Services (and in the case of any such family the term 'last month for which the family actually received such aid' as used in such section 402(a)(37) means the month before the month in which the family makes such application);

"(B) must be a family that would have been continuously eligible for aid under the State plan (without regard to the amendments made by this section), from the time it ceased to receive such aid to the time of its application under subparagraph (A), if section 402(a)(8)(A)(iv) of such Act [subsec. (a)(8)(A)(iv) of this section] applied; and

"(C) must fully disclose, in its application under subparagraph (A), any health insurance coverage which its members may have in effect."

Section 2625(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [enacting subsec. (a)(8)(C) of this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Section 2632(b)(2) of Pub. L. 98-369 provided in part that the amendment by section 2632(b)(2) of Pub. L. 98-369 is effective July 18, 1984.

Section 2639(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 602(a)(36) and 1382a(b)(13) of this title and repealing section 545(a)-(c) of Pub. L. 97-424 and section 404 of Pub. L. 98-21, which had previously amended sections 602(a)(36) and 1382a(b)(13) of this title and had provided effective dates for those prior amendments] shall be effective with respect to months which begin after September 30, 1984; but sections 402(a)(36) and 1612(b)(13) of the Social Security Act [sections 602(a)(36) and 1382a(b)(13) of this title] (as amended by subsections (a) and (b) of this section) shall be effective only with respect to months which end before October 1, 1987."

Section 2642(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (a) of this section] shall become effective June 1, 1984."

Section 2646 of Pub. L. 98-369 provided that: "Except as otherwise specifically provided in this subtitle [subtitle B, sections 2611 to 2646 of Pub. L. 98-369], the provisions of parts 1 and 2 [sections 2611 to 2642 of Pub. L. 98-369, enacting section 1320b-6 of this title, amending sections 602, 609, 614, 615, 657, 1320a-6, 1382 to 1382b, 1382j, and 1383 of this title and section 51 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 602, 609, 614, 1320a-6, 1382a, and 1383 of this title and section 51 of Title 26] and the amendments made thereby shall take effect on October 1, 1984."

Amendment by section 2651(b)(1), (2), of Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Section 404(c) of Pub. L. 98-21, which had provided that the amendments made by section 404 [amending sections 602 and 1382a of this title] were effective with respect to months which began after April 1983 and ended before Oct. 1, 1984, was repealed by section 2369(c)(2), (d) of Pub. L. 98-369, effective with respect to months which begin after Sept. 30, 1984.

Section 545(c) of Pub. L. 97-424, which had provided that the amendments made by subsections (a) and (b) of section 545 [amending sections 602 and 1382a of this title] were effective with respect to home energy assistance received in months beginning on or after Jan. 6, 1983, and prior to July 1, 1985, was repealed by section 2639(c)(1), (d) of Pub. L. 98-369, effective with respect to months which begin after Sept. 30, 1984.

WISCONSIN CHILD SUPPORT INITIATIVE

Section 22 of Pub. L. 98-378 provided that:

"(a)(1) If the State of Wisconsin requests the Secretary of Health and Human Services to waive the requirements of parts A and D of title IV of the Social Security Act [42 U.S.C. 601 et seq., 651 et seq.], or to waive the requirements of part D and only those requirements of part A of such Act as relate to the provision of aid to dependent children as defined (without regard to section 407 [42 U.S.C. 607]) in section 406(a) of the Social Security Act [42 U.S.C. 606(a)] (hereafter referred to in this section as 'dependent children in single-parent families'), in order to permit the State to make an adequate test in any county or counties, or throughout the State, of its Child Support Initiative, the Secretary shall waive such requirements if—

"(A) the State provides a complete description, in accordance with paragraph (2), of the program, known as the Initiative, which it will operate in place of the programs under such parts A and D, and makes the description readily available to the public throughout the State;

"(B) the Governor provides assurances that, under the Initiative, assistance will be provided to all children in need of financial support, and the State will continue to operate an effective child support enforcement program;

"(C) the State agrees that, during the conduct of such test, it will continue to determine eligibility for medical assistance under the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], applying the criteria (insofar as may be applicable to members of families with dependent children affected by the Initiative) in effect under its State plan approved under part A of title IV for the month preceding the month in which the Initiative (approved under this section) becomes effective, except that such criteria shall be deemed to have been changed to the extent necessary to comply with generally applicable changes in Federal law or regulations occurring after the date of the enactment of this Act [Aug. 16, 1984];

"(D) the State specifies measurable performance objectives, submits an evaluation plan (including criteria for evaluating the Initiative), and agrees to submit interim and final evaluations and reports, at such time or times and containing such information, as the Secretary may require; and

"(E) the State agrees to obtain, at least once every two years, a financial and compliance audit of the funds received under this section and to obtain, after the close of the operation of the Initiative under this section, such an audit and make it public within the State on a timely basis and provide a copy to the Secretary within 30 days after its completion.

"(2) The program description provided under paragraph (1)(A) shall describe in detail how the proposed

Initiative will affect children and families, with specific reference to the principles for calculating benefits and establishing and enforcing child support obligations. The description shall also include estimates of cost and program effects and provide other relevant information necessary for the Secretary to determine whether the financial well-being of children and their families will be adversely affected by the operation of the Initiative.

"(b) The Child Support Initiative proposed by the State of Wisconsin as detailed in the program description submitted to the Secretary, and the related requested waivers, shall become effective within 120 days after its submission unless the Secretary determines that the financial well-being of children in the State will be adversely affected by the Initiative. The Secretary shall notify the State in writing that, effective with the beginning of the following quarter (or of such later quarter as the State may select), the State may operate its Child Support Initiative instead of its programs of aid to families with dependent children (or, if the State had so requested, instead of its program of aid to dependent children in single-parent families) and child support enforcement in such county or counties, or on a statewide basis, as the State has indicated in its request. Except as specifically provided in subsection (c), no amount will be payable for any quarter under section 403(a) (or under section 403(a) with respect to single-parent families, if the State had so requested), 455(a), or 458 of the Social Security Act [42 U.S.C. 603(a), 655(a), 658] with respect to such county or counties in which the Initiative is in effect.

"(c)(1) For each quarter during which such program is in effect throughout the State, the Secretary will pay to the State the sum of its proportionate share (as defined in paragraph (4)(A)) of each of the following:

"(A) the amount advanced by the Secretary to all the other States (as defined in section 1101(a) of the Social Security Act [42 U.S.C. 1301(a)]) for such quarter with respect to section 403(a)(1) and (2) of such Act [42 U.S.C. 603(a)(1), (2)];

"(B) the amount so advanced by the Secretary with respect to section 403(a)(3) of such Act;

"(C) the amount so advanced by the Secretary with respect to section 455(a) of such Act [42 U.S.C. 655(a)]; and

"(D) the amount so advanced by the Secretary with respect to section 458(a) of such Act [42 U.S.C. 658(a)],

reduced by so much of its proportionate share of support collections on behalf of individuals receiving aid to families with dependent children (as defined in paragraph (4)(B)) as would have been credited to the Federal Government under section 457(b) of such Act [42 U.S.C. 657(b)] had such collections been made in the last quarter of fiscal year 1986.

"(2) If in any quarter the Initiative approved under this section is in operation in fewer than all the counties in the State, the amount paid to the State with respect to the counties to which the waiver under subsection (a) applies shall equal (in lieu of the amount specified in paragraph (1)) the proportionate share with respect to the counties in which the Initiative is operated (as defined in paragraph (5)(A)) of the amount advanced to the State under the four authorities specified in paragraph (1) with respect to all the other counties for such quarter, reduced by so much of the proportionate share of support collections (as defined in paragraph (5)(B)) with respect to the counties in which the Initiative is operated, as would have been credited to the Federal Government under section 457(b) of such Act [42 U.S.C. 657(b)] had such collections been made in the last quarter of fiscal year 1986.

"(3) Payment under this subsection shall be estimated by the Secretary before the beginning of each quarter during which the Initiative is in effect on the basis of the advances made under parts A and D of title IV of the Social Security Act [42 U.S.C. 601 et seq., 651 et seq.] for such quarter, and the Secretary shall make payments for such quarter on a monthly basis (with each payment made no later than the beginning of the month involved), in the amounts so estimated, and adjusted as necessary to reflect the amount of any previously made overpayment or underpayment under this section. Payment of any amount determined with respect to paragraphs (1)(A) and (1)(B) shall be made from amounts appropriated to carry out part A of title IV of the Social Security Act for the appropriate fiscal year; payment of any amount determined with respect to paragraphs (1)(C) and (1)(D) shall be made from amounts appropriated to carry out part D of title IV of the Social Security Act.

"(4)(A) The State's proportionate share of each amount enumerated in paragraph (1) shall be the portion of such amount that bears the same ratio to such amount as the corresponding portion advanced to the State for quarters in fiscal years 1984 through 1986 bears to the total corresponding amount advanced to all the other States for such quarters.

"(B) The State's proportionate share of support collections means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children by all the other States for the quarter involved as such collections by the State for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other States for such quarters.

"(5)(A) The proportionate share with respect to the counties in which the Initiative is operated, in the case of—

"(i) the amount advanced to the State with respect to all other counties under section 403(a)(1) of the Social Security Act [42 U.S.C. 603(a)(1)];

"(ii) the amount so advanced under section 403(a)(3) of such Act [42 U.S.C. 603(a)(3)];

"(iii) the amount so advanced under section 455(a) of such Act [42 U.S.C. 655(a)]; and

"(iv) the amount so advanced with respect to section 458(a) of such Act [42 U.S.C. 658(a)],

is the sum of such amounts, each having been multiplied by the ratio of (I) the corresponding amount advanced with respect to such counties for all quarters in fiscal years 1984 through 1986 to (II) the corresponding amount advanced with respect to all the other counties in the State for all such quarters.

"(B) The proportionate share of support collections for any quarter, with respect to the counties in which the Initiative is operated, means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children with respect to all the other counties in the State for such quarter as such collections by such counties for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other counties in the State for such quarters.

"(6) If the State requests, under subsection (a), waiver of only those requirements under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] as relate to the provision of aid to dependent children in single-parent families, and continues to operate its program of aid to families with dependent children deprived by reason of the unemployment of a parent—

"(A) the State's proportionate share of the amount specified in paragraph (1)(A) (and only that amount) shall be computed under paragraph (4) by application of the ratio of (i) the amount advanced to the State, under section 403(a)(1) of the Social Security Act [42 U.S.C. 603(a)(1)] for quarters in fiscal years 1984 through 1986 with respect to expenditures in the form of aid to dependent children in single-parent families, to (ii) the amount advanced to all the other States, under section 403(a)(1) and (2) of such Act with respect to such expenditures, rather than by application of the ratio specified in paragraph (4); and

"(B) part A of title IV of such Act shall continue to apply to the State's program of aid to families with dependent children deprived by reason of the unemployment of a parent; except that section 403(a)(3) shall not apply during the period that, or in the part or parts of the State where, the Initiative is in effect.

"(d)(1) The State may cease to conduct the Initiative under this section and (if it so chooses) return to the administration of its plans approved under part A and part D of title IV of the Social Security Act [42 U.S.C. 601 et seq., 651 et seq.] upon the provision to the Secretary of at least 3 months advance notice (or such greater advance notice as may be necessary so that administration of such plans will resume at the beginning of a quarter in the fiscal year).

"(2) The Secretary may terminate approval of the Initiative upon the giving of at least 3 months advance notice (or such greater advance notice as may be necessary as specified in paragraph (1)) to the State if it is determined that the financial well-being of children in the State (or county or counties involved) would be better achieved by the operation of programs under part A and part D of title IV of the Social Security Act [42 U.S.C. 601 et seq., 651 et seq.].

"(e) This section shall be in effect for quarters beginning after September 30, 1986, and ending before October 1, 1994."

UTILITY PAYMENTS MADE BY TENANTS IN ASSISTED HOUSING

Pub. L. 98-181, title II, § 221, Nov. 30, 1983, 97 Stat. 1188, as amended by Pub. L. 98-479, title I, § 102(g)(3), Oct. 17, 1984, 98 Stat. 2222, provided that: "Notwithstanding any other provision of law, for purposes of determining eligibility, or the amount of benefits payable, under part A of title IV of the Social Security Act [this part], any utility payment made in lieu of any rental payment by a person living in a dwelling unit in a lower income housing project assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] or section 236 of the National Housing Act [12 U.S.C. 1715z-1] shall be considered to be a shelter payment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 604, 606, 607, 608, 609, 614, 615, 631, 633, 636, 643, 644, 652, 654, 656, 658, 664, 666, 672, 673, 1202, 1308, 1315, 1352, 1396a, 4728 of this title; title 7 sections 2014, 2015; title 11 section 523; title 20 section 2712; title 25 sections 683, 686, 689, 996; title 26 section 6402; title 29 section 1603.

§ 603. Payments to States

(a) Computation of amounts

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

[*See main edition for text of (1) and (2)*]

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan—

[*See main edition for text of (A) to (C)*]

except that no payment shall be made with respect to amounts expended in connection with the provision of any service described in section 1397a(a) of this title other than services furnished under section 602(a)(35)(B) of this title (as described in the parenthetical phrase in subparagraph (C)), and other than services the provision of which is required by section 602(a)(19) of this title to be included in the plan of the State, or which is a service provided in connection with a community work experience program or work supplementation program under section 609 or 614 of this title; and

[*See main edition for text of (4) and (5)*]

No payment shall be made under this subsection with respect to amounts paid to supplement or otherwise increase the amount of aid to families with dependent children found payable in accordance with section 602(a)(13) of this title if such amount is determined to have been paid by the State in recognition of the current or anticipated needs of a family (other than with respect to the first or first and second months of eligibility), but any such amount, if determined to have been paid by the State in recognition of the difference between the current or anticipated needs of a family for a month based upon actual income or other relevant circumstances for such month, and the needs of such family for such month based upon income and other relevant circumstances as retrospectively determined under section 602(a)(13)(A)(ii) of this title, shall not be considered income within the meaning of section 602(a)(13) of this title for the purpose of determining the amount of aid in the succeeding months.

(b) Method of computation and payment

The method of computing and paying such amounts shall be as follows:

[*See main edition for text of (1)*]

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to aid to families with dependent children furnished under the State plan, and (C) reduced by such amount as is necessary to provide the "appropriate reimbursement of the Federal Government" that the State is required to make under section 657 of this title out of that portion of child support collections retained by it pursuant to such section; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount

estimated by the Secretary of Health and Human Services for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Department of the Treasury and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

[*See main edition for text of* (*c*) *to* (*g*)]

(h) Reduction in amount; suspension; continuation; determination of substantial compliance by State

(1) Notwithstanding any other provision of this chapter, if a State's program operated under part D of this subchapter is found as a result of a review conducted under section 652(a)(4) of this title not to have complied substantially with the requirements of such part for any quarter beginning after September 30, 1983, and the Secretary determines that the State's program is not complying substantially with such requirements at the time such finding is made, the amounts otherwise payable to the State under this part for such quarter and each subsequent quarter, prior to the first quarter throughout which the State program is found to be in substantial compliance with such requirements, shall be reduced (subject to paragraph (2)) by—

(A) not less than one nor more than two percent, or

(B) not less than two nor more than three percent, if the finding is the second consecutive such finding made as a result of such a review, or

(C) not less than three nor more than five percent, if the finding is the third or a subsequent consecutive such finding made as a result of such a review.

(2)(A) The reductions required under paragraph (1) shall be suspended for any quarter if—

(i) the State submits a corrective action plan, within a period prescribed by the Secretary following notice of the finding under paragraph (1), which contains steps necessary to achieve substantial compliance within a time period which the Secretary finds to be appropriate;

(ii) the Secretary approves such corrective action plan (and any amendments thereto) as being sufficient to achieve substantial compliance; and

(iii) the Secretary finds that the corrective action plan (and any amendment thereto approved by the Secretary under clause (ii)), is being fully implemented by the State and that the State is progressing in accordance with the timetable contained in the plan to achieve substantial compliance with such requirements.

(B) A suspension of the penalty under subparagraph (A) shall continue until such time as the Secretary determines that—

(i) the State has achieved substantial compliance,

(ii) the State is no longer implementing its corrective action plan, or

(iii) the State is implementing or has implemented its corrective action plan but has failed to achieve substantial compliance within the appropriate time period (as specified in subparagraph (A)(i)).

(C)(i) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(i), the penalty shall not be applied.

(ii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(ii), the penalty shall be applied as if the suspension had not occurred.

(iii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(iii), the penalty shall be applied to all quarters ending after the expiration of the time period specified in such subparagraph (and prior to the first quarter throughout which the State program is found to be in substantial compliance).

(3) For purposes of this subsection, section 602(a)(27) of this title, and section 652(a)(4) of this title, a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the child support enforcement program.

[*See main edition for text of* (*i*)]

(j) Incentive adjustments; "dollar error rate of aid" defined

In the case of Puerto Rico, Guam, or the Virgin Islands, if the dollar error rate of aid furnished by such State under its State plan approved under this part with respect to any six-month period, as based on samples and evaluations thereof, is—

[*See main edition for text of* (*1*) *and* (*2*)]

For purposes of this subsection (i) the term "dollar error rate of aid" means the total of the dollar error rates of aid for (I) payments to ineligible families receiving assistance; (II) overpayments to eligible families receiving assistance; (III) underpayments to eligible families receiving assistance; and (IV) nonpayments to eligible families not receiving assistance due to erroneous terminations or denials, and (ii) the term "erroneous excess payments" means the total of (I) erroneous payments to ineligible families receiving assistance, and (II) overpayments to eligible families receiving assistance.

(Aug. 14, 1935, ch. 531, title IV, § 403, 49 Stat. 628; Aug. 10, 1939, ch. 666, title IV, § 402, 53 Stat. 1380; Aug. 10, 1946, ch. 951, title V, §§ 502, 504, 60 Stat. 992, 993; Aug. 6, 1947, ch. 510, § 3, 61 Stat. 794; June 14, 1948, ch. 468, § 3(b), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 2, § 322(a), pt. 6, § 361(c), (d), 64 Stat. 550, 558; July 18, 1952, ch. 945, § 8(b), 66 Stat. 778; Sept. 1, 1954, ch. 1206, title III, § 303(a), 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§ 302, 312(c), 342, 351(a), 70 Stat. 847, 849, 852, 854; Aug. 28, 1958, Pub. L. 85-840, title V, § 502, 72 Stat. 1048; July 25, 1962, Pub. L. 87-543, title I,

§§ 101(a)(2), (b)(2)(A)-(C), 104(a)(3)(C), 108(b), (c), 76 Stat. 174, 180, 185, 190; July 30, 1965, Pub. L. 89-97, title I, § 122, title IV, § 401(c), 79 Stat. 353, 415; Jan. 2, 1968, Pub. L. 90-248, title II, §§ 201 (c)-(e)(3), 205(b), 206(a), 207(b), 208, 241(b)(2), (3), 81 Stat. 879, 880, 892-894, 916; June 28, 1968, Pub. L. 90-364, title III, § 301, 82 Stat. 273; July 9, 1969, Pub. L. 91-41, § 3, 83 Stat. 45; Dec. 28, 1971, Pub. L. 92-223, § 3(a)(8), (9), 85 Stat. 805; Oct. 20, 1972, Pub. L. 92-512, title III, § 301(b)-(d), 86 Stat. 946, 947; Oct. 30, 1972, Pub. L. 92-603, title II, §§ 299E(d), 299F, 86 Stat. 1462, 1463; Jan. 4, 1975, Pub. L. 93-647, §§ 3(a)(3), (4), (e)(2), 5(b), 101(c)(6)(A), 88 Stat. 2348-2350, 2360; Aug. 9, 1975, Pub. L. 94-88, title II, § 204, 89 Stat. 435; Nov. 12, 1977, Pub. L. 95-171, § 3(a)(1), 91 Stat. 1354; Dec. 20, 1977, Pub. L. 95-216, title IV, §§ 401, 402(a), 91 Stat. 1559, 1560; June 9, 1980, Pub. L. 96-265, title IV, §§ 401(g), (h), 406(a), 407(c), 94 Stat. 462, 465, 467; Aug. 13, 1981, Pub. L. 97-35, title XXI, §§ 2181(a)(1), 2184(b)(1), title XXIII, §§ 2307(b), 2315(b), 2317(a), 2319(a)-(c), 2353(b)(1), (d), 95 Stat. 815, 817, 848, 855-857; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 154(b), 156(a)-(c), 157(a), 96 Stat. 397-399; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(2), (j)(2)(B)(i), (3)(B)(i), 98 Stat. 1166, 1170, 1171; Aug. 16, 1984, Pub. L. 98-378, § 9(b), 98 Stat. 1316.)

References in Text

Part D of this subchapter, referred to in subsec. (h)(1), is classified to section 651 et seq. of this title.

Amendments

1984—Subsec. (a)(3). Pub. L. 98-369, § 2663(j)(3)(B)(i), struck out "of Health, Education, and Welfare" after "Secretary" in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 98-369, § 2663(j)(2)(B)(i), substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

Subsec. (b)(3). Pub. L. 98-369, § 2663(c)(2)(A), substituted "the Fiscal Service of the Department of the Treasury" for "the Division of Disbursement of the Treasury Department".

Pub. L. 98-369, § 2663(j)(2)(B)(i), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (h). Pub. L. 98-375 amended subsec. (h) generally. Prior to amendment subsec. (h) read as follows: "Notwithstanding any other provision of this chapter, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters beginning after December 31, 1976, be reduced by 5 per centum of such amount if such State is found by the Secretary as the result of the annual audit to have failed to have an effective program meeting the requirements of section 602(a)(27) of this title in any fiscal year beginning after September 30, 1976 (but, in the case of the fiscal year beginning October 1, 1976, only considering the second, third, and fourth quarters thereof)."

Subsec. (j). Pub. L. 98-369, § 2663(c)(2)(B), struck out the comma after "excess payments" in cl. (ii) of last sentence.

1982—Subsec. (j). Pub. L. 97-248, § 156(c), substituted "In the case of Puerto Rico, Guam, or the Virgin Islands, if the dollar error rate of aid furnished by such State" for "If the dollar error rate of aid furnished by a State".

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-378 effective Oct. 1, 1983, see section 9(c) of Pub. L. 98-378, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 606. Definitions

When used in this part—

[*See main edition for text of* (*a*)]

(b) The term "aid to families with dependent children" means money payments with respect to a dependent child or dependent children, or, at the option of the State, a pregnant woman but only if it has been medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who, if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children, and includes (1) money payments to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 602 of this title includes provision for—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary; and

(D) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made.

Payments with respect to a dependent child which are intended to enable the recipient to pay for specific goods, services, or items recognized by the State agency as a part of the child's need under the State plan may (in the discretion of the State or local agency administering the plan in the political subdivision) be made, pursuant to a determination referred to in clause (2)(A), in the form of checks drawn jointly to the order of the recipient and the person furnishing such goods, services, or items and negotiable only upon endorsement by both such recipient and such person; and payments so made shall be considered for all of the purposes of this part to be payments described in clause (2). Whenever payments with respect to a dependent child are made in the manner described in clause (2) (including payments described in the preceding sentence), a statement of the specific reasons for making such payments in that manner (on which the determination under clause (2)(A) was based) shall be placed in the file maintained with respect to such child by the State or local agency administering the State plan in the political subdivision. Payments of the type described in clause (2) shall not be subject to the requirements of clauses (A) through (D) of such clause (2), when they are made in the manner described in clause (2) at the request of the family member to whom payment would otherwise be made in an unrestricted manner.

[*See main edition for text of* (*c*) *to* (*f*)]

(g) Notwithstanding the provisions of subsection (b) of this section, the term "aid to families with dependent children" does not mean any—

(1) amount paid to meet the needs of an unborn child; or

(2) amount paid (or by which a payment is increased) to meet the needs of a woman occasioned by or resulting from her pregnancy, unless, as has been medically verified, the woman's child is expected to be born in the month such payments are made (or increased) or within the three-month period following such month of payment.

(h) Each dependent child, and each relative with whom such a child is living (including the spouse of such relative as described in subsection (b) of this section), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) of the collection or increased collection of child or spousal support under part D of this subchapter, and who has received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of subchapter XIX of this chapter for an additional four calendar months beginning with the month in which such ineligibility begins.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2361(c), title VI, § 2663(c)(3)(A), (B)(i), 98 Stat. 1104, 1166; Aug. 16, 1984, Pub. L. 98-378, § 20(a), 98 Stat. 1322.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (h), is classified to section 651 et seq. of this title.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 2663(c)(3)(B)(i), in provisions following subpar. (D) substituted "clauses (A) through (D)" for "clauses (A) through (E)".

Subsec. (b)(2)(D), (E). Pub. L. 98-369, § 2663(c)(3)(A), struck out subpar. (D) which read "aid in the form of foster home care in behalf of children described in section 608(a) of this title; and", and redesignated subpar. (E) as (D).

Subsec. (g). Pub. L. 98-369, § 2361(c), struck out par. (1) designation, substituted "(1)" and "(2)" for "(A)" and "(B)", respectively, and struck out par. (2) which related to pregnant women.

Subsec. (h). Pub. L. 98-378 temporarily added subsec. (h). See Effective and Termination Dates of 1984 Amendments note below.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Section 20(b) of Pub. L. 98-378 provided that: "The amendment made by subsection (a) [enacting subsec. (h) of this section] shall apply only with respect to individuals becoming ineligible for aid to families with dependent children (as described in section 406(h) of the Social Security Act [subsec. (h) of this section] as added by such subsection) on or after the date of the enactment of this Act [Aug. 16, 1984] and before October 1, 1988."

Amendment by section 2361(c) of Pub. L. 98-369 applicable to calendar quarters beginning on or after Oct. 1, 1984, without regard to whether or not final regulations to carry out the amendment have been promulgated by such date, except as otherwise provided, see section 2361(d) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 1396a of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

§ 607. Dependent children of unemployed parents

[*See main edition for text of* (*a*)]

(b) Requirements of State plan

The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title—

(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) of this section when—

[*See main edition for text of* (*A*) *and* (*B*)]

(C)(i) such parent has 6 or more quarters of work (as defined in subsection (d)(1) of this section) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) such parent received unemployment compensation under an unemployment compensation law of a State or of the United States, or such parent was qualified (within the meaning of subsection (d)(3) of this section) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

(2) provides—

(A) for such assurances as will satisfy the Secretary that unemployed parents of dependent children as defined in subsection (a) of this section will be certified to the Secretary of Labor as provided in section 602(a)(19) of this title within 30 days after receipt of aid with respect to such children;

[*See main edition for text of* (*B*) *to* (*D*); (*c*) *and* (*d*)]

(e) Agreement with States for simplification of procedures

The Secretary and the Secretary of Labor shall jointly enter into an agreement with each State which is able and willing to do so for the purpose of (1) simplifying the procedures to be followed by unemployed parents and other unemployed persons in such State in registering pursuant to section 602(a)(19) of this title for the work incentive program established by part C of this subchapter and in registering with public employment offices (under this section and otherwise) or in connection with applications for unemployment compensation, by reducing the number of locations or agencies where such persons must go in order to register for such programs and in connection with such applications, and (2) providing where possible for a single registration satisfying this section and the requirements of both the work incentive program and the applicable unemployment compensation laws.

(Aug. 14, 1935, ch. 531, title IV, § 407, as added May 8, 1961, Pub. L. 87-31, § 1, 75 Stat. 75, and amended July 25, 1962, Pub. L. 87-543, title I, §§ 104(a)(3)(E), 131(a), 134, 76 Stat. 185, 193, 196; Oct. 13, 1964, Pub. L. 88-641, § 2(b), 78 Stat. 1042; June 29, 1967, Pub. L. 90-36, § 2, 81 Stat. 94; Jan. 2, 1968, Pub. L. 90-248, title II, § 203(a), 81 Stat. 882; June 28, 1968, Pub. L. 90-364, title III, § 302, 82 Stat. 273; Dec. 28, 1971, Pub. L. 92-223, § 3(a)(10), (11), 85 Stat. 805; Oct. 20, 1976, Pub. L. 94-566, title V, § 507(a), (b), (d), 90 Stat. 2688; Aug. 13, 1981, Pub. L. 97-35, title XXIII, §§ 2313(a)(2)-(7), (c)(2), 2353(q), 95 Stat. 853, 854, 874; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(4), (j)(3)(B)(ii), 98 Stat. 1166, 1171.)

AMENDMENTS

1984—Subsec. (b)(1)(C). Pub. L. 98-369, § 2663(c)(4)(A), substituted "such parent" for "such father" and "he" wherever appearing.

Subsec. (b)(2)(A). Pub. L. 98-369, § 2663(c)(4)(B), substituted "30 days" for "thirty days".

Subsec. (e). Pub. L. 98-369, § 2663(j)(3)(B)(ii), struck out "of Health, Education, and Welfare" after "The Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 606, 608, 633, 672, 673, 1315, 1396d of this title.

§ 608. Payment to States for foster home care of dependent children; definitions

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment of par. (a) of this section and enactment of second paragraph following par. (f) by section 102(b) of Pub. L. 96-272 effective only with respect to expenditures made after Sept. 30, 1979, and before Oct. 1, 1985, see section 102(c) of Pub. L. 96-272, as amended, set out as a note under section 672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 606, 674, 8624 of this title.

§ 609. Community work experience programs

(a) Establishment and purpose; compensation for work performed; State program

(1) Any State which chooses to do so may establish a community work experience program in accordance with this section. The purpose of the community work experience program is to provide experience and training for individuals not otherwise able to obtain employment, in order to assist them to move into regular employment. Community work experience programs shall be designed to improve the employability of participants through actual work experience and training and to enable individuals employed under community work experience programs to move promptly into regular public or private employment. The facilities of the State public employment offices may be utilized to find employment opportunities for recipients under this program. Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. To the extent possible, the prior training, experience, and skills of a recipient shall be utilized in making appropriate work experience assignments. A community work experience program established under this section shall provide—

(A) appropriate standards for health, safety, and other conditions applicable to the performance of work;

(B) that the program does not result in displacement of persons currently employed, or the filling of established unfilled position vacancies;

[*See main edition for text of* (*C*) *to* (*E*)]

(F) that (i) except as provided in clause (ii) provision will be made for transportation and other costs, not in excess of an amount established by the Secretary, reasonably necessary and directly related to participation in the program, and (ii) to the extent that the State is unable to provide for the costs involved through the furnishing of services directly to the individuals participating in the program, participants who are recipients of aid under the State's plan approved under section 602 of this title will instead be reimbursed for transportation costs directly related to their participation in the program (in amounts equal to the cost of transportation by the most appropriate means as determined by the State agency), and for day care expenses directly attributable to such participation (in amounts determined by the State agency to be reasonable, necessary, and cost-effective but not in excess of the comparable maximum day care deduction allowed under section 602(a)(8)(A)(iii) of this title for recipients of aid under the plan generally); and amounts paid as reimbursement to participants under clause (i) or (ii) shall be considered, for purposes of section 603(a) of this title, to be expenditures made for the proper and efficient administration of the State's plan approved under section 602 of this title.

[*See main edition for text of* (*2*)]

(3) Nothing in this part or part C of this subchapter, or in any State plan approved under this part, shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate, whether or not such terms, conditions, and cases are consistent with section 602(a)(19) of this title or part C of this subchapter) a community work experience program in accordance with this section.

(4)(A) Participants in community work experience programs under this section may, subject to subparagraph (B), perform work in the public interest (which otherwise meets the requirements of this section) for a Federal office or agency with its consent, and, notwithstanding section 1342 of title 31 or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

(B) The State agency shall provide appropriate workers' compensation and tort claims protection to each participant performing work for a Federal office or agency pursuant to subparagraph (A) on the same basis as such compensation and protection are provided to other participants in community work experience programs in the State.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2627, 2641(a), 2663(c)(5), 98 Stat. 1136, 1146, 1166.)

AMENDMENTS

1984—Subsec. (a)(1)(B). Pub. L. 98-369, § 2663(c)(5)(A), substituted "vacancies" for "vacanies".

Subsec. (a)(1)(F)(i). Pub. L. 98-369, § 2627(1), added "(i) except as provided in clause (ii)" after "that".

Subsec. (a)(1)(F)(ii). Pub. L. 98-369, § 2627(2), added cl. (ii).

Subsec. (a)(3). Pub. L. 98-369, § 2663(c)(5)(B), substituted "part C" for "part (C)" after "section 602(a)(19) of this title or."

Subsec. (a)(4). Pub. L. 98-369, § 2641(a), added par. (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2641(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (a)(4) of this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2627 of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 614 of this title; title 7 section 2029.

§ 610. Food stamp program coupons

(a) Option to deduct charges from aid

Any State plan for aid and services to needy families with children may (but is not required under this subchapter or any other provision of Federal law to) provide for the institution of procedures, in any or all areas of the State, by the State agency administering or supervising the administration of such plan under which any household participating in the food stamp program established by the Food Stamp Act of 1977, as amended [7 U.S.C. 2011 et seq.], will be entitled, if it so elects, to have the charges, if any, for its coupon allotment under such program deducted from any aid, in the form of money payments, which is (or, except for the deduction of such charge, would be) payable to or with respect to such household (or any member or members thereof) under such plan and have its coupon allotment distributed to it with such aid.

[*See main edition for text of* (*b*)]

(c) Failure to adopt procedures

Notwithstanding any other provision of law, no agency which is designated as a State agency for any State under or pursuant to the Food Stamp Act of 1977, as amended [7 U.S.C. 2011 et seq.], shall be regarded as having failed to comply with any requirement imposed by or pursuant to such Act solely because of the failure, of the State agency administering or supervising the administration of the State plan (approved under this part) of such State, to institute or carry out a procedure, described in subsection (a) of this section.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(6), 98 Stat. 1166.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, as amended, referred to in subsecs. (a) and (c), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

1984—Subsecs. (a), (c). Pub. L. 98-369 substituted "Food Stamp Act of 1977" for "Food Stamp Act of 1964".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 611. Repealed. Pub. L. 98-369, div. B, title VI, § 2651(b)(3), July 18, 1984, 98 Stat. 1149

Section, act Aug. 14, 1935, ch. 531, title IV, § 411, as added Dec. 20, 1977, Pub. L. 95-216, title IV, § 403(a), 91 Stat. 1561, related to availability of wage information to States and political subdivisions. See section 1320b-7 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

§ 614. Work supplementation program

[*See main edition for text of* (*a*)]

(b) Federal funds paid to State to support program; establishment of standards by State; adjustment of aid payable to recipients

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Notwithstanding any other provision of law, a State may make further adjustments in the amounts of aid paid under the plan to different categories of recipients (as determined under paragraph (4)) in order to offset increases in benefits from needs related programs (other than the State plan approved under this part) as the State determines to be necessary and appropriate to further the purposes of the work supplementation program.

(6) Notwithstanding section 602(a)(8) of this title or any other provision of law, a State operating a work supplementation program under this section (A) may reduce or eliminate the amount of earned income to be disregarded under the State plan as the State determines to be necessary and appropriate to further the purposes of the work supplementation program, and (B) during one or more of the first nine months of an individual's employment pursuant to a program under this section, may apply to the wages of the individual the provisions of section 602(a)(8)(A)(iv) of this title without regard to the provisions of (B)(ii)(II) [1] of such section.

(c) Eligible individual; supplemental job; voluntary participation by eligible individual

[*See main edition for text of* (*1*) *and* (*2*)]

(3) For purposes of this section, a supplemented job is—

(A) a job position provided to an eligible individual by the State or local agency administering the State plan under this part; or

(B) a job position provided to an eligible individual by any other employer for which all or part of the wages are paid by such State or local agency.

A State may provide or subsidize any job position under the program as such State determines to be appropriate, but acceptance of any such position shall be voluntary.

(d) Federal share

The amount of the Federal payment to a State under section 603 of this title for expenditures incurred in making payments to individuals and employers under a work supplementation program shall not exceed an amount equal to the amount which would otherwise be payable under such section if the family of each individual employed in the program established in such State under this section had received the maximum amount of aid payable under the State plan to such a family with no income (without regard to adjustments under subsection (b) of this section) for a period of months equal to the lesser of (1) nine months, or (2) the number of months in which such individual was employed in such program.

[*See main edition for text of* (*e*) *to* (*g*)]

(h) Coordination with other statutory work requirements

No individual receiving a grant under the State plan shall be excused, by reason of the fact that such State has a work supplementation program, from any requirement of this part or part C of this subchapter relating to work requirements (except during any period in which such individual is employed under such work supplementation program).

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2638(a), 2663(c)(7)(A), 98 Stat. 1143, 1166.)

AMENDMENTS

1984—Subsec. (b)(5). Pub. L. 98-369, § 2663(c)(7)(A), substituted "recipients" for "receipients".

Subsec. (b)(6). Pub. L. 98-369, § 2638(a)(1), added "(A)" before "may" and added cl. (B).

Subsec. (c)(3)(A). Pub. L. 98-369, § 2638(a)(2)(A), inserted "or" after the semicolon.

Subsec. (c)(3)(B). Pub. L. 98-369, § 2638(a)(2)(B), (C), substituted "any other employer" for "a public or nonprofit entity" and substituted a period for "; or" after "local agency".

Subsec. (c)(3)(C). Pub. L. 98-369, § 2638(a)(2)(D), struck out subpar. (C) which related to a job provided by a proprietary entity involving child day care services for which all or part of the wages are paid by a State or local agency as being a supplemented job.

Subsec. (d). Pub. L. 98-369, § 2638(a)(3), substituted "for expenditures incurred in making payments to individuals and employers under" for "for any quarter for expenditures incurred in operating", and substituted "amount which would otherwise be payable under such section if the family of each individual employed in the program established in such State under this section had received the maximum amount of aid payable under the State plan to such a family with no income (without regard to adjustments under subsection (b) of this section) for a period of months equal to the lesser of (1) nine months, or (2) the number of months in which such individual was employed in such program" for "difference between—(1) the amount which would have been paid under section 603 of this title to such State for such quarter under the State plan if it did not have a work supplementation program in effect and had not altered its State plan accordingly, as such State plan was in effect in May 1981, or as modified thereafter as required by Federal law; and (2) the amount paid to such State under section 603 of this title for such quarter exclusive of the amount so paid for such quarter for the work supplementation program".

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[1] So in original. Probably should be "subsection (a)(8)(B)(ii)(II)".

Subsec. (h). Pub. L. 98-369, § 2638(a)(4), added "(except during any period in which such individual is employed under such work supplementation program)".

Effective Date of 1984 Amendment

Section 2638(c)(1) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending subsecs. (b)(6), (c), (d), and (h) of this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Section Referred to in Other Sections

This section is referred to in sections 603, 1396a of this title; title 26 section 51.

§ 615. Attribution of income and resources of sponsor and spouse to alien

[*See main edition for text of* (*a*)]

(b) Computation

(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the unearned income of an alien for any month shall be determined as follows:

[*See main edition for text of* (*A*)]

(B) the amount determined under subparagraph (A) shall be reduced by an amount equal to the sum of—

[*See main edition for text of* (*i*)]

(ii) the cash needs standard established by the State under its plan for a family of the same size and composition as the sponsor and those other individuals living in the same household as the sponsor who are claimed by him as dependents for purposes of determining his Federal personal income tax liability but whose needs are not taken into account in making a determination under section 602(a)(7) of this title;

[*See main edition for text of* (*iii*) *and* (*iv*), (*2*)]

(c) Provision of information by alien concerning his sponsor; receipt of information from Departments of State and Justice

(1) Any individual who is an alien and whose sponsor was a public or private agency shall be ineligible for aid under a State plan approved under this part during the period of three years after his or her entry into the United States, unless the State agency administering such plan determines that such sponsor either no longer exists or has become unable to meet such individual's needs; and such determination shall be made by the State agency based upon such criteria as it may specify in the State plan, and upon such documentary evidence as it may therein require. Any such individual, and any other individual who is an alien (as a condition of his or her eligibility for aid under a State plan approved under this part during the period of three years after his or her entry into the United States), shall be required to provide to the State agency administering such plan such information and documentation with respect to his sponsor as may be necessary in order for the State agency to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be required to provide to the State agency such information and documentation as it may request and which such alien or his sponsor provided in support of such alien's immigration application.

[*See main edition for text of* (*2*); (*d*) *to* (*f*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2635, 2663(c)(7)(B), 98 Stat. 1142, 1166.)

Amendments

1984—Subsec. (b)(1)(B)(ii). Pub. L. 98-369, § 2663(c)(7)(B), substituted "determining" for "determinig".

Subsec. (c)(1). Pub. L. 98-369, § 2635, substituted "Any individual who is an alien and whose sponsor was a public or private agency shall be ineligible for aid under a State plan approved under this part during the period of three years after his or her entry into the United States, unless the State agency administering such plan determines that such sponsor either no longer exists or has become unable to meet such individual's needs; and such determination shall be made by the State agency based upon such criteria as it may specify in the State plan, and upon such documentary evidence as it may therein require. Any such individual, and any other individual who is an alien (as a condition of his or her eligibility for aid under a State plan approved under this part during the period of three years after his or her entry into the United States), shall be required to provide" for "Any individual who is an alien shall, during the period of three years after entry into the United States, in order to be eligible for aid under a State plan approved under this part, be required to provide".

Effective Date of 1984 Amendment

Amendment by section 2635 of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Part B—Child Welfare Services

Part Referred to in Other Sections

This part is referred to in sections 300z-5, 602, 671, 672, 674, 675, 676 of this title; title 8 section 1522; title 25 section 1931; title 40 App. section 202.

§ 620. Authorization of appropriations

[*See main edition for text of* (*a*)]

(b) Funds appropriated for any fiscal year pursuant to the authorization contained in subsection (a) of this section shall be included in the appropriation Act (or supplemental appropriation Act) for the fiscal year preceding the fiscal year for which such funds are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding the fact that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(As amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(8), 98 Stat. 1166.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 struck out the comma after "preceding sentence".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

PART C—WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID UNDER STATE PLAN APPROVED UNDER PART A

§ 631. Authorization of appropriations

(a) Transfer of moneys

There is hereby authorized to be appropriated to the Secretary of Health and Human Services for each fiscal year a sum sufficient to carry out the purposes of this part. The Secretary of Health and Human Services shall transfer to the Secretary of Labor from time to time sufficient amounts, out of the moneys appropriated pursuant to this section, to enable him to carry out such purposes.

[*See main edition for text of* (*b*) *and* (*c*)]

(Aug. 14, 1935, ch. 531, title IV, § 431, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 884, and amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(2), 85 Stat. 805; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(ii), 98 Stat. 1170.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted "Health and Human Services" for "Health, Education, and Welfare" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 632. Establishment of programs

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Use of authorities for providing training and employment services and opportunities; referrals under job training partnership provisions; use of funds; reimbursement of agencies for services

In providing the training and employment services and opportunities required by this part, the Secretary shall, to the maximum extent feasible, assure that such services and opportunities are provided by using all authority available under this chapter or any other Act. In order to assure that the services and opportunities so required are provided, the Secretary (1) shall assure, when appropriate, that registrants under this part are referred for training and employment services under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], and (2) may use the funds appropriated under this part to provide programs required by this part through such other Acts to the same extent and under the same conditions (except as regards the Federal matching percentage) as if appropriated under such other Act and, in making use of the programs of other Federal, State, or local agencies (public or private), the Secretary may reimburse such agencies for services rendered to individuals under this part to the extent such services and opportunities are not otherwise available on a nonreimbursable basis.

[*See main edition for text of* (*e*)]

(f) Private industry council for service delivery area; functions; institutional training

(1) The Secretary shall utilize the services of each private industry council (as established under the Job Training Partnership Act [29 U.S.C. 1501 et seq.]) to identify and provide advice on the types of jobs available or likely to become available in the service delivery area of such council.

[*See main edition for text of* (*2*)]

(As amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(k), 98 Stat. 1171.)

AMENDMENTS

1984—Subsecs. (d), (f)(1). Pub. L. 98–369 struck out "of Labor" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 603, 607, 631, 633, 634, 636, 642 of this title; title 26 section 51.

§ 633. Operation of program

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Refusal of employment

Where an individual, certified to the Secretary pursuant to section 602(a)(19)(G) of this title refuses without good cause to accept employment or participate in a project under a program established by this part, the Secretary shall (after providing opportunity for fair hearing) notify the State agency which certified such individual and submit such other information as he may have with respect to such refusal.

[*See main edition for text of* (*h*) *and* (*i*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(k), 98 Stat. 1171.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-369 struck out "of Labor" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 634. Incentive payments and allowances for transportation and other costs

[*See main edition for text of* (*a*)]

(b) The Secretary is also authorized to pay, to any member of a family participating in manpower training under this part, allowances for transportation and other costs incurred by such member, to the extent such costs are necessary to and directly related to the participation by such member in such training.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(k), 98 Stat. 1171.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 struck out "of Labor" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 636. Period of enrollment

[*See main edition for text of* (*a*)]

(b) Services provided under this part may continue to be provided to an individual for such period as the Secretary determines (in accordance with regulations prescribed jointly by him and the Secretary of Health and Human Services) is necessary to qualify him fully for employment even though his earnings disqualify him from aid under a State plan approved under section 602 of this title.

(Aug. 14, 1935, ch. 531, title IV, § 436, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 204(a), 81 Stat. 887, and amended Dec. 28, 1971, Pub. L. 92-223, § 3(b)(6), 85 Stat. 808; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(B)(iii), 98 Stat. 1170.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 639. Rules and regulations

The Secretary and the Secretary of Health and Human Services shall, not later than July 1, 1972, issue regulations to carry out the purposes of this part. Such regulations shall provide for the establishment, jointly by the Secretary and the Secretary of Health and Human Services, of (1) a national coordination committee the duty of which shall be to establish uniform reporting and similar requirements for the administration of this part, and (2) a regional coordination committee for each region which shall be responsible for review and approval of statewide operational plans developed pursuant to section 633(b) of this title.

(Aug. 14, 1935, ch. 531, title IV, § 439, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 204(a), 81 Stat. 888, and amended Dec. 28, 1971, Pub. L. 92-223, § 3(b)(8), 85 Stat. 808; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(B)(iv), 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 641. Evaluation and research

The Secretary shall (jointly with the Secretary of Health and Human Services) provide for the continuing evaluation of the work incentive programs established by this part, including their effectiveness in achieving stated goals and their impact on other related programs. He also may conduct research regarding ways to increase the effectiveness of such programs. He may, for this purpose, contract for independent evaluations of and research regarding such programs or individual projects under such programs. For purposes of sections 635 and 643 of this title, the costs of carrying out this section shall not be regarded as costs of carrying out work incentive programs established by this part. Nothing in this section shall be construed as authorizing the Secretary to enter into any contract with any organization after June 1, 1970, for the dissemination by such organization of information about programs authorized to be carried on under this part.

(Aug. 14, 1935, ch. 531, title IV, § 441, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 204(a), 81 Stat. 888, and amended Dec. 28, 1971, Pub. L. 92-223, § 3(b)(9), 85 Stat. 808; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(9), (j)(2)(B)(v), 98 Stat. 1166, 1170.)

AMENDMENTS

1984—Pub. L. 98-369, § 2663(c)(9), struck out subsec. (a) designation.

Pub. L. 98-369, § 2663(j)(2)(B)(v), substituted "Health and Human Services" for "Health, Education, and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 643. Collection of State share

If a non-Federal contribution of 10 per centum of the costs of the work incentive programs established by this part is not made in any State (as specified in section 602(a) of this title), the Secretary of Health and Human Services may withhold any action under section 604 of this title because of the State's failure to comply substantially with a provision required by section 602 of this title. If the Secretary of Health and Human Services does withhold such action, he shall, after reasonable notice and opportunity for hearing to the appropriate State agency or agencies, withhold any payments to be made to the State under sections 303(a), 603(a), 1203(a), 1353(a), 1383(a), and 1396b(a) of this title until the amount so withheld (including any amounts contributed by the State pursuant to the requirement in section 602(a)(19)(C) of this title) equals 10 per centum of the costs of such work incentive programs. Such withholding shall remain in effect until such time as the Secretary has assurances from the State that such 10 per centum will be contributed as required by section 602 of this title. Amounts so withheld shall be deemed to have been paid to the State under such sections and shall be paid by the Secretary of Health and Human Services to the Secretary. Such payment shall be considered a non-Federal contribution for purposes of section 635 of this title.

(Aug. 14, 1935, ch. 531, title IV, § 443, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 204(a), 81 Stat. 888, and amended Dec. 28, 1971, Pub. L. 92-223, § 3(b)(11), 85 Stat. 808; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(B)(vi), 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 644. Agreements with other agencies providing assistance to families of unemployed parents

(a) Authorization to enter into agreements

The Secretary is authorized to enter into an agreement (in accordance with the succeeding provisions of this section) with any qualified State agency (as described in subsection (b) of this section) under which the program established by the preceding sections of this part C will (except as otherwise provided in this section) be applicable to individuals certified by such State agency in the same manner, to the same extent, and under the same conditions as such program is applicable with respect to individuals certified to the Secretary by a State agency administering or supervising the administration of a State plan approved by the Secretary of Health and Human Services under part A of this subchapter.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Public service employment lists

The Secretary shall, at the request of any qualified State agency referred to in subsection (a) of this section and upon receipt from it of a list of the names of individuals referred to the Secretary, furnish to such agency the names of each individual on such list participating in public service employment under section 633(a)(3) of this title whom the Secretary determines should continue to participate in such employment. The Secretary shall not comply with any such request with respect to an individual on such list unless such individual has been certified to the Secretary by such agency under section 602(a)(19)(G) of this title for a period of at least six months.

(Aug. 14, 1935, ch. 531, title IV, § 444, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 204(a), 81 Stat. 889, and amended Dec. 28, 1971, Pub. L. 92-223, § 3(b)(12), 85 Stat. 809; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(10), (j)(2)(B)(vii), 98 Stat. 1166, 1170.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2663(j)(2)(B)(vii), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (d). Pub. L. 98-369, § 2663(c)(10), substituted "referred" for "rereferred" after "names of individuals".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 645. Work incentive demonstration program

[*See main edition for text of* (*a*)]

(b) Application; contents of State program plan; approval

(1) Not later than June 30, 1985, the Governor of a State which desires to operate a work incentive demonstration program under this section shall submit to the Secretary of Health

and Human Services a letter of application stating such intent. Accompanying the letter of application shall be a State program plan which must—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) describe the techniques to be used to achieve the objectives of the work incentive demonstration program, which may include but shall not be limited to: maximum periods of participation, job training, job find clubs, grant diversion to either public or private sector employers, services contracts with State employment services, service delivery areas under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], or private placement agencies, targeted jobs tax credit outreach campaigns, and performance-based placement incentives; and

[*See main edition for text of* (*F*), (*2*) *and* (*3*); (*c*)]

(d) Term of program; discretionary planning period

A State's work incentive demonstration program, if initially approved, shall be in force for a three-year period, except that in the case of a State which has submitted a letter of application on or before June 30, 1984, such program may continue in force until June 30, 1987. During this period, the State may elect to use up to six months for planning purposes. During such planning period, all requirements of part A of this subchapter and this part C shall remain in full force and effect.

(e) Evaluations

The Secretary of Health and Human Services shall conduct two evaluations of a State's work incentive demonstration program. The first evaluation shall be conducted at the conclusion of the first twelve months of operation of the demonstration program. The second evaluation shall be conducted three years from the date of the Secretary's approval of the demonstration program. Both evaluations shall compare placement rates during the demonstration program with placement rates achieved during a number of previous years, to be determined by the Secretary of Health and Human Services.

(f) State funds for administration and operation of program; study of allocation formula; report to Congress

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The Secretary of Health and Human Services shall conduct, in consultation with the States, a thorough study of the allocation formula described in paragraph (1) of this subsection and report to Congress no later than April 1, 1985, on the findings of this study with recommendations, if appropriate, for modifying the allocation formula to take into account State performance and to provide for the equitable distribution of funds.

[*See main edition for text of* (*g*)]

(Aug. 14, 1935, ch. 531, title IV, § 445, as added Aug. 13, 1981, Pub. L. 97-35, title XXIII, § 2309, 95 Stat. 850, and amended Sept. 3, 1982, Pub. L. 97-248, title I, § 158(a), (b), 96 Stat. 399; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(11), 98 Stat. 1166; Aug. 22, 1984, Pub. L. 98-396, title I, § 101, 98 Stat. 1392, 1393.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-396 substituted "June 30, 1985" for "June 30, 1984".

Subsec. (b)(1)(E). Pub. L. 98-396 which directed the substitution of "service delivery areas under the Job Training Partnership Act," for "prime sponsors under the Comprehensive Employment and Training Act of 1973," was executed by substituting "service delivery areas" for "prime sponsors" as the probable intent of Congress in view of the intervening substitution of "Job Training Partnership Act" for "Comprehensive Employment and Training Act of 1973" by Pub. L. 98-369.

Pub. L. 98-369 substituted "Job Training Partnership Act" for "Comprehensive Employment and Training Act of 1973".

Subsec. (d). Pub. L. 98-396 added provision that in the case of a State which has submitted a letter of application on or before June 30, 1984, such program may continue in force until June 30, 1987.

Subsec. (e). Pub. L. 98-396 substituted provision that the second evaluation shall be conducted three years from the date of the Secretary's approval of the demonstration program for provision that the second evaluation had to be conducted at the conclusion of the demonstration program.

Subsec. (f)(3). Pub. L. 98-396 added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 101 of Pub. L. 98-396 provided in part that: "These provisions [amending this section] shall become effective on the date of the enactment of this Act [Aug. 22, 1984]."

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 405, 503, 602, 603, 603a, 606, 671, 1306, 1315, 1320b-7 of this title; title 26 section 6103; title 29 section 49b.

§ 651. Authorization of appropriations

For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

(As amended Aug. 16, 1984, Pub. L. 98-378, § 2, 98 Stat. 1305.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1984—Pub. L. 98-378 substituted "obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested," for "and obtaining child and spousal support,".

SHORT TITLE

This part is popularly known as the "Child Support Enforcement Act".

§ 652. Duties of Secretary

(a) Establishment of separate organizational unit; duties

The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title), conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 603(h) of this title whether the actual operation of such programs in each State conforms to the requirements of this part;

[*See main edition for text of* (*5*) *to* (*9*)]

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

[*See main edition for text of* (*A*) *and* (*B*)]

(C) the following data, with the data required under each clause being separately stated for cases where the child is receiving aid to families with dependent children (or foster care maintenance payments under part E of this subchapter), cases where the child was formerly receiving such aid or payments and the State is continuing to collect support assigned to it under section 602(a)(26) or 671(a)(17) of this title, and all other cases under this part:

(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted, and the total amount of such obligations;

(ii) the total number of cases in which a support obligation has been established, and the total amount of such obligations;

(iii) the number of cases described in clause (i) in which support was collected during such fiscal year, and the total amount of such collections;

(iv) the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and

(v) the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;

[*See main edition for text of* (*D*) *to* (*F*)]

(G) data, by State, on the use of Federal courts and on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government;

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report; and

(I) the amount of administrative costs which are expended in each functional category of expenditures, including establishment of paternity.

The information contained in any such report under subparagraph (A) shall specifically include (i) the total amount of child support payments collected as a result of services furnished during the fiscal year involved to individuals under section 654(6) of this title, (ii) the cost to the States and to the Federal Government of furnishing such services to those individuals, and (iii) the extent to which the furnishing of such services was successful in providing sufficient support to those individuals to assure that they did not require assistance under the State plan approved under part A of this subchapter.

[*See main edition for text of* (*b*)]

(c) Revolving fund; appropriations

[*See main edition for text of* (*1*)]

(2) There is hereby appropriated to the fund, out of any moneys in the Treasury not otherwise appropriated, amounts equal to the amounts collected under section 6305 the Internal Revenue Code of 1954, reduced by the amounts credited or refunded as overpayments of the amounts so collected. The amounts appropriated by the preceding sentence shall be transferred at least quarterly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the

extent prior estimates were in excess of or less than the amounts required to be transferred.

(d) Child support management information system

(1) The Secretary shall not approve the initial and annually updated advance automatic data processing planning document, referred to in section 654(16) of this title, unless he finds that such document, when implemented, will generally carry out the objectives of the management system referred to in such subsection, and such document—

[*See main edition for text of* (*A*)]

(B) contains a description of the proposed management system referred to in section 655(a)(1)(B) of this title, including a description of information flows, input data, and output reports and uses,

[*See main edition for text of* (*C*) *to* (*G*)]

(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a) of this section, on a continuing basis, review, assess, and inspect the planning, design, and operation of, management information systems referred to in section 655(a)(1)(B) of this title, with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 654(16) of this title.

(B) If the Secretary finds with respect to any statewide management information system referred to in section 655(a)(1)(B) of this title that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automatic data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.

(e) Technical assistance to States

The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 655(a)(1)(B) of this title.

(f) Regulations

The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under subchapter XIX of this chapter with respect to the availability of health insurance coverage.

(Aug. 14, 1935, ch. 531, title IV, § 452, as added Jan. 4, 1975, Pub. L. 93–647, § 101(a), 88 Stat. 2351, and amended; May 23, 1977, Pub. L. 95–30, title V, § 504(a), 91 Stat. 163; June 9, 1980, Pub. L. 96–265, title IV, §§ 402(a), 405(c), (d), 94 Stat. 462, 464, 465; June 17, 1980, Pub. L. 96–272, title III, § 301(b), 94 Stat. 527; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2332(b), 95 Stat. 861; Sept. 3, 1982, Pub. L. 97–248, title I, § 175(a)(1), 96 Stat. 403; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(12), (j)(2)(B)(viii), 98 Stat. 1166, 1170; Aug. 16, 1984, Pub. L. 98–378, §§ 4(b), 9(a)(1), 13, 16, 98 Stat. 1312, 1316, 1319, 1321.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369, § 2663(j)(2)(B)(viii), substituted "Health and Human Services" for "Health, Education, and Welfare" in provisions preceding par. (1).

Subsec. (a)(4). Pub. L. 98–378, § 9(a)(1), substituted "not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title)" for "not less often than annually".

Subsec. (a)(10)(C). Pub. L. 98–378, § 13(a), amended subpar. (C) generally to include the reporting of additional aspects of child support enforcement. Prior to amendment, subpar. (C) read as follows: "the number of child support cases (with separate identification of the number in which collection of spousal support was involved) in each State during each quarter of the fiscal year last ending before the report is submitted and during each quarter of the preceding fiscal year (including the transitional period beginning July 1, 1976, and ending September 30, 1976, in the case of the first report to which this subparagraph applies), and the disposition of such cases;".

Subsec. (a)(10)(I). Pub. L. 98–378, § 13(b), added subpar. (I).

Subsec. (c)(2). Pub. L. 98–369, § 2663(c)(12), substituted "preceding sentence" for "preceding section".

Subsecs. (d)(1)(B), (2)(A), (B), (e). Pub. L. 98–378, § 4(b), substituted "655(a)(1)(B) of this title" for "655(a)(3) of this title".

Subsec. (f). Pub. L. 98–378, § 16, added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 4(c) of Pub. L. 98–378 provided that: "The amendments made by this section [amending sections 652 and 655 of this title] shall apply to fiscal years after fiscal year 1983."

Amendment by section 9(a)(1) of Pub. L. 98–378 effective Oct. 1, 1983, see section 9(c) of Pub. L. 98–378, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Section 13(c) of Pub. L. 98–378 provided that: "The amendments made by this section [amending this section] shall be effective for reports for fiscal year 1986 and each fiscal year thereafter."

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 653, 654, 660 of this title; title 26 section 6305.

§ 653. Parent Locator Service

[*See main edition for text of* (*a*)]

(b) Disclosure of information to authorized persons

Upon request, filed in accordance with subsection (d) of this section of any authorized person (as defined in subsection (c) of this section) for the social security account number (or numbers, if the individual involved has more than one such number) and the most recent address and place of employment of any absent parent, the Secretary shall, notwithstanding any other provision of law, provide through the Parent Locator Service such information to such person, if such information—

(1) is contained in any files or records maintained by the Secretary or by the Department of Health and Human Services; or

(2) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e) of this section, from any other department, agency, or instrumentality of the United States or of any State.

No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1) of this section.

[*See main edition for text of* (*c*) *to* (*e*)]

(f) Arrangements and cooperation with State agencies

The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part for such State agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) of this section and to transmit to the Secretary requests for information with regard to the whereabouts of absent parents and otherwise to cooperate with the Secretary in carrying out the purposes of this section.

(Aug. 14, 1935, ch. 531, title IV, § 453, as added Jan. 4, 1975, Pub. L. 93-647, § 101(a), 88 Stat. 2353, and amended Aug. 13, 1981, Pub. L. 97-35, title XXIII, § 2332(c), 95 Stat. 862; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(13), (j)(2)(B)(ix), 98 Stat. 1166, 1170; Aug. 16, 1984, Pub. L. 98-378, §§ 17, 19(a), 98 Stat. 1321, 1322.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-378, § 19(a), inserted "the social security account number (or numbers, if the individual involved has more than one such number) and".

Subsec. (b)(1). Pub. L. 98-369, § 2663(j)(2)(B)(ix), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (b)(2). Pub. L. 98-369, § 2663(c)(13), substituted "of the United States" for ", or the United States".

Subsec. (f). Pub. L. 98-378, § 17, struck out ", after determining that the absent parent cannot be located through the procedures under the control of such State agencies," before "to transmit to the Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 654. State plan for child and spousal support

A State plan for child and spousal support must—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) provide that such State will undertake—

[*See main edition for text of* (*A*)]

(B) in the case of any child with respect to whom such assignment is effective, including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter, to secure support for such child from his parent (or from any other person legally liable for such support), and from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), utilizing any reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A or E of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;

(5) provide that, in any case in which support payments are collected for an individual with respect to whom an assignment under section 602(a)(26) of this title is effective, such payments shall be made to the State for distribution pursuant to section 657 of this title and shall not be paid directly to the family, and the individual will be notified at least annually of the amount of the support payments collected; [1] except that this paragraph shall not apply to such payments (except as provided in section 657(c) of this title) for any month following the first month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A of this subchapter;

(6) provide that (A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to

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[1] So in original. The semicolon probably should be a comma.

such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), (B) an application fee for furnishing such services shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), (C) a fee of not more than $25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 664(a)(2) of this title, and (D) any costs in excess of the fees so imposed may be collected—

[*See main edition for text of* (i) *and* (ii), (7)]

(8) provide that the agency administering the plan will establish a service to locate absent parents utilizing—

(A) all sources of information and available records, and

(B) the Parent Locator Service in the Department of Health and Human Services;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) in securing compliance by an absent parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State, and

[*See main edition for text of* (*D*), (*10*) *to* (*15*)]

(16) provide, at the option of the State, for the establishment, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under section 652(d) of this title, of an automatic data processing and information retrieval system designed effectively and efficiently to assist management in the administration of the State plan, in the State and localities thereof, so as (A) to control, account for, and monitor (i) all the factors in the support enforcement collection and paternity determination process under such plan (including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, collection, and distribution of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii) the costs of all services rendered, either directly or by interfacing with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, (D) to facilitate the development and improvement of the income withholding and other procedures required under section 666(a) of this title through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement;

(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 663 of this title for the use of the Parent Locator Service established under section 653 of this title, provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, will impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 of this title, and take all steps nec-

essary to implement and utilize such procedures;

(19) provide that the agency administering the plan—

[*See main edition for text of* (*A*)]

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

[*See main edition for text of* (*i*)]

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 662(e) of this title) to require the withholding of amounts from such compensation;

(20) provide, to the extent required by section 666 of this title, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws;

(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 666(e) of this title) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the absent parent owing the overdue support; and

(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

(22) in order for the State to be eligible to receive any incentive payments under section 658 of this title, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision; and

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained.

The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21).

(Aug. 14, 1935, ch. 531, title IV, § 454, as added Jan. 4, 1975, Pub. L. 93-647, § 101(a), 88 Stat. 2354, and amended Aug. 9, 1975, Pub. L. 94-88, title II, § 208(b), (c), 89 Stat. 436; May 23, 1977, Pub. L. 95-30, title V, § 502(a), 91 Stat. 162; June 9, 1980, Pub. L. 96-265, title IV, § 405(b), 94 Stat. 463; Dec. 28, 1980, Pub. L. 96-611, § 9(a), 94 Stat. 3571; Aug. 13, 1981, Pub. L. 97-35, title XXIII, §§ 2331(b), 2332(d)(2)-(7), 2333(a), (b), 2335(a), 95 Stat. 860, 862, 863; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 171(a), (b)(1), 173(a), 96 Stat. 401, 403; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(14), (j)(2)(B)(x), 98 Stat. 1166, 1170; Aug. 16, 1984, Pub. L. 98-378, §§ 3(a), (c), (d)-(f), 5(b), 6(a), 11(b)(1), 12(a), (b), 14(a), 21(d), 98 Stat. 1306, 1310, 1311, 1314, 1318, 1319, 1320, 1324.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in pars. (4) and (5), are classified to section 601 et seq. and 670 et seq., respectively, of this title.

AMENDMENTS

1984—Par. (4)(B). Pub. L. 98-378, § 11(b)(1), added "including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter," after "such assignment is effective," and added "or E" after "part A".

Par. (4)(B). Pub. L. 98-378, § 12(a), substituted ", and" for "and, at the option of the State," before "from such parent" and inserted ", and only if the support obligation established with respect to the child is being enforced under the plan".

Par. (5). Pub. L. 98-378, § 3(e), added ", and the individual will be notified at least annually of the amount of the support payments collected;".

Par. (6)(A). Pub. L. 98-378, § 12(b), struck out ", at the option of the State," before "support collection services" and inserted ", and only if the support obligation established with respect to the child is being enforced under the plan".

Par. (6)(B). Pub. L. 98-378, § 3(c), substituted "shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), and" for "may be imposed, except that the amount of any such application fee shall be reasonable, as determined under regulations of the Secretary,".

Par. (6)(C). Pub. L. 98-378, § 21(d)(1), (3), added cl. (C). Former cl. (C) redesignated (D).

Par. (6)(D). Pub. L. 98-378, § 21(d)(1), (2), redesignated former cl. (C) as (D) and in cl. (D) as so redesignated, substituted "fees" for "fee" before "so imposed".

Par. (8)(B). Pub. L. 98-369, § 2663(j)(2)(B)(x), substituted "Health and Human Services" for "Health, Education, and Welfare".

Par. (9)(C). Pub. L. 98-369, § 2663(c)(14)(A), struck out "of such parent" before "with respect to whom aid".

Par. (16)(A)(ii). Pub. L. 98-369, § 2663(c)(14)(B), substituted "collection, and distribution" for "collection and distribution," before "of incentive payments".

Par. (16)(D), (E). Pub. L. 98-378, § 6(a), added cl. (D) and redesignated former cl. (D) as (E).

Par. (17). Pub. L. 98-378, § 2663(c)(14)(C), realigned margin, substituted "provide that the State will accept" for "to accept", "will impose" for "and to impose", "will transmit" for "to transmit", and "will otherwise comply" for ", otherwise to comply".

Par. (20). Pub. L. 98-378, § 3(a), added par. (20).

Par. (21). Pub. L. 98-378, § 3(d), added par. (21).

Par. (22). Pub. L. 98-378, § 5(b), added par. (22).

Par. (23). Pub. L. 98-378, § 14(a), added par. (23).

Pub. L. 98-378, § 3(f), added after numbered paragraphs provision that the State may allow the jurisdiction which makes the collection involved to retain any application fee under par. (6)(B) or any late payment fee under par. (21).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 3(g) of Pub. L. 98-378 provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting section 666 of this title and amending section 654 of this title] shall become effective on October 1, 1985.

"(2) Section 454(21) of the Social Security Act (as added by subsection (d) of this section) [42 U.S.C. 654(21)], and section 466(e) of such Act (as added by subsection (b) of this section) [42 U.S.C. 666(e)], shall be effective with respect to support owed for any month beginning after the date of the enactment of this Act [Aug. 16, 1984].

"(3) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by any amendment made by this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature."

Amendment by section 5(b) of Pub. L. 98-378 effective Oct. 1, 1985, see section 5(c)(1) of Pub. L. 98-378, set out as a note under section 658 of this title.

Section 6(c) of Pub. L. 98-378 provided that: "The amendments made by this section [amending sections 654 and 655 of this title] shall apply with respect to quarters beginning on or after October 1, 1984."

Section 11(e) of Pub. L. 98-378 provided that: "The amendments made by this section [amending sections 654, 656, 657, 664, and 671 of this title] shall become effective October 1, 1984, and shall apply to collections made on or after that date."

Section 12(c) of Pub. L. 98-378 provided that: "The amendments made by this section [amending this section] shall become effective October 1, 1985."

Section 14(b) of Pub. L. 98-378 provided that: "The amendments made by subsection (a) [amending this section] shall become effective October 1, 1985."

Amendment by section 21(d) of Pub. L. 98-378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98-378, set out as a note under section 6103 of Title 26.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

STATE COMMISSIONS ON CHILD SUPPORT

Section 15 of Pub. L. 98-378 provided that:

"(a) As a condition of the State's eligibility for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] for quarters beginning more than 30 days after the date of the enactment of this Act [Aug. 16, 1984] and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall (subject to subsection (f)) appoint a State Commission on Child Support.

"(b) Each State Commission appointed under subsection (a) shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the agency or organizational unit administering the State's plan under part D of such title IV [this part], the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

"(c) It shall be the function of each State Commission to examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act [part A of this subchapter] and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

"(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary of Health and Human Services along with the Governor's comments thereon.

"(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under subsections (c) and (d), shall be considered as expenditures qualifying for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] or be otherwise payable or reimbursable by the United States or any agency thereof.

"(f) If the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

"(1) has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations,

"(2) has established within the five years prior to the enactment of this Act [Aug. 16, 1984] a commission or council with substantially the same functions as the State Commissions provided for under this section, or

"(3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so,

then such State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 652, 655, 658, 663, 664, 666, 1315, 1396k of this title; title 26 section 6103.

§ 655. Payments to States

(a) Amounts payable each quarter

(1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter, an amount—

(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 of this title, and

(B) equal to 90 percent (rather than the percent specified in subparagraph (A)) of so much of the sums expended during such quarter as are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (including in such sums the full cost of the hardware components of such system) which the Secretary finds meets the requirements specified in section 654(16) of this title, or meets such requirements without regard to clause (D) thereof;

except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 663 of this title. In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

(B) 68 percent for fiscal years 1988 and 1989, and

(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.

[*See main edition for text of* (*b*)]

(c) Repealed. Pub. L. 97-248, title I, § 174(b), Sept. 3, 1982, 96 Stat. 403

[*See main edition for text of* (*d*)]

(e) Special project grants for interstate enforcement; appropriations

(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their absent parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 658(b) of this title (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State's plan approved under section 654 of this title.

(5) There is authorized to be appropriated the sum of $7,000,000 for fiscal year 1985, $12,000,000 for fiscal year 1986, and $15,000,000 for each fiscal year thereafter, to be used by the Secretary in making grants under this subsection.

(Aug. 14, 1935, ch. 531, title IV, § 455, as added Jan. 4, 1975, Pub. L. 93-647, § 101(a), 88 Stat. 2355, and amended Aug. 9, 1975, Pub. L. 94-88, title II, §§ 201(c), 205, 89 Stat. 433, 435; July 14, 1976, Pub. L. 94-365, § 3, 90 Stat. 990; June 30, 1977, Pub. L. 95-59, § 4, 91 Stat. 255; Jan. 2, 1980, Pub. L. 96-178, § 2(a), 93 Stat. 1295; June 9, 1980, Pub. L. 96-265, title IV, §§ 404(a), 405(a), 407(a), (b), 94 Stat. 463, 467; Dec. 28, 1980, Pub. L. 96-611, §§ 9(c), 11(c), 94 Stat. 3573, 3574; Aug. 13, 1981, Pub. L. 97-35, title XXIII, § 2333(c), 95 Stat. 863; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 171(b)(2), 174(a), (b), 96 Stat. 401, 403; Aug. 16, 1984, Pub. L. 98-378, §§ 4(a), 6(b), 8, 98 Stat. 1311, 1314, 1315.)

References in Text

Section 5(a) of the Child Support Enforcement Amendments of 1984, referred to in subsec. (e)(4), is section 5(a) of Pub. L. 98-378, which amended section 658 of this title.

Amendments

1984—Subsec. (a)(1). Pub. L. 98-378, § 4(a)(1)-(5), designated existing provisions as par. (1) and in par. (1) as so designated, struck out ", beginning with the quarter commencing July 1, 1975," after "for each quarter", substituted subpar. (A) for former par. (1) which provided for an amount equal to 70 percent of the total amounts expended by the State during the quarter for the operation of the plan approved under section 654 of this title, struck out former par. (2) which provided for an amount equal to 50 percent of the total amounts expended by the State during the quarter for the operation of a plan which met the conditions of section 654 of this title except as was provided by a waiver by the Secretary which was granted pursuant to specific authority set forth in the law, redesignated former par. (3) as subpar. (B) of par. (1), and in subpar. (B) as so redesignated, substituted "subparagraph (A)" for "clause (1) or (2)", and inserted "(including in such sums the full cost of the hardware components of such system)" and ", or meets such requirements without regard to clause (D) thereof".

Subsec. (a)(2). Pub. L. 98-378, § 4(a)(6), added par. (2). Former par. (2) was struck out.

Subsec. (a)(3). Pub. L. 98-378, § 4(a)(3), redesignated par. (3) of subsec. (a) as subpar. (B) of subsec. (a)(1).

Subsec. (e). Pub. L. 98-378, § 8, added subsec. (e).

1982—Subsec. (c). Pub. L. 97-248, § 174(b), struck out subsec. (c) which had provided that expenditures of courts of a State or its political subdivisions in connection with performance of services related to the operation of a plan approved under section 654 of this title, would be included in determining the amounts expended by a State during any quarter for the operation of such plan, that the aggregate amount of such expenditures would be reduced by the total amount of those expenditures made by a State for the 12-month period beginning on Jan. 1, 1978, and that a State agency could, under State law, pay the courts of the State from amounts received under subsec. (a) of this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 4(a) of Pub. L. 98-378 applicable to fiscal years after fiscal year 1983, see section 4(c) of Pub. L. 98-378, set out as a note under section 652 of this title.

Amendment by section 6(b) of Pub. L. 98-378 applicable with respect to quarters beginning on or after Oct. 1, 1984, see section 6(c) of Pub. L. 98-378, set out as a note under section 654 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603a, 652, 658, 1315 of this title; title 2 section 906.

§ 656. Support obligation as obligation to State; amount; discharge in bankruptcy

(a)(1) The support rights assigned to the State under section 602(a)(26) of this title or secured on behalf of a child receiving foster care maintenance payments shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(2) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

(3) Any amounts collected from an absent parent under the plan shall reduce, dollar for dollar, the amount of his obligation under subparagraphs (A) and (B) of paragraph (2).

(b) A debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under title 11.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(15), 98 Stat. 1167; Aug. 16, 1984, Pub. L. 98-378, § 11(b)(2), 98 Stat. 1318.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-378, § 11(b)(2), inserted "or secured on behalf of a child receiving foster care maintenance payments" after "section 602(a)(26) of this title".

Pub. L. 98-369, § 2663(c)(15)(A), designated existing unenumerated provisions as par. (1). Former par. (1) redesignated (2).

Subsec. (a)(2). Pub. L. 98-369, § 2663(c)(15)(B), redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 98-369, § 2663(c)(15)(C), (D), redesignated former par. (2) as (3) and in par. (3) as so redesignated, substituted "subparagraphs (A) and (B) of paragraph (2)" for "paragraphs (1)(A) and (B)".

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98-378, set out as a note under section 654 of this title.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 657. Distribution of proceeds

[*See main edition for text of* (*a*)]

(b) Amount collected during any fiscal year beginning after September 30, 1976

The amounts collected as support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall (subject to subsection (d) of this section) be distributed as follows:

(1) the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) and which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(c) Collection after termination of assistance; distribution of support proceeds

Whenever a family for whom support payments have been collected and distributed under the plan ceases to receive assistance under part A of this subchapter, the State shall—

[*See main edition for text of* (*1*)]

(2) at the end of such three-month period, if the State is authorized to do so by the individual on whose behalf the collection will be made, continue to collect amounts of support payments which represent monthly support payments from the absent parent and pay any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other

individuals who are not receiving assistance under part A of this subchapter,

and so much of any amounts of support so collected as are in excess of the payments required to be made in paragraph (1) shall be distributed in the manner provided by subsection (b)(3)(A) and (B)[2] of this section with respect to excess amounts described in subsection (b) of this section.

(d) Disposition of amounts collected by State as child support on behalf of children for whom public agencies make foster care payments

Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E of this subchapter—

(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2640(b), 98 Stat. 1145; Aug. 16, 1984, Pub. L. 98-378, §§ 7(a), 11(a), 98 Stat. 1315, 1317.)

REFERENCES IN TEXT

Subsection (b)(3)(A) and (B) of this section, referred to in subsec. (c), was redesignated subsection (b)(4)(A) and (B) of this section by section 2640(b)(1) of Pub. L. 98-369.

Parts A and E of this subchapter, referred to in subsecs. (c) and (d), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-378, § 11(a)(2), added "(subject to subsection (d) of this section)" after "shall" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-369, § 2640(b)(1), added par. (1). Former par. (1) redesignated (2).

Subsec. (b)(2). Pub. L. 98-369, § 2640(b)(1), (2)(A), redesignated former par. (1) as (2), and in par. (2) as so redesignated, added "which are in excess of any amount paid to the family under paragraph (1) and". Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 98-369, § 2640(b)(1), (2)(B), redesignated former par. (2) as (3), and in par. (3) as so redesignated, substituted "paragraph (2)" for "paragraph (1)". Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 98-369, § 2640(b)(1), (2)(C), redesignated former par. (3) as (4), and in par. (4) as so redesignated, substituted "paragraphs (1), (2), and (3)" for "paragraphs (1) and (2)".

Subsec. (c). Pub. L. 98-378, § 7(a)(1), substituted "shall" for "may" in provisions preceding par. (1).

Subsec. (c)(2). Pub. L. 98-378, § 7(a)(2), substituted "any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this subchapter," for "the net amount of any amount so collected, which represents monthly support payments, to the family after deducting any costs incurred in making the collection from the amount of any recovery made,".

Subsec. (d). Pub. L. 98-378, § 11(a)(1), added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 7(b) of Pub. L. 98-378 provided that: "The amendments made by subsection (a) [amending subsec. (c) of this section] shall become effective October 1, 1984."

Amendment by section 11(a) of Pub. L. 98-378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98-378, set out as a note under section 654 of this title.

Amendment by Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 603, 652, 654, 664, 666 of this title.

§ 658. Incentive payments to States

(a) Purpose; requirement; quarterly payments

In order to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether or not they are eligible for aid to families with dependent children under a State plan approved under part A of this subchapter, and regardless of the economic circumstances of their parents, the Secretary shall, from support collected which would otherwise represent the Federal share of assistance to families of absent parents, pay to each State for each fiscal year, on a quarterly basis (as described in subsection (e) of this section) beginning with the quarter commencing October 1, 1985, an incentive payment in an amount determined under subsection (b) of this section.

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[2] See References in Text note below.

(b) Incentive formula

(1) Except as provided in paragraphs (2), (3), and (4), the incentive payment shall be equal to—

(A) 6 percent of the total amount of support collected under the plan during the fiscal year in cases in which the support obligation involved is assigned to the State pursuant to section 602(a)(26) or section 671(a)(17) of this title (with such total amount for any fiscal year being hereafter referred to in this section as the State's "AFDC collections" for that year), plus

(B) 6 percent of the total amount of support collected during the fiscal year in all other cases under this part (with such total amount for any fiscal year being hereafter referred to in this section as the State's "non-AFDC collections" for that year).

(2) If subsection (c) of this section applies with respect to a State's AFDC collections or non-AFDC collections for any fiscal year, the percent specified in paragraph (1)(A) or (B) (with respect to such collections) shall be increased to the higher percent determined under such subsection (with respect to such collections) in determining the State's incentive payment under this subsection for that year.

(3) The dollar amount of the portion of the State's incentive payment for any fiscal year which is determined on the basis of its non-AFDC collections under paragraph (1)(B) (after adjustment under subsection (c) of this section if applicable) shall in no case exceed—

(A) the dollar amount of the portion of such payment which is determined on the basis of its AFDC collections under paragraph (1)(A) (after adjustment under subsection (c) of this section if applicable) in the case of fiscal year 1986 or 1987;

(B) 105 percent of such dollar amount in the case of fiscal year 1988;

(C) 110 percent of such dollar amount in the case of fiscal year 1989; or

(D) 115 percent of such dollar amount in the case of fiscal year 1990 or any fiscal year thereafter.

(4) The Secretary shall make such additional payments to the State under this part, for fiscal year 1986 or 1987, as may be necessary to assure that the total amount of payments under this section and section 655(a)(1)(A) of this title for such fiscal year is no less than 80 percent of the amount that would have been payable to that State and its political subdivisions for such fiscal year under this section and section 655(a)(1)(A) of this title if those sections (including the amendment made by section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984) had remained in effect as they were in effect for fiscal year 1985.

(c) Increase in percentage; laboratory costs

If the total amount of a State's AFDC collections or non-AFDC collections for any fiscal year bears a ratio to the total amount expended by the State in that year for the operation of its plan approved under section 654 of this title for which payment may be made under section 655 of this title (with the total amount so expended in any fiscal year being hereafter referred to in this section as the State's "combined AFDC/non-AFDC administrative costs" for that year) which is equal to or greater than 1.4, the relevant percent specified in subparagraph (A) or (B) of subsection (b)(1) of this section (with respect to such collections) shall be increased to—

(1) 6.5 percent, plus

(2) one-half of 1 percent for each full two-tenths by which such ratio exceeds 1.4;

except that the percent so specified shall in no event be increased (for either AFDC collections or non-AFDC collections) to more than 10 percent. For purposes of the preceding sentence, laboratory costs incurred in determining paternity in any fiscal year may at the option of the State be excluded from the State's combined AFDC/non-AFDC administrative costs for that year.

(d) Support collected on behalf of individuals residing in another State

In computing incentive payments under this section, support which is collected by one State on behalf of individuals residing in another State shall be treated as having been collected in full by each such State.

(e) Estimates by Secretary; quarterly payments

The amounts of the incentive payments to be made to the various States under this section for any fiscal year shall be estimated by the Secretary at or before the beginning of such year on the basis of the best information available. The Secretary shall make such payments for such year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section shall be deemed obligated.

(As amended Sept. 3, 1982, Pub. L. 97-248, title I, § 174(c), 96 Stat. 403; Aug. 16, 1984, Pub. L. 98-378, § 5(a), (c)(2)(A), 98 Stat. 1312, 1314.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (a), is classified to section 601 et seq. of this title.

Section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984, referred to in subsec. (b)(4), is section 5(c)(2)(A) of Pub. L. 98-378, which amended subsec. (a) of this section. See 1984 Amendment note below.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-378, § 5(a), in amending subsec. (a) generally, substituted general provisions relating to payments to States to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner for provisions which required payment to States and localities making enforcement and collection of support rights assigned under section 602(a)(26) of this title.

Pub. L. 98-378, § 5(c)(2)(A), temporarily substituted "distributed as provided in paragraphs (1), (2), and (4)(A) of section 657(b) of this title" for "distributed as provided in section 657 of this title to reduce or repay assistance payments". See Effective and Termination Dates of 1984 Amendment note below.

Subsec. (b). Pub. L. 98-378, § 5(a), in amending subsec. (b) generally, substituted provisions relating to an incentive formula for payments under this section for provisions relating to the allocation of payments among jurisdictions involved in enforcement or collection under this section.

Subsec. (c). Pub. L. 98-378, § 5(a), in amending subsec. (c) generally, substituted provisions relating to an increase in percentages of payments under this section and relating to laboratory costs for provisions relating to collection and distribution in accordance with a State plan approved under section 654 of this title.

Subsecs. (d), (e). Pub. L. 98-378, § 5(a), in amending section generally, added subsecs. (d) and (e).

1982—Subsec. (a). Pub. L. 97-248 substituted "12 percent" for "15 per centum".

Effective and Termination Dates of 1984 Amendment

Section 5(c)(1) of Pub. L. 98-378 provided that: "The amendments made by the preceding provisons of this section [amending sections 654 and 658 of this title] shall become effective on October 1, 1985."

Section 5(c)(2)(A) of Pub. L. 98-378 provided in part that the amendment by that section is effective until Sept. 30, 1985.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97-248 applicable with respect to amounts collected on or after Oct. 1, 1983, see section 174(d) of Pub. L. 97-248, set out as a note under section 655 of this title.

Construction of Reference to Section 657(b) of This Title

Section 5(c)(2)(B) of Pub. L. 98-378 provided that: "The reference to provisions of section 457(b) of the Social Security Act [section 657(b) of this title] in the amendment made by subparagraph (A) of this paragraph [amending subsec. (a) of this section] is a reference to such provisions as in effect after the effective date of section 2640(b) of the Deficit Reduction Act of 1984 [effective date of section 2640(b) of Pub. L. 98-369, Oct. 1, 1984]."

Section Referred to in Other Sections

This section is referred to in sections 654, 655 of this title; title 2 section 906.

§ 659. Enforcement of individual's legal obligations to provide child support or make alimony payments

(a) United States and District of Columbia to be subject to legal process

Notwithstanding any other provision of law (including section 407 of this title), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

[See main edition for text of (b) to (f)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, § 335(b)(1), 97 Stat. 130.)

Amendments

1983—Subsec. (a). Pub. L. 98-21 added reference to section 407 of this title.

§ 660. Civil action to enforce child support obligations; jurisdiction of district courts

The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health and Human Services under section 652(a)(8) of this title. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

(Aug. 14, 1935, ch. 531, title IV, § 460, as added Jan. 4, 1975, Pub. L. 93-647, § 101(a), 88 Stat. 2358, and amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(B)(xi), 98 Stat. 1170.)

Amendments

1984—Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 662. Definitions

For purposes of section 659 of this title—

[See main edition for text of (a) to (e)]

(f) Entitlement of an individual to any money shall be deemed to be "based upon remuneration for employment", if such money consists of—

[See main edition for text of (1)]

(2) periodic benefits (including a periodic benefit as defined in section 428(h)(3) of this title) or other payments to such individual under the insurance system established by subchapter II of this chapter or any other system or fund established by the United States (as defined in subsection (a) of this section) which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by himself or any other individual (not including any payment as compensation for death under any Federal program, any payment under any Federal program established to provide "black lung" benefits, any payment by the Veterans' Administration as pension, or any payments by the

Veterans' Administration as compensation for a service-connected disability or death, except any compensation paid by the Veterans' Administration to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his retired pay in order to receive such compensation), and does not consist of amounts paid, by way of reimbursement or otherwise, to such individual by his employer to defray expenses incurred by such individual in carrying out duties associated with his employment.

[*See main edition for text of* (*g*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(17), 98 Stat. 1167.)

AMENDMENTS

1984—Subsec. (f)(2). Pub. L. 98-369 substituted "dependents' or survivors' benefits" for "dependents or survivors' benefits".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 664. Collection of past-due support from Federal tax refunds

(a) Procedures applicable; distribution

(1) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which has been assigned to such State pursuant to section 602(a)(26) or section 671(a)(17) of this title, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to the past-due support, shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay such amount to the State agency (together with notice of the individual's home address) for distribution in accordance with section 657(b)(4) or (d)(3) of this title.

(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support (as that term is defined for purposes of this paragraph under subsection (c) of this section) which such State has agreed to collect under section 654(6) of this title, and that the State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed.

(B) This paragraph shall apply only with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

(3)(A) Prior to notifying the Secretary of the Treasury under paragraph (1) or (2) that an individual owes past-due support, the State shall send notice to such individual that a withholding will be made from any refund otherwise payable to such individual. The notice shall also (i) instruct the individual owing the past-due support of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support, and (ii) provide information, as may be prescribed by the Secretary of Health and Human Services by regulation in consultation with the Secretary of the Treasury, with respect to procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(B) If the Secretary of the Treasury determines that an amount should be withheld under paragraph (1) or (2), and that the refund from which it should be withheld is based upon a joint return, the Secretary of the Treasury shall notify the State that the withholding is being made from a refund based upon a joint return, and shall furnish to the State the names and addresses of each taxpayer filing such joint return. In the case of a withholding under paragraph (2), the State may delay distribution of the amount withheld until the State has been notified by the Secretary of the Treasury that the other person filing the joint return has received his or her proper share of the refund, but such delay may not exceed six months.

(C) If the other person filing the joint return with the named individual owing the past-due support takes appropriate action to secure his or her proper share of a refund from which a withholding was made under paragraph (1) or (2), the Secretary of the Treasury shall pay such share to such other person. The Secretary of the Treasury shall deduct the amount of such payment from amounts subsequently payable to the State agency to which the amount originally withheld from such refund was paid.

(D) In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).

(b) Regulations; contents, etc.

(1) The Secretary of the Treasury shall issue regulations, approved by the Secretary of Health and Human Services, prescribing the time or times at which States must submit notices of past-due support, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify the minimum amount of past-due support to which the offset procedure established by subsection (a) of this section, may be applied, and the fee that a State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure, and shall provide that the Secretary of the Treasury will advise the Secretary of Health and Human Services, not less frequently than annually, of the States which have furnished notices of past-due support under subsection (a) of this section, the number of cases in each State with respect to which such notices have been furnished, the amount of support sought to be collected under this subsection by each State, and the amount of such collections actually made in the case of each State. Any fee paid to the Secretary of the Treasury pursuant to this subsection may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(2) In the case of withholdings made under subsection (a)(2) of this section, the regulations promulgated pursuant to this subsection shall include the following requirements:

(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than $500. The State may limit the $500 threshhold[3] amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and may limit the application of the withholding to past-due support accrued since such time.

(B) The fee which the Secretary of the Treasury may impose to cover the costs of the withholding and notification may not exceed $25 per case submitted.

(c) "Past-due support" defined

(1) Except as provided in paragraph (2), as used in this part the term "past-due support" means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.

(2) For purposes of subsection (a)(2) of this section, the term "past-due support" means only past-due support owed to or on behalf of a minor child.

(As amended Aug. 16, 1984, Pub. L. 98-378, §§ 11(d), 21(a)-(c), 98 Stat. 1318, 1322, 1324.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsec. (a)(2)(B), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-378, § 21(a), (b)(1), designated existing provisions as par. (1), substituted "shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay" for "and pay", and added pars. (2) and (3).

Pub. L. 98-378, § 11(d), added "or section 671(a)(17)" and substituted "section 657(b)(4) or (d)(3)" for "section 657(b)(3)".

Subsec. (b)(1). Pub. L. 98-378, § 21(b)(2), designated existing provisions as par. (1), substituted "The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify" for "The regulations shall specify", substituted "and shall provide" for "and provide", added provision that any fee paid to the Secretary of the Treasury pursuant to subsec. (b) may be used to reimburse appropriations which bore all or part of the cost of applying such procedure, and added par. (2).

Subsec. (c)(1). Pub. L. 98-378, § 21(c), designated existing provisions as par. (1), and, in par. (1) as so designated, inserted reference to par. (2), and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 11(d) of Pub. L. 98-378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98-378, set out as a note under section 654 of this title.

Amendment by section 21(a) to (c) of Pub. L. 98-378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98-378, set out as a note under section 6103 of Title 26.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 654 of this title; title 26 sections 6103, 6402; title 31 section 3720A.

§ 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

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[3] So in original. Probably should be "threshold".

(1) Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support.

(2) Procedures under which expedited processes (determined in accordance with regulations of the Secretary) are in effect under the State judicial system or under State administrative processes (A) for obtaining and enforcing support orders, and (B) at the option of the State, for establishing paternity. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement within the political subdivision (in accordance with the general rule for exemptions under subsection (d) of this section).

(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

(A) any refund of State income tax which would otherwise be payable to an absent parent will be reduced, after notice has been sent to that absent parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such absent parent;

(B) the amount by which such refund is reduced shall be distributed in accordance with section 657(b)(4) or (d)(3) of this title in the case of overdue support assigned to a State pursuant to section 602(a)(26) or 671(a)(17) of this title, or, in the case of overdue support which a State has agreed to collect under section 654(6) of this title, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

(C) notice of the absent parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

(4) Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.

(5) Procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday.

(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such absent parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 1681a(f) of title 15) upon the request of such agency; except that (A) if the amount of the overdue support involved in any case is less than $1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State.

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

Notwithstanding section 654(20)(B) of this title, the procedures which are required under paragraphs (3), (4), (6), and (7) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

(b) Withholding from income of amounts payable as support

The procedures referred to in subsection (a)(1) of this section (relating to the withholding from income of amounts payable as support) must provide for the following:

(1) In the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's wages (as defined by the State for purposes of this section) must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 1673(b) of title 15. If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A of this subchapter) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

(3) An absent parent shall become subject to such withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of—

(A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month,

(B) the date as of which the absent parent requests that such withholding begin, or

(C) such earlier date as the State may select.

(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on August 16, 1984, if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.

(5) Such withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 657 of this title under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

(6)(A)(i) The employer of any absent parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such absent parent's wages the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the appropriate agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (5)) for distribution in accordance with section 657 of this title.

(ii) The notice given to the employer shall contain only such information as may be necessary for the employer to comply with the withholding order.

(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from wages due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same wages.

(8) The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such absent parents' income or

the nature of their income-producing activities.

(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by absent parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

(10) Provision must be made for terminating withholding.

(c) Administration of support payments through State agency or other entity

Any State may at its option, under its plan approved under section 654 of this title, establish procedures under which support payments under this part will be made through the State agency or other entity which administers the State's income withholding system in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or $25, whichever is less, shall be imposed on the requesting parent by the State.

(d) Exemption of States

If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

(e) "Overdue support" defined

For purposes of this section, the term "overdue support" means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the absent parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of paragraph (4) or (6) of section 654 of this title. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section.

(Aug. 14, 1935, ch. 531, title IV, § 466, as added Aug. 16, 1984, Pub. L. 98-378, § 3(b), 98 Stat. 1306.)

References in Text

Part A of this subchapter, referred to in subsec. (b)(2), is classified to section 601 et seq. of this title.

Effective Date

Section effective Oct. 1, 1985, except that subsec. (e) shall become effective with respect to support owed for any month beginning after Aug. 16, 1984, see section 3(g) of Pub. L. 98-378, set out as an Effective Date of 1984 Amendment note under section 654 of this title.

Section Referred to in Other Sections

This section is referred to in section 654 of this title.

§ 667. State guidelines for child support awards

(a) Establishment of guidelines; method

Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action.

(b) Availability of guidelines; binding nature

The guidelines established pursuant to subsection (a) of this section shall be made available to all judges and other officials who have the power to determine child support awards within such State, but need not be binding upon such judges or other officials.

(c) Technical assistance to States; State to furnish Secretary with copies

The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.

(Aug. 14, 1935, ch. 531, title IV, § 467, as added Aug. 16, 1984, Pub. L. 98-378, § 18(a), 98 Stat. 1321.)

Effective Date

Section 18(b) of Pub. L. 98-378 provided that: "The amendment made by subsection (a) [enacting this section] shall become effective on October 1, 1987."

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

Part Referred to in Other Sections

This part is referred to in sections 300z-5, 602, 622, 625, 652, 654, 657, 1308, 1396a of this title; title 2 section 906.

§ 671. State plan for foster care and adoption assistance

(a) Requisite features of State plan

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

[*See main edition for text of* (*1*) *to* (*14*)]

(15) effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home;

(16) provides for the development of a case plan (as defined in section 675(1) of this title) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 675(5)(B) of this title with respect to each such child; and

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the plans approved under parts A and D of this subchapter, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part.

[*See main edition for text of* (*b*)]

(As amended Aug. 16, 1984, Pub. L. 98-378, § 11(c), 98 Stat. 1318.)

References in Text

Parts A, B, C, and D of this subchapter, referred to in subsec. (a)(2), (4), (8)-(10), (13), and (17), are classified to sections 601 et seq., 620 et seq., 630 et seq., and 651 et seq., respectively, of this title.

Amendments

1984—Subsec. (a)(17). Pub. L. 98-378 added par. (17).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98-378, set out as a note under section 654 of this title.

Section Referred to in Other Sections

This section is referred to in sections 652, 658, 664, 666, 672 of this title; title 26 section 6402.

§ 672. Foster care maintenance payments program

Effective and Termination Dates of 1980 Amendment

Section 102(a)(1) of Pub. L. 96-272, as amended by Pub. L. 98-118, § 3(a), Oct. 11, 1983, 97 Stat. 803; Pub. L. 98-617, § 4(c)(1), Nov. 8, 1984, 98 Stat. 3297, provided in part that the amendment by section 102(a)(1) of Pub. L. 96-272 shall be effective with respect to expenditures made after Sept. 30, 1980, and before Oct. 1, 1985.

Section 102(c) of Pub. L. 96-272, as amended by Pub. L. 98-118, § 3(b), Oct. 11, 1983, 97 Stat. 803; Pub. L. 98-617, § 4(c)(2), Nov. 8, 1984, 98 Stat. 3297, provided that: "The amendments made by subsections (a) and (b) [amending sections 608, 672, 673, and 675 of this title] shall be effective only with respect to expenditures made after September 30, 1979, and before October 1, 1985; and from and after October 1, 1985, the provisions of law amended by such subsections shall read as they would if this section had not been enacted."

Section Referred to in Other Sections

This section is referred to in sections 602, 608, 671, 674, 675 of this title.

§ 673. Adoption assistance program

Effective and Termination Dates of 1980 Amendment

Amendment by section 102(a)(3) of Pub. L. 96-272 effective only with respect to expenditures made after Sept. 30, 1979, and before Oct. 1, 1985, see section 102(c) of Pub. L. 96-272, as amended, set out as a note under section 672 of this title.

§ 674. Payments to States

[*See main edition for text of* (*a*)]

(b) Maximum aggregate sums payable to any State; State allotments

(1) Notwithstanding the provisions of subsections (a)(1) and (a)(3) of this section, the aggregate of the sums payable thereunder to any State (other than a State subject to limitation under section 1308(a) of this title) with respect to expenditures relating to foster care, for the calendar quarters in any of the fiscal years 1981 through 1985 in which the conditions set forth in paragraph (2) are met, shall not exceed the State's allotment for such year.

(2)(A) The limitation in paragraph (1) shall apply—

[*See main edition for text of* (*i*) *and* (*ii*)]

(iii) with respect to fiscal year 1983, only if the amount appropriated under section 620 of this title for such fiscal year is equal to $266,000,000;

(iv) with respect to fiscal year 1984, only if the amount appropriated under section 620 of this title for such fiscal year is equal to $266,000,000; and

(v) with respect to fiscal year 1985, only if the amount appropriated under section 620 of this title for such fiscal year is equal to $266,000,000.

(B) The limitations set forth in paragraph (1) with respect to the fiscal years 1982 through 1985 shall apply only if the required appropriation is made in advance in an appropriation Act (as authorized under section 620(b) of this title) for the fiscal year preceding the fiscal year to which the limitation would apply.

[*See main edition for text of* (*3*)]

(4) For purposes of paragraph (3)(A), a State's allotment shall be determined as follows:

(A) The allotment for any State for fiscal year 1980 shall be an amount equal to such State's base amount (as determined under subparagraph (C)) increased by 21.2 percent.

(B) The allotment for any State for each of the fiscal years 1981 through 1985 shall be an amount equal to such State's allotment for the preceding fiscal year, increased or decreased by a percentage equal to twice the percentage increase or decrease (as the case may be) (but not to exceed an increase or decrease of 10 percent) in the Consumer Price Index prepared by the Department of Labor, and used in determining cost-of-living adjustments under section 415(i) of this title, for the second quarter of the preceding fiscal year as compared to such index for the second quarter of the second preceding fiscal year. For purposes of this subparagraph the Consumer Price Index for any quarter shall be the arithmetical mean of such index for the three months in such quarter.

[*See main edition for text of* (*C*)]

(5)(A) For purposes of paragraph (3)(C), a State's allotment for any fiscal year ending after September 30, 1980, and before October 1, 1985, may, at the option of the State (and if the State meets the requirements of subparagraphs (B) and (C)), be determined by application of the provisions of paragraph (4) with the following modifications:

[*See main edition for text of* (*i*)]

(ii) For purposes of clause (i), the percentage determined under such clause shall not exceed 33.1 percent in the case of fiscal year 1981, 46.4 percent in the case of fiscal year 1982, 61.1 percent in the case of fiscal year 1983, or 77.2 percent in the case of each of fiscal years 1984 and 1985.

[*See main edition for text of* (*B*) *to* (*E*), (*6*)]

(c) Reimbursement for expenditures

(1) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1985 during which the limitation under subsection (b)(1) of this section is in effect, sums available to a State from its allotment under subsection (b) of this section for carrying out this part, which the State does not claim as reimbursement for expenditures in such year pursuant to subsection (a) of this section, may be claimed by the State as reimbursement for expenditures in such year pursuant to part B of this subchapter, in addition to sums available pursuant to section 620 of this title for carrying out part B of this subchapter.

(2) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1985 during which the limitation under subsection (b)(1) of this section is not in effect, a State may claim as reimbursement for expenditures for such year pursuant to part B of this subchapter, in addition to amounts claimed under section 620 of this title an amount equal to the amount by which the State's allotment amount for such fiscal year (as determined under subsection (b)(3) of this section) exceeds the amount claimed by such State for such fiscal year as reimbursement for expenses relating to foster care under subsection (a) of this section; except that the total amount claimed by such State for such fiscal year under this paragraph, when added to the amount that such State receives for such fiscal year under section 620 of this title, may not exceed the amount that would have been payable to such State under section 620 of this title for such fiscal year if the relevant amount described in subsection (b)(2)(A) of this section had been appropriated for such fiscal year.

[*See main edition for text of* (*3*) *and* (*4*)]

(d) Quarterly estimates of State's entitlement for next quarter; payments; United States' pro rata share of amounts recovered as overpayment

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsections (a), (b), and (c) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (C) such other investigation as the Secretary may find necessary.

[*See main edition for text of* (*2*) *and* (*3*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(18), 98 Stat. 1167; Nov. 8, 1984, Pub. L. 98-617, § 4(a), (b), 98 Stat. 3296, 3297.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-617, § 4(a)(1), substituted "1985" for "1984" after "1981 through".

Subsec. (b)(2)(A)(v). Pub. L. 98-617, § 4(a)(2), added cl. (v).

Subsec. (b)(2)(B). Pub. L. 98-617, § 4(a)(1), which directed the substitution of "1981 through 1985" for "1981 through 1984" was executed by substituting "1982 through 1985" for "1982 through 1984" as the probable intent of Congress because subpar. (B) did not contain the phrase "1981 through 1984".

Subsec. (b)(4)(A). Pub. L. 98-369, § 2663(c)(18)(A), substituted "subparagraph (C)" for "subparagraph (c)".

Subsec. (b)(4)(B). Pub. L. 98-617, § 4(a)(1), substituted "1985" for "1984" after "1981 through".

Subsec. (b)(5)(A). Pub. L. 98-617, § 4(a)(3)(A), substituted "October 1, 1985" for "October 1, 1984".

Subsec. (b)(5)(A)(ii). Pub. L. 98-617, § 4(a)(3)(B), substituted "each of fiscal years 1984 and 1985" for "fiscal year 1984".

Subsec. (c)(1), (2). Pub. L. 98-617, § 4(b), substituted "1985" for "1984" after "1981 through".

Pub. L. 98-369, § 2663(c)(18)(B), substituted "relevant" for "relvant".

Subsec. (d)(1). Pub. L. 98-369, § 2663(c)(18)(C), substituted "and (C) such" for "and (c) such" and "Secretary may find" for "secretary may find".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 673 of this title; title 2 section 906.

§ 675. Definitions

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by section 102(a)(4) of Pub. L. 96-272 effective only with respect to expenditures made after Sept. 30, 1979, and before Oct. 1, 1985, see section 102(c) of Pub. L. 96-272, as amended, set out as a note under section 672 of this title.

SUBCHAPTER V—MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300w-3, 300x-3, 300z-5, 671, 1301, 1320a-3, 1320a-7a, 1382d, 1396a, 8623 of this title; title 7 section 3178.

§ 701. Authorization of appropriations; purposes; definitions

(a) For the purpose of enabling each State—

[*See main edition for text of* (*1*) *to* (*4*)]

and for the purpose of enabling the Secretary to provide for special projects of regional and national significance, research, and training with respect to maternal and child health and crippled children, for genetic disease testing, counseling, and information development and dissemination programs, and for grants relating to hemophilia (without regard to age), there are authorized to be appropriated $478,000,000 for fiscal year 1984 and each fiscal year thereafter.

[*See main edition for text of* (*b*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2372(a), 98 Stat. 1110.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "$478,000,000 for fiscal year 1984 and each fiscal year thereafter" for "$373,000,000 for fiscal year 1982 and for each fiscal year thereafter".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2372(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1983."

§ 703. Payments to States

(a) Statutory provisions applicable

From the sums appropriated therefor and the allotments available under section 702(b) of this title, the Secretary shall make payments as provided by section 6503(a) of title 31 to each State provided such an allotment under section 702(b) of this title, for each quarter, of an amount equal to four-sevenths of the total of the sums expended by the State during such quarter in carrying out the provisions of this subchapter.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2373(a)(1), 98 Stat. 1111.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "section 6503(a) of title 31" for "section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)".

§ 706. Administrative and fiscal accountability

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Access to books, records, etc.; creation of new records

[*See main edition for text of* (*1*) *and* (*2*)]

(3) For other provisions relating to deposit, accounting, reports, and auditing with respect to Federal grants to States, see section 6503(b) of title 31.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2373(a)(2), 98 Stat. 1111.)

AMENDMENTS

1984—Subsec. (d)(3). Pub. L. 98-369 substituted "section 6503(b) of title 31" for "section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)".

SUBCHAPTER VII—ADMINISTRATION

§ 902. Duties of Secretary of Health and Human Services

The Secretary [1] shall perform the duties imposed upon him by this chapter and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

(Aug. 14, 1935, ch. 531, title VII, § 702, 49 Stat. 636; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(C)(i), (*l*)(1), 98 Stat. 1170, 1171.)

AMENDMENTS

1984—Pub. L. 98-369, § 2663(*l*)(1), substituted "Secretary" for "Administrator".

Pub. L. 98-369, § 2663(j)(2)(C)(i), which directed the substitution of "Health and Human Services" for "Health, Education, and Welfare", could not be executed because "Health, Education, and Welfare" did not appear in text.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

TRANSFER OF FUNCTIONS

Reorganization Plan No. 2 of 1949 (eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065) transferred to the Secretary of Labor certain duties and functions of the Federal Security Administrator (now the Secretary of Health and Human Services), with respect to employment services, unemployment compensation, and the Bureau of Employment Security (which also was transferred to the Department of Labor from the Federal Security Agency). Reorganization Plan No. 19 of

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[1] See Transfer of Functions note below.

1950 (eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271) transferred the Bureau of Employees' Compensation from the Federal Security Agency (now the Department of Health and Human Services) to the Department of Labor and provided for the transfer from the Federal Security Administrator to the Secretary of Labor of certain functions and duties with respect to the Bureau of Employees' Compensation and with respect to employees' compensation, including workmen's compensation. In effect, with respect to these functions and duties, the provisions of this section also apply to the Secretary of Labor.

Study Concerning the Establishment of the Social Security Administration as an Independent Agency

Pub. L. 98-21, title III, § 338, Apr. 20, 1983, 97 Stat. 132, as amended by Pub. L. 98-369, div. B, title VI, § 2662(h)(1), July 18, 1984, 98 Stat. 1160, provided that:

"(a) There is hereby established, under the authority of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a joint study panel to be known as the Joint Study Panel on the Social Security Administration (hereafter in this section referred to as the 'Panel'). The duties of the Panel shall be to conduct the study provided for in subsection (c).

"(b)(1) The Panel shall be composed of 3 members, appointed jointly by the chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and such chairmen shall jointly select one member of the Panel to serve as chairman of the Panel. Members of the Panel shall be chosen, on the basis of their integrity, impartiality, and good judgment, from individuals who, as a result of their training, experience, and attainments, are widely recognized by professionals in the fields of government administration, social insurance, and labor relations as experts in those fields.

"(2) Vacancies in the membership of the Panel shall not affect the power of the remaining members to perform the duties of the Panel and shall be filled in the same manner in which the original appointment was made.

"(3) Each member of the Panel not otherwise in the employ of the United States Government shall receive the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which such member is actually engaged in the performance of the duties of the Panel. Each member of the Panel shall be allowed travel expenses in the same manner as any individual employed intermittently by the Federal Government is allowed travel expenses under section 5703 of title 5, United States Code.

"(4) By agreement between the chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, such Committees shall provide the Panel, on a reimbursible basis, office space, clerical personnel, and such supplies and equipment as may be necessary for the Panel to carry out its duties under this section. Subject to such limitations as the chairmen of such Committees may jointly prescribe, the Panel may appoint such additional personnel as the Panel considers necessary and fix the compensation of such personnel as it considers appropriate at an annual rate which does not exceed the rate of basic pay then payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code, and may procure by contract the temporary or intermittent services of clerical personnel and experts or consultants, or organizations thereof.

"(5) There are hereby authorized to be appropriated to the Panel, from amounts in the general fund of the Treasury not otherwise appropriated, such sums as are necessary to carry out the purposes of this section.

"(6) The provisions of section 8344 of title 5, United States Code, shall not apply to service by an individual as a member of the Panel.

"(c)(1) The Panel shall undertake, as soon as possible after the date of the enactment of this Act [Apr. 20, 1983], a thorough study with respect to the implementation of removing the Social Security Administration from the Department of Health and Human Services and establishing it as an independent agency in the executive branch with its own independent administrative structure, including the possibility of such a structure headed by a board appointed by the President, by and with the advice and consent of the Senate.

"(2) The Panel in its study under paragraph (1) shall address, analyze, and report specifically on the following matters:

"(A) the manner in which the transition to an independent agency would be conducted;

"(B) the authorities which would have to be transferred or amended in such a transition;

"(C) the program or programs which would be included within the jurisdiction of the new agency;

"(D) the legal and other relationships of the Social Security Administration with other organizations which would be required as a result of establishing the Social Security Administration as an independent agency; and

"(E) any other details which may be necessary for the development of appropriate legislation to establish the Social Security Administration as an independent agency.

"(d) The Panel shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, not later than April 1, 1984, a report of the findings of the study conducted under subsection (c), together with any recommendations the Panel considers appropriate. The Panel and all authority granted in this section shall expire thirty days after the date of the submission of its report under this section."

[Section 2662(h)(2) of Pub. L. 98-369 provided that: "The amendment made by this subsection [amending this note] shall take effect on January 1, 1984."]

Earnings Sharing Implementation Report

Pub. L. 98-21, title III, § 343, Apr. 20, 1983, 97 Stat. 136, provided that:

"(a) The Secretary of Health and Human Services (hereinafter in this section referred to as the 'Secretary') shall develop, in consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, proposals for earnings sharing legislation as described in subsection (b). The Secretary shall report such proposals to such committees not later than July 1, 1984. The report and proposals provided to such committees shall—

"(1) take into account, discuss, and analyze the impact of earnings sharing on various categories of social security beneficiaries and include recommendations for the implementation of earnings sharing which may be necessary to provide adequate protection for particular classes of beneficiaries;

"(2) include specific recommendations with respect to an appropriate and feasible time period or time periods for implementation of such proposals along with recommendations for any transition provisions which may be necessary or appropriate; and

"(3) provide cost-impact analyses on each proposal presented.

"(b) For the purposes of subsection (a), the term 'earnings sharing' refers to proposals that the combined earnings of a husband and wife during the period of their marriage shall be divided equally and shared between them for social security benefit purposes.

"(c) In preparing the report and proposals required in subsection (a), the Secretary shall include consideration and analysis of the earnings sharing proposals contained in (1) S. 3, 98th Congress, 1st Session, (2) H.R. 1513, 97th Congress, 1st Session, and (3) the earnings sharing option described in the report entitled 'Social Security and the Changing Roles of Men and Women', submitted to the Congress pursuant to Public Law 95-216, the Social Security Amendments of 1977.

"(d) In carrying out subsections (a), (b), and (c), the Secretary shall consult with the Director of the Congressional Budget Office. Not later than 30 days after the Secretary submits the report required in subsection (a), the Director of the Congressional Budget Office shall submit a report to the committees identified in such subsection on the methodologies, recommendations, and analyses used in the Secretary's report."

§ 903. Expenses of Secretary; appointment and compensation of officers and employees

The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out his functions under this chapter. Appointments of attorneys and experts may be made without regard to the civil-service laws.

(Aug. 14, 1935, ch. 531, title VII, § 703, 49 Stat. 636; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(*l*)(1), 98 Stat. 1171.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Secretary" for "Administrator".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 904. Annual report to Congress

The Secretary shall make a full report to Congress, within one hundred and twenty days after the beginning of each regular session, of the administration of the functions with which he is charged under this chapter. In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.

(Aug. 14, 1935, ch. 531, title VII, § 704, 49 Stat. 636; Aug. 28, 1950, ch. 809, title IV, § 402(b), 64 Stat. 558; Apr. 21, 1976, Pub. L. 94-273, § 33, 90 Stat. 380; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(*l*)(1), 98 Stat. 1171.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Secretary" for "Administrator".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 1383 of this title.

§ 907. Advisory Council on Social Security

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Technical assistance; actuarial services; availability of assistance and data; compensation and travel expenses

(1) Any Council appointed hereunder is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary shall, in addition, make available to such Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health and Human Services as it may require to carry out such functions.

[*See main edition for text of* (*2*); (*d*)]

(Aug. 14, 1935, ch. 531, title VII, § 706, as added July 30, 1965, Pub. L. 89-97, title I, § 109(a), 79 Stat. 339, and amended Jan. 2, 1968, Pub. L. 90-248, title I, § 165, title IV, § 403(d), 81 Stat. 874, 932; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(C)(ii), 98 Stat. 1170.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

APPOINTMENT OF MEMBERS; STUDY OF MEDICAL AND VOCATIONAL ASPECTS OF DISABILITY; DEFINITION; TASK FORCES

Pub. L. 98-460, § 12, Oct. 9, 1984, 98 Stat. 1806, provided that:

"(a) The Secretary of Health and Human Services shall appoint the members of the next Advisory Council on Social Security pursuant to section 706 of the Social Security Act [42 U.S.C. 907] prior to June 1, 1985.

"(b)(1) The Advisory Council shall include in its review and report, studies and recommendations with respect to the medical and vocational aspects of disability, including studies and recommendations relating to—

"(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;

"(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved;

"(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability under title XVI [42 U.S.C. 1381 et seq.] and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination;

"(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability under title XVI in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

"(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability under title XVI; and

"(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability under title XVI will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

"(2) For purposes of this subsection, 'work evaluation' includes (with respect to any individual) a determination of—

"(A) such individual's skills,

"(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,

"(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,

"(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and

"(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

"(c) The Advisory Council may convene task forces of experts to consider and comment upon specialized issues."

§ 907a. National Commission on Social Security

[*See main edition for text of* (*a*) *to* (*h*)]

(i) **Repealed. Pub. L. 98–369, div. B, title III, § 2349(b)(3), July 18, 1984, 98 Stat. 1097**

(As amended Pub. L. 98–369, div. B, title III, § 2349(b)(3), July 18, 1984, 98 Stat. 1097.)

AMENDMENTS

1984—Subsec. (i). Pub. L. 98–369 struck out subsec. (i) which provided for notice of and attendance at meetings of the Health Insurance Benefits Advisory Council.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2349(c) of Pub. L. 98–369 provided that: "The amendments made by this section [amending sections 907a and 1395z of this title and section 231f of Title 45, Railroads, and repealing section 1395dd of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

§ 910. Recommendations by Board of Trustees to remedy inadequate balances in the Social Security trust funds

(a) Terms and conditions of recommendations

If the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund determines at any time that the balance ratio of any such Trust Fund for any calendar year may become less than 20 percent, the Board shall promptly submit to each House of the Congress a report setting forth its recommendations for statutory adjustments affecting the receipts and disbursements of such Trust Fund necessary to maintain the balance ratio of such Trust Fund at not less than 20 percent, with due regard to the economic conditions which created such inadequacy in the balance ratio and the amount of time necessary to alleviate such inadequacy in a prudent manner. The report shall set forth specifically the extent to which benefits would have to be reduced, taxes under section 1401, 3101, or 3111 of the Internal Revenue Code of 1954 would have to be increased, or a combination thereof, in order to obtain the objectives referred to in the preceding sentence.

(b) "Balance ratio" defined

For purposes of this section, the term "balance ratio" means, with respect to any calendar year in connection with any Trust Fund referred to in subsection (a) of this section, the ratio of—

(1) the balance in such Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 401(*l*) or 1395i(j) of this title, as of the beginning of such year, to

(2) the total amount which (as estimated by the Secretary) will be paid from such Trust Fund during such calendar year for all purposes authorized by section 401, 1395i, or 1395t of this title (as applicable), other than payments of interest on, or repayments of, loans under section 401(*l*) or 1395i(j) of this title, but excluding any transfer payments between such Trust Fund and any other Trust Fund referred to in subsection (a) of this section and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from that Account.

(Aug. 14, 1935, ch. 531, title VII, § 709, as added Apr. 20, 1983, Pub. L. 98–21, title I, § 143, 97 Stat. 102.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.

§ 911. Budgetary treatment of trust fund operations

(a) Federal Old-Age and Survivors Insurance Trust Fund; Federal Disability Insurance Trust Fund

The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, and the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(b) Federal Hospital Insurance Trust Fund; Federal Supplementary Medical Insurance Trust Fund

The disbursements of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Funds, including the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954, shall be set forth separately in such budgets.

(c) Payments between general fund of Treasury and trust funds prohibited

No provision of law enacted after December 12, 1985 (other than a provision of an appropriation Act that appropriates funds authorized under this chapter as in effect on December 12, 1985) may provide for payments from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, or for payments from either such Trust Fund to the general fund of the Treasury.

(Aug. 14, 1935, ch. 531, title VII, § 710, as added Apr. 20, 1983, Pub. L. 98-21, title III, § 346(a)(1), 97 Stat. 137, and amended Dec. 12, 1985, Pub. L. 99-177, title II, § 261(a)(1), 99 Stat. 1093.)

AMENDMENT OF SECTION

Pub. L. 98-21, title III, § 346(b), Apr. 20, 1983, 97 Stat. 138, as amended Pub. L. 99-177, title II, § 261(b), Dec. 12, 1985, 99 Stat. 1094, provided that effective for fiscal years beginning on or after Oct. 1, 1992, this section is amended to read as follows:

(a)(1) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund and the taxes imposed under sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954 shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(2) No provision of law enacted after December 12, 1985 (other than a provision of an appropriation Act that appropriates funds authorized under this chapter as in effect on December 12, 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in paragraph (1) or for payments from any such Trust Fund to the general fund of the Treasury.

(b) The disbursements of the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Fund shall be set forth separately in such budgets.

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsecs. (a) and (b), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-177, § 261(a)(1)(E), temporarily added subsec. (a). See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (b). Pub. L. 99-177, § 261(a)(1)(A)-(D), temporarily designated existing provisions as subsec. (b), struck out references to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, and substituted "sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954" for "sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954". See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (c). Pub. L. 99-177, § 261(a)(1)(F), temporarily added subsec. (c). See Effective and Termination Dates of 1985 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 261(a)(2) of Pub. L. 99-177 provided that: "The amendments made by paragraph (1) [amending this section] shall apply with respect to fiscal years beginning after September 30, 1985, and ending before October 1, 1992."

EFFECTIVE AND TERMINATION DATES

Section 346(a)(2) of Pub. L. 98-21 provided that: "The amendment made by paragraph (1) [enacting this section] shall apply with respect to fiscal years beginning on or after October 1, 1984, and ending on or before September 30, 1992, except that such amendment shall apply with respect to the fiscal year beginning on October 1, 1983, to the extent it relates to the congressional budget."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 622.

SUBCHAPTER IX—EMPLOYMENT SECURITY ADMINISTRATIVE FINANCING

§ 1101. Employment Security Administration Account

[*See main edition for text of* (a) *and* (b)]

(c) Administrative expenditures; necessary expenses; quarterly transfer of funds; adjustments; limitation; estimate of net receipts

[*See main edition for text of* (1) *and* (2)]

(3) [*See main edition for text of* (A) *and* (B)]

(C) Each estimate of net receipts under this paragraph shall be based upon (i) a tax rate of

0.6 percent in the case of any calendar year for which the rate of tax under section 3301 of the Federal Unemployment Tax Act [26 U.S.C. 3301] is 6.0 percent, and (ii) a tax rate of 0.8 percent in the case of any calendar year for which the rate of tax under such section is 6.2 percent.

[*See main edition for text of* (*4*); (*d*) *to* (*f*)]

(Aug. 14, 1935, ch. 531, title IX, § 901, as added Aug. 5, 1954, ch. 657, § 2, 68 Stat. 668, and amended Sept. 13, 1960, Pub. L. 86-778, title V, § 521, 74 Stat. 970; May 8, 1961, Pub. L. 87-31, § 7, 75 Stat. 78; May 29, 1963, Pub. L. 88-31, § 1, 77 Stat. 51; Aug. 7, 1969, Pub. L. 91-53, § 3, 83 Stat. 93; Aug. 10, 1970, Pub. L. 91-373, title III, § 303, 84 Stat. 713; Apr. 21, 1976, Pub. L. 94-273, § 39, 90 Stat. 381; Oct. 20, 1976, Pub. L. 94-566, title II, § 211(c)(1), 90 Stat. 2676; Sept. 3, 1982, Pub. L. 97-248, title II, § 271(b)(2)(A), (c)(3)(D), 96 Stat. 554, 555; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(d)(1), (2), 98 Stat. 1167.)

Amendments

1984—Subsec. (c). Pub. L. 98-369, § 2663(d)(1), realigned margins of subsec. (c).

Subsec. (f). Pub. L. 98-369, § 2663(d)(2), realigned margins of par. (3).

1982—Subsec. (c)(3)(C). Pub. L. 97-248, § 271(c)(3)(D), substituted "0.6" for "0.5", "6.0" for "3.2", and "6.2" for "3.5".

Subsec. (c)(3)(C)(ii). Pub. L. 97-248, § 271(b)(2)(A), substituted "0.8" for "0.7", struck out "3301" after "tax under such section", and substituted "3.5" for "3.4".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Effective Date of 1982 Amendment

Amendment by section 271(b)(2)(A) of Pub. L. 97-248 applicable to remuneration paid after Dec. 31, 1982, see section 271(d)(1) of Pub. L. 97-248, as amended, set out as a note under section 3301 of Title 26, Internal Revenue Code.

Amendment by section 271(c)(3)(D) of Pub. L. 97-248 applicable to remuneration paid after Dec. 31, 1984, see section 271(d)(2) of Pub. L. 97-248, as amended, set out as a note under section 3301 of Title 26.

§ 1104. Unemployment Trust Fund

[*See main edition for text of* (*a*)]

(b) Investments

It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

[*See main edition for text of* (*c*) *to* (*g*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(d)(3), 98 Stat. 1167.)

Amendments

1984—Subsec. (b). Pub. L. 98-369 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as amended".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Section Referred to in Other Sections

This section is referred to in sections 503, 1105, 1109, 1322 of this title; title 2 section 906; title 5 section 8509; title 26 sections 3304, 3306; title 45 sections 360, 361, 363a, 366a.

§ 1108. Federal Advisory Council

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Compensation

Members of the Council shall, while serving on business of the Council, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in government service employed intermittently.

[*See main edition for text of* (*e*) *and* (*f*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(d)(4), 98 Stat. 1167.)

Amendments

1984—Subsec. (d). Pub. L. 98-369 substituted "5703" for "5703(b)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1109. Federal Employees Compensation Account

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 906; title 5 section 8509.

SUBCHAPTER X—GRANTS TO STATES FOR AID TO THE BLIND

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 428, 602, 671, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1320b-2, 1320b-3, 1320b-7, 1382, 1382c, 1395v, 1396a, 1396b, 1396d of this title; title 7 sections 2012, 2014; title 26 section 6103; title 29 section 802.

§ 1202. State plans for aid to blind

(a) A State plan for aid to the blind must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; and [1] (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title or aid to families with dependent children under the State plan approved under section 602 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency (A) shall disregard the first $85 per month of earned income, plus one-half of earned income in excess of $85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $7.50 of any income; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (13) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (14) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

[*See main edition for text of* (*b*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2651(f), 98 Stat. 1149.)

AMENDMENTS

1984—Subsec. (a)(14). Pub. L. 98-369 added cl. (14).

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[1] So in original. The word "and" probably should not appear.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

SUBCHAPTER XI—GENERAL PROVISIONS AND PEER REVIEW

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 432, 1395x, 3012 of this title.

PART A—GENERAL PROVISIONS

§ 1301. Definitions

(a) When used in this chapter—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) The term "Secretary", except when the context otherwise requires, means the Secretary of Health and Human Services.

[*See main edition for text of* (*7*) *to* (*9*);
(*b*) *to* (*d*)]

(Aug. 14, 1935, ch. 531, title XI, § 1101, 49 Stat. 647; Aug. 10, 1939, ch. 666, title VIII, § 801, 53 Stat. 1398; Aug. 10, 1946, ch. 951, title IV, § 401(a), 60 Stat. 986; June 14, 1948, ch. 468, § 2(a), 62 Stat. 438; Aug. 28, 1950, ch. 809, title IV, § 403(a)(1), (2), (b), 64 Stat. 559; Aug. 16, 1956, ch. 836, title III, § 333, 70 Stat. 852; Aug. 28, 1958, Pub. L. 85-840, title V, §§ 505, 506, 72 Stat. 1050, 1051; June 25, 1959, Pub. L. 86-70, § 32(a), (d), 73 Stat. 149; July 12, 1960, Pub. L. 86-624, § 30(a), (d), 74 Stat. 419, 420; Sept. 13, 1960, Pub. L. 86-778, title V, § 541, 74 Stat. 985; July 25, 1962, Pub. L. 87-543, title I, § 153, 76 Stat. 206; July 30, 1965, Pub. L. 89-97, title I, § 121(c)(1), 79 Stat. 352; Oct. 30, 1972, Pub. L. 92-603, title II, § 272(a), 86 Stat. 1451; Dec. 31, 1973, Pub. L. 93-233, § 18(z-2)(1)(A), 87 Stat. 973; Apr. 21, 1976, Pub. L. 94-273, § 22, 90 Stat. 379; Oct. 20, 1976, Pub. L. 94-566, title I, § 116(a), 90 Stat. 2672; Oct. 25, 1977, Pub. L. 95-142, § 5(c)(2), (*l*)(2), 91 Stat. 1184, 1191; Aug. 13, 1981, Pub. L. 97-35, title XXI, §§ 2162(a)(1), 2193(c)(2), title XXIII, § 2352(b), 95 Stat. 806, 827, 871; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 136(a), 160(c), 96 Stat. 375, 400; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(e)(1), (j)(1), 98 Stat. 1167, 1170.)

AMENDMENTS

1984—Subsec. (a)(6). Pub. L. 98-369, § 2663(j)(1), substituted "means the Secretary of Health and Human Services" for "means the Secretary of Health, Education, and Welfare".

Subsec. (a)(8), (9). Pub. L. 98-369, § 2663(e)(1), realigned margins of pars. (8) and (9).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PROVISIONS RELATING TO FEDERAL SECURITY ADMINISTRATOR

Section 2663(*l*) of Pub. L. 98-369 provided that: "Any reference to the Federal Security Administrator which may remain in the provisions of title II, IV, VII, or XI of the Social Security Act [42 U.S.C. 401 et seq., 601 et seq., 901 et seq., 1301 et seq.] (other than section 1101(a)(6) of such Act [42 U.S.C. 1301(a)(6)]) is amended—

"(1) by substituting 'Secretary' or 'Secretary's' for the term 'Administrator' or 'Administrator's', where the reference is to that term alone;

"(2) by substituting 'Secretary of Health, Education, and Welfare' for the term 'Federal Security Administrator', where the reference is to that term, if the provision containing such reference is amended by paragraph (2) or (3) of subsection (j) [Pub. L. 98-369, § 2663(j)(2), (3), see Tables for classification] (in which case the amendment of such provision under this paragraph shall be deemed to have taken effect immediately prior to the amendment of such provision under such paragraph (2) or (3)); and

"(3) by substituting 'Secretary of Health and Human Services' for the term 'Federal Security Administrator' in any other case where the reference is to that term;

and any reference to the Federal Security Agency which may remain in such provisions is amended by substituting 'Department of Health and Human Services' for the term 'Federal Security Agency'; but nothing in this subsection shall affect the exercise under section 402(a)(5) of such Act [42 U.S.C. 602(a)(5)] of the functions, powers, and duties relating to the prescription of personnel standards on a merit basis which were transferred from the Secretary of Health, Education, and Welfare by section 208(a)(3)(D) of Public Law 91-648 [42 U.S.C. 4728(a)(3)(D)]."

§ 1302. Rules and regulations

The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter.

(Aug. 14, 1935, ch. 531, title XI, § 1102, 49 Stat. 647; Aug. 28, 1950, ch. 809, title IV, § 403(c), 64 Stat. 559; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(D)(i), (*l*)(2), 98 Stat. 1170, 1171.)

AMENDMENTS

1984—Pub. L. 98-369, § 2663(*l*)(2), substituted "Secretary of Health, Education, and Welfare" for "Federal Security Administrator" immediately prior to the substitution of "Health and Human Services" for "Health, Education, and Welfare" by Pub. L. 98-369, § 2663(j)(2)(D)(i).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

NOTICE ON SOCIAL SECURITY CHECKS

Pub. L. 98-473, title II, § 1212, Oct. 12, 1984, 98 Stat. 2165, provided that:

"(a) The Secretary of the Treasury shall take such steps as may be necessary to provide that all checks issued for payment of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.], and the envelopes in which such checks are mailed, contain a printed notice that the commission of forgery in conjunction with the cashing or attempted cashing of such checks constitutes a violation of Federal law. Such notice shall also state the maximum penalties for forgery under the applicable provisions of title 18 of the United States Code.

"(b) Subsection (a) shall apply with respect to checks issued for months after the ninth month after the date of the enactment of this Act [Oct. 12, 1984]."

§ 1303. Separability of provisions

SEPARABILITY OF PROVISIONS

Pub. L. 98-460, § 18, Oct. 9, 1984, 98 Stat. 1813, provided that: "If any provision of this Act [amending sections 405, 408, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 to 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1305 of this title, and amending provisions set out as a note under section 1382h of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby."

§ 1305. Short title of chapter

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98-460, § 1, Oct. 9, 1984, 98 Stat. 1794, provided that: "This Act [amending sections 405, 408, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 to 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1303 of this title, and amending provisions set out as a note under section 1382h of this title] may be cited as the 'Social Security Disability Benefits Reform Act of 1984'."

Pub. L. 98-378, § 1, Aug. 16, 1984, 98 Stat. 1305, provided that: "This Act [enacting sections 666 and 667 of this title, amending sections 602, 603, 606, 651 to 658, 664, 671, 1315, and 1396a of this title and sections 6103, 6402, and 7213 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 602, 606, 652, 654, 657, 658, and 667 of this title and section 6103 of Title 26] may be cited as the 'Child Support Enforcement Amendments of 1984'."

Pub. L. 98-369, div. B, title III, § 2300, July 18, 1984, 98 Stat. 1061, provided that: "This title [enacting sections 1317, 1395yy, 1395zz, and 1396q of this title, amending sections 291i, 300s-1a, 606, 701, 703, 706, 907a, 1308, 1310, 1316, 1320a-1, 1320a-7 to 1320a-8, 1320c-2, 1395b-1, 1395f, 1395h, 1395i, 1395i-2, 1395k, 1395*l*, 1395n, 1395p to 1395cc, 1395ff, 1395ii, 1395*ll*, 1395mm to 1395*oo*, 1395rr, 1395ww, 1396a, 1396b, 1396d, 1396k, 1396*l*, and 1396n of this title, section 5315 of Title 5, Government Organization and Employees, section 162 of Title 26, Internal Revenue Code, section 623 of Title 29, Labor, and section 231f of Title 45, Railroads, repealing section 1395dd of this title, enacting provisions set out as notes under sections 291i, 701, 907a, 1308, 1310, 1317, 1320a-1, 1320a-7, 1320c-2, 1395b-1, 1395f, 1395h, 1395i, 1395k, 1395*l*, 1395n, 1395p, 1395r, 1395u, 1395x, 1395y, 1395bb, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395uu, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396*l*, and 1396q of this title and section 623 of Title 29, and amending provisions set out as notes under sections 1320c, 1395x, 1395mm, and 1395ww of this title] may be cited as the 'Medicare and Medicaid Budget Reconciliation Amendments of 1984'."

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-21, § 1, Apr. 20, 1983, 97 Stat. 65, provided in part that Pub. L. 98-21 [enacting sections 910 and 911 of this title and sections 86, 3510, and 6050F of Title 26, Internal Revenue Code, amending sections 401, 402, 403, 405, 407, 409, 410, 411, 415, 416, 417, 418, 422, 423, 425, 426, 427, 428, 429, 430, 433, 503, 602, 659, 1320a-1, 1320c-2, 1322, 1382, 1382a, 1382f, 1382g, 1395f, 1395i, 1395i-2, 1395n, 1395r, 1395t, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395ww, and 1395xx of this title, section 3413 of Title 12, Banks and Banking, and sections 37, 41, 43, 44A, 46, 53, 85, 86, 87, 105, 128, 164, 275, 401, 403, 406, 407, 415, 861, 871, 904, 1401, 1402, 1441, 3101, 3111, 3121, 3302, 3304, 3306, 6103, 6413, and 7871 of Title 26, and enacting provisions set out as notes under sections 401, 402, 403, 405, 407, 410, 411, 414, 415, 416, 418, 426, 428, 429, 433, 602, 902, 911, 1382, 1395b-1, 1395i, 1395r, 1395x, 1395y, 1395cc, and 1395ww of this title, sections 37, 86, 406, 1401, 1402, 3101, 3121, 3302, 3303, 3304, 3306, and 3510 of Title 26, section 3023 of Title 38, Veterans' Benefits, and section 231n of Title 45, Railroads] may be cited as the "Social Security Amendments of 1983".

§ 1306. Disclosure of information in possession of Department of Health and Human Services

(a) Disclosure prohibited; exceptions

No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act [42 U.S.C. 1001 et seq.] or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code [of 1939], or under regulations made under authority thereof, which has been transmitted to the Secretary [1] by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the Secretary or by any officer or employee of the Department of Health and Human Services in the course of discharging the duties of the Secretary under this chapter, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the Secretary or from any officer or employee of the Department of Health and Human Services shall be made except as the Secretary may by regulations prescribe and except as otherwise provided by Federal law. Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Requests for information and services

Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the Secretary [1] to avoid undue interference with his functions under this chapter, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the Secretary. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the Secretary, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical

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[1] See Transfer of Functions note below.

Insurance Trust Fund) for the unit or units of the Department of Health and Human Services which furnished the information or services. Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of subchapter IV of this chapter for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of subchapter IV of this chapter.

[*See main edition for text of* (*c*) *to* (*e*)]

(Aug. 14, 1935, ch. 531, title XI, § 1106, as added Aug. 10, 1939, ch. 666, title VIII, § 802, 53 Stat. 1398, and amended Aug. 28, 1950, ch. 809, title IV, § 403(d), 64 Stat. 559; Aug. 28, 1958, Pub. L. 85-840, title VII, § 701, 72 Stat. 1055; July 30, 1965, Pub. L. 89-97, title I, § 108(c), title III, § 340, 79 Stat. 339, 411; Jan. 2, 1968, Pub. L. 90-248, title I, § 168, title II, § 241(c)(1), 81 Stat. 875, 917; Oct. 30, 1972, Pub. L. 92-603, title II, § 249C(a), 86 Stat. 1428; Jan. 4, 1975, Pub. L. 93-647, § 101(d), 88 Stat. 2360; Aug. 13, 1981, Pub. L. 97-35, title XXII, § 2207, 95 Stat. 838; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(D)(ii), (*l*), 98 Stat. 1170, 1171.)

Amendments

1984—Subsec. (a). Pub. L. 98-369, § 2663(*l*), substituted "Secretary" and "Department of Health and Human Services" for "Administrator" and "Federal Security Agency", respectively, wherever appearing.

Subsec. (b). Pub. L. 98-369, § 2663(j)(2)(D)(ii), substituted "Health and Human Services" for "Health, Education, and Welfare".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Transfer of Functions

Reorganization Plan No. 2 of 1949 (eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065) transferred to the Secretary of Labor certain duties and functions of the Federal Security Administrator (now the Secretary of Health and Human Services), with respect to employment services, unemployment compensation, and the Bureau of Employment Security (which was also transferred to the Department of Labor from the Federal Security Agency). Reorganization Plan No. 19 of 1950 (eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271) transferred the Bureau of Employees' Compensation from the Federal Security Agency (now the Department of Health and Human Services) to the Department of Labor and provided for the transfer from the Federal Security Administrator to the Secretary of Labor of certain functions and duties with respect to the Bureau of Employees' Compensation and with respect to employees' compensation, including workmen's compensation. In effect, with respect to these functions and duties, the provisions of this section also apply to the Secretary of Labor.

§ 1307. Penalty for fraud

(a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this chapter, of chapter 2, 21, or 23 of the Internal Revenue Code of 1954, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939, or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Secretary that he is such individual, or the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or (2) falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(Aug. 14, 1935, ch. 531, title XI, § 1107, as added Aug. 10, 1939, ch. 666, title VIII, § 802, 53 Stat. 1398, and amended Aug. 28, 1950, ch. 809, title IV, § 403(e), (f), 64 Stat. 560; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(e)(2)(A), (3), (j)(2)(D)(iii), (*l*)(1), 98 Stat. 1168, 1170, 1171.)

References in Text

Subchapter E of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 1631 to 1636 of the 1939 Code, and was repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of the Internal Revenue Code of 1954.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1954 Code, see section 7852(b) of the 1954 Code. For table of comparisons of the 1939 Code to the 1954 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1954 is classified generally to Title 26.

Amendments

1984—Subsec. (a). Pub. L. 98-369, § 2663(e)(2)(A), substituted "of chapter 2, 21, or 23 of the Internal Revenue Code of 1954, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939," for "subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code [of 1939]".

Subsec. (b). Pub. L. 98-369, § 2663(*l*)(1), substituted "Secretary" for "Administrator".

Pub. L. 98-369, § 2663(j)(2)(D)(iii), which directed the substitution of "Health and Human Services" for "Health, Education, and Welfare" could not be executed because "Health, Education, and Welfare" did not appear in text.

Pub. L. 98-369, § 2663(e)(3), substituted "divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father," for "former wife divorced," in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Section § 2663(e)(2)(B) of Pub. L. 98-369 provided that: "The amendment made by subparagraph (A) [amending subsec. (a) of this section] shall not apply to returns filed or representations made on or before the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2663(e)(3), (j)(2)(D)(iii), (*l*)(1), of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1308. Limitation on payments to Puerto Rico, Virgin Islands, Guam, Northern Mariana Islands, American Samoa, and Trust Territory of Pacific Islands

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Total amount certified under subchapter XIX

The total amount certified by the Secretary under subchapter XIX of this chapter with respect to a fiscal year for payment to—

(1) Puerto Rico shall not exceed $63,400,000;

(2) the Virgin Islands shall not exceed $2,100,000;

(3) Guam shall not exceed $2,000,000;

(4) the Northern Mariana Islands shall not exceed $550,000; and

(5) American Samoa shall not exceed $1,150,000.

[*See main edition for text of* (*d*)]

(Aug. 14, 1935, ch. 531, title XI, § 1108, as added Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(g), 64 Stat. 558, and amended Aug. 1, 1956, ch. 836, title III, § 351(c), 70 Stat. 855; Aug. 28, 1958, Pub. L. 85-840, title V, §§ 507, 508, 72 Stat. 1051; Sept. 13, 1960, Pub. L. 86-778, title VI, § 602, 74 Stat. 992; May 8, 1961, Pub. L. 87-31, § 6(a)(1), (2), (b), 75 Stat. 78; June 30, 1961, Pub. L. 87-64, title III, § 303(d), 75 Stat. 143; July 25, 1962, Pub. L. 87-543, title I, § 151, 76 Stat. 206; July 30, 1965, Pub. L. 89-97, title II, § 208(a)(2), title IV, § 408(a), 79 Stat. 355, 422; Jan. 2, 1968, Pub. L. 90-248, title II, § 248(a)(1), 81 Stat. 918; Oct. 30, 1972, Pub. L. 92-603, title II, §§ 271(a), (b), 272(b), 86 Stat. 1451; Jan. 4, 1975, Pub. L. 93-647, § 3(i), 88 Stat. 2350; Nov. 6, 1978, Pub. L. 95-600, title VIII, § 802(b), 92 Stat. 2945; June 17, 1980, Pub. L. 96-272, title II, § 207(c), title III, §§ 305(a), (b), 94 Stat. 526, 529, 530; Aug. 13, 1981, Pub. L. 97-35, title XXI, §§ 2162(b)(1), 2193(c)(1), title XXIII, § 2353(f), 95 Stat. 806, 827, 872; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 136(b), 160(a), 96 Stat. 375, 400; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2365(a), 98 Stat. 1108.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 substituted "$63,400,000" for "$45,000,000" in par. (1), "$2,100,000" for "$1,500,000" in par. (2), "$2,000,000" for "$1,400,000" in par. (3), "$550,000" for "$350,000" in par. (4), and "$1,150,000" for "$750,000" in par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2365(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (c) of this section] shall be effective for fiscal years beginning on or after October 1, 1983."

§ 1310. Cooperative research or demonstration projects

(a)(1) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1957, $5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (A) making grants to States and public and other organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under this chapter and programs related thereto, and (B) making contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters.

[*See main edition for text of* (*2*) *and* (*3*); (*b*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2331(a), 98 Stat. 1088.)

AMENDMENTS

1984—Subsec. (a)(1)(A). Pub. L. 98-369 struck out "nonprofit" before first reference to "organizations and agencies".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2331(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1310 and 1395b-1 of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

§ 1314. Public advisory groups

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Technical and other assistance for initial Council; availability of data

The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Health and Human Services as it may require to carry out such functions.

[*See main edition for text of* (*d*) *to* (*f*)]

(g) Compensation and travel expenses

Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $75 per day, including travel time; and while so serving away from their homes or regular places of business, hey may be allowed travel expenses, including er diem in lieu of subsistence, as authorized by ection 5703 of title 5 for persons in Government service employed intermittently.

h) Exemption from conflict of interest laws of members of Council or advisory committees; exceptions

(1) Any member of the Council or any advisoy committee appointed under this chapter, vho is not a regular full-time employee of the Jnited States, is hereby exempted, with respect o such appointment, from the operation of secions 203, 205, and 209 of title 18, except as therwise specified in paragraph (2) of this subection.

[*See main edition for text of (2)*]

Aug. 14, 1935, ch. 531, title XI, § 1114, as added uly 25, 1962, Pub. L. 87-543, title I, § 121, 76 Stat. 190, and amended Jan. 2, 1968, Pub. L. 0-248, title IV, § 403(e), 81 Stat. 932; July 18, 984, Pub. L. 98-369, div. B, title VI, 2663(e)(4), (j)(2)(D)(iv), 98 Stat. 1168, 1170.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 2663(j)(2)(D)(iv), ubstituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (g). Pub. L. 98-369, § 2663(e)(4)(A), made echnical correction of typographical error resulting n no change in text.

Subsec. (h)(1). Pub. L. 98-369, § 2663(e)(4)(B), substituted "sections 203, 205, and 209 of title 18" for "sections 281, 283, and 1914 of title 18 and section 190 of he Revised Statutes (5 U.S.C. 99)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1315. Demonstration projects

(a) Waiver of State plan requirements; costs regarded as State plan expenditures; availability of appropriations

In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of subchapter I, X, XIV, XVI, or XIX of this chapter, or part A or D of subchapter IV of this chapter, in a State or States—

(1) the Secretary may waive compliance with any of the requirements of section 302, 602, 654, 1202, 1352, 1382, or 1396a of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2) costs of such project which would not otherwise be included as expenditures under section 303, 603, 655, 1203, 1353, 1383, or 1396b of this title, as the case may be, and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such subchapter, or for administration of such State plan or plans, as may be appropriate.

In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such subchapters for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such subchapters and is not included as part of the cost of projects for purposes of section 1310 of this title.

[*See main edition for text of (b)*]

(c) Child support enforcement programs

In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) of this section to assist in promoting the objectives of part D of subchapter IV of this chapter, the project—

(1) must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program;

(2) may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support; and

(3) must not result in increased cost to the Federal Government under the program of aid to families with dependent children.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(e)(5), 98 Stat. 1168; Aug. 16, 1984, Pub. L. 98-378, § 10, 98 Stat. 1317.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-378, § 10(a)(1), substituted "part A or D of subchapter IV" for "part A of subchapter IV" in provisions preceding par. (1).

Pub. L. 98-369, § 2663(e)(5), struck out "VI," after "I," in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-378, § 10(a)(2), added "654,".

Pub. L. 98-369, § 2663(e)(5), struck out "802," after "602,".

Subsec. (a)(2). Pub. L. 98-378, § 10(a)(3), added "655,".

Pub. L. 98-369, § 2663(e)(5), struck out "803," after "603,".

Subsec. (c). Pub. L. 98-378, § 10(b), added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 645, 1396b of this title.

§ 1316. Administrative and judicial review of public assistance determinations

(a) Determination of conformity with requirements for approval; petition for reconsideration; hearing; time limitations; review by court of appeals

(1) Whenever a State plan is submitted to the Secretary by a State for approval under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, he

shall, not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such subchapter. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

[*See main edition for text of (2)*]

(3) Any State which is dissatisifed with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 304, 604, 1204, 1354, 1384, or 1396c of this title may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28.

[*See main edition for text of (4) and (5)*]

(b) Amendment of plans

For the purposes of subsection (a) of this section, any amendment of a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, may, at the option of the State, be treated as the submission of a new State plan.

[*See main edition for text of (c)*]

(d) Items covered under other subchapters; disallowance

Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(c)(2), title VI, § 2663(e)(6), 98 Stat. 1102, 1168.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 2663(e)(6)(A), struck out "VI," after "I,".

Pub. L. 98-369, § 2354(c)(2), corrected typographical error in directory language of Pub. L. 97-35, § 2353(h)(1). See 1982 Amendment note below.

Subsec. (a)(3). Pub. L. 98-369, § 2663(e)(6)(B), struck out "804," after "604,".

Subsec. (b). Pub. L. 98-369, § 2663(e)(6)(A), struck out "VI," after "I,".

Pub. L. 98-369, § 2354(c)(2), corrected typographical error in directory language of Pub. L. 97-35, § 2353(h)(1). See 1982 Amendment note below.

Subsec. (d). Pub. L. 98-369, § 2663(e)(6)(A), struck out "VI," after "I,".

Pub. L. 98-369, § 2663(e)(6)(C), substituted "XVI, or XIX of this chapter, or part A" for "XVI, or or XIX of this chapter, or part A".

1981—Subsec. (a)(1). Pub. L. 97-35, § 2353(h)(1), as amended by Pub. L. 98-369, § 2354(c)(2), substituted "or XIX of this chapter" for "XIX or XX of this chapter".

Subsec. (b). Pub. L. 97-35, § 2353(h)(1), as amended by Pub. L. 98-369, § 2354(c)(2), substituted "or XIX of this chapter" for "XIX or XX of this chapter".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(c)(2) of Pub. L. 98-369 effective as if originally included in Pub. L. 97-35, see section 2354(e)(2) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1317. Appointment of Administrator of Health Care Financing Administration

The Administrator of the Health Care Financing Administration shall be appointed by the President by and with the advice and consent of the Senate.

(Aug. 14, 1935, ch. 531, title XI, § 1117, as added July 18, 1984, Pub. L. 98-369, div. B, title III, § 2332(a), 98 Stat. 1088.)

PRIOR PROVISIONS

A prior section 1317, act Aug. 14, 1935, ch. 531, title XI, § 1117, as added July 30, 1965, Pub. L. 89-97, title IV, § 405, 79 Stat. 420, and amended Jan. 2, 1968, Pub. L. 90-248, title II, §§ 221(a)-(c), 241(c)(6), 81 Stat. 899, 917, which related to maintenance of State public assistance expenditures, was repealed by Pub. L. 90-248, title II, § 221(d), Jan. 2, 1968, 81 Stat. 900, eff. July 1, 1968.

EFFECTIVE DATE

Section 2332(c) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting section 1317 of this title and amending section 5315 of Title 5, Government Organization and Employees] shall apply to appointments made after the date of the enactment of this Act [July 18, 1984]."

§ 1320. Approval of certain projects

No payment shall be made under this chapter with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this chapter (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Under Secretary of Health and Human Services.

(Aug. 14, 1935, ch. 531, title XI, § 1120, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 249, 81 Stat. 919, and amended Jan. 2, 1975, Pub. L. 93-608, § 2(5), 88 Stat. 1971; Dec. 21, 1982, Pub. L. 97-375, title I, § 107(a), 96 Stat. 1820; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(D)(v), 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1320a-1. Limitation on use of Federal funds for capital expenditures

[*See main edition for text of* (*a*)]

(b) Agreement between Secretary and State for submission of proposed capital expenditures related to health care facilities and procedures for appeal from recommendations

The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d)(1)(B) of this section that has a governing body or advisory board at least half of whose members represent consumer interests) will—

(1) make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility in such State within the field of its responsibilities,

[*See main edition for text of* (*2*) *and* (*3*)]

whenever and to the extent that the findings of such designated agency or any such other agency indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act [42 U.S.C. 201 et seq.] to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

(c) Manner of payment to States for carrying out agreement

The Secretary shall pay any such State from the general fund in the Treasury, in advance or by way of reimbursement as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (b) of this section.

[*See main edition for text of* (*d*) *to* (*f*)]

(g) "Capital expenditure" defined

For the purposes of this section, a "capital expenditure" is an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds $600,000 (or such lesser amount as the State may establish), (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made. For purposes of clause (1) of the preceding sentence, the cost of the studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment with respect to which such expenditure is made shall be included in determining whether such expenditure exceeds the dollar amount specified in clause (1).

[*See main edition for text of* (*h*)]

(i) National advisory council; establishment or designation of existing council; functions; consultations with other appropriate national advisory councils; composition; compensation and travel expenses

[*See main edition for text of* (*1*) *and* (*2*)]

(3) If an advisory council is established by the Secretary under paragraph (1), it shall be composed of members who are not otherwise in the regular full-time employ of the United States, and who shall be appointed by the Secretary without regard to the civil service laws from among leaders in the fields of the fundamental sciences, the medical sciences, and the organization, delivery, and financing of health care, and persons who are State or local officials or are active in community affairs or public or civic affairs or who are representative of minority groups. Members of such advisory council, while attending meetings of the council or otherwise serving on business of the council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the maximum rate specified at the time of such service for grade GS-18 in section 5332 of title 5, including traveltime, and while away from their homes or regular places of business they may also be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(j) Capital expenditure review exception for eligible organization health care facilities

A capital expenditure made by or on behalf of a health care facility shall not be subject to review pursuant to this section if 75 percent of the patients who can reasonably be expected to use the service with respect to which the capital expenditure is made will be individuals enrolled in an eligible organization as defined in section 1395mm(b) of this title, and if the Secretary determines that such capital expenditure is for services and facilities which are needed by such organization in order to operate efficiently and economically and which are not otherwise readily accessible to such organization because—

(1) the facilities do not provide common services at the same site (as usually provided by the organization),

(2) the facilities are not available under a contract of reasonable duration,

(3) full and equal medical staff privileges in the facilities are not available,

(4) arrangements with such facilities are not administratively feasible, or

(5) the purchase of such services is more costly than if the organization provided the services directly.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 607(a), (b)(1), (c), 97 Stat. 171, 172; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(a)(1), (2), 98 Stat. 1100.)

Amendments

1984—Subsec. (b). Pub. L. 98-369, § 2354(a)(1), substituted a comma for the period at the end of par. (1), and struck out "(or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963)" before "to meet the need" in provisions following par. (3).

Subsec. (i)(3). Pub. L. 98-369, § 2354(a)(2), substituted "5703" for "5703(b)".

1983—Subsec. (c). Pub. L. 98-21, § 607(a), substituted "the general fund in the Treasury" for "the Federal Hospital Insurance Trust Fund".

Subsec. (g). Pub. L. 98-21, § 607(b)(1), substituted "$600,000 (or such lesser amount as the State may establish)" for "$100,000" and Pub. L. 98-21, § 607(b)(1)(B), substituted "the dollar amount specified in clause (1)" for "$100,000" the second time it appeared.

Subsec. (j). Pub. L. 98-21, § 607(c), added subsec. (j).

Effective Date of 1984 Amendment

Section 2354(e) of Pub. L. 98-369 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending sections 1316, 1320a-1, 1320a-7a, 1320a-6, 1395f, 1395i, 1395i-2, 1395k, 1395*l*, 1395n, 1395p, 1395s to 1395z, 1395aa, 1395cc, 1395ff, 1395ii, 1395*ll*, 1395mm, 1395*oo*, 1395rr, and 1395ww of this title and section 162 of Title 26, Internal Revenue Code, and amending provisions set out as notes under sections 1320c, 1395x, and 1395mm of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

"(2) The amendments made by paragraphs (1) [amending section 1395f of this title and amending provisions set out as a note under section 1395x of this title], (2) [amending section 1316 of this title], and (3) [amending provisions set out as notes under sections 1320c and 1395mm of this title] of subsection (c) shall be effective as if they had been originally included in Public Laws 96-499, 97-35, and 97-248, respectively."

Section Referred to in Other Sections

This section is referred to in sections 300m-2, 1395x, 1395ww, 1396b, 6371d of this title.

§ 1320a-3. Disclosure of ownership and related information; procedure; definitions; scope of requirements

Section Referred to in Other Sections

This section is referred to in sections 300e-17, 1395x, 1396a, 6024 of this title.

§ 1320a-5. Disclosure by institutions, organizations, and agencies of owners, officers, etc., convicted of offenses related to programs; notification requirements; "managing employee" defined

(a) As a condition of participation in or certification or recertification under the programs established by subchapters XVIII,[1] and XIX of this chapter, any hospital, nursing facility, or other institution, organization, or agency shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who—

[*See main edition for text of (1) and (2)*]

The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of Health and Human Services of the receipt from any institution, organization, or agency of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request.

[*See main edition for text of (b)*]

(Aug. 14, 1935, ch. 531, title XI, § 1126, as added Oct. 25, 1977, Pub. L. 95-142, § 8(a), 91 Stat. 1194, and amended Aug. 13, 1981, Pub. L. 97-35, title XXIII, § 2353(j), 95 Stat. 873; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(D)(vi), 98 Stat. 1170.)

Amendments

1984—Subsec. (a). Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare" in provisions following par. (2).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1320a-7, 1395cc, 1396b, 6024 of this title.

§ 1320a-6. Adjustments in SSI benefits on account of retroactive benefits under subchapter II

(a) Reduction in benefits

Notwithstanding any other provision of this chapter, in any case where an individual—

(1) is entitled to benefits under subchapter II of this chapter that were not paid in the months in which they were regularly due; and

(2) is an individual or eligible spouse eligible for supplemental security income benefits for one or more months in which the benefits referred to in clause (1) were regularly due,

then any benefits under subchapter II of this chapter that were regularly due in such month or months, or supplemental security income benefits for such month or months, which are due but have not been paid to such individual or eligible spouse shall be reduced by an amount equal to so much of the supplemental security income benefits, whether or not paid retroactively, as would not have been paid or would not be paid with respect to such individual or spouse if he had received such benefits under subchapter II of this chapter in the month or months in which they were regularly due.

(b) "Supplemental security income benefits" defined

For purposes of this section, the term "supplemental security income benefits" means benefits paid or payable by the Secretary under subchapter XVI of this chapter, including State supplementary payments under an agreement pursuant to section 1382e(a) of this title or an administration agreement under section 212(b) of Public Law 93-66.

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[1] So in original. The comma probably should not appear.

(c) Reimbursement of the State

From the amount of the reduction made under subsection (a) of this section, the Secretary shall reimburse the State on behalf of which supplementary payments were made for the amount (if any) by which such State's expenditures on account of such supplementary payments for the month or months involved exceeded the expenditures which the State would have made (for such month or months) if the individual had received the benefits under subchapter II of this chapter at the times they were regularly due. An amount equal to the portion of such reduction remaining after reimbursement of the State under the preceding sentence shall be covered into the general fund of the Treasury.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2615(a), 98 Stat. 1132.)

REFERENCES IN TEXT

Section 212(b) of Pub. L. 93-66, referred to in subsec. (b), is set out as a note under section 1382 of this title.

AMENDMENTS

1984—Pub. L. 98-369 substituted provisions relating to adjustment in supplemental security income benefits on account of retroactive benefits under subchapter II of this chapter for provisions which related to adjustment of retroactive benefits under subchapter II of this chapter on account of supplemental security income benefits.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2615(b) of Pub. L. 98-369 provided that: "The amendment made by this section [amending this section] shall apply for purposes of reducing retroactive benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] or retroactive supplemental security income benefits payable beginning with the seventh month following the month in which this Act is enacted [July 1984]; except that in the case of retroactive title II benefits other than those which result from a determination of entitlement following an application for benefits under title II or from a reinstatement of benefits under title II following a period of suspension or termination of such benefits, it shall apply when the Secretary of Health and Human Services determines that it is administratively feasible."

§ 1320a-7. Exclusion of certain individuals from program

[*See main edition for text of* (a)]

(b) Individuals with ownership or control of 5 percent or more; officers, directors, agents, or managing employees; exclusion determination; notice to State and local agencies

Whenever the Secretary determines, with respect to an entity, that a person who has a direct or indirect ownership or control interest of 5 percent or more in the entity, or who is an officer, director, agent, or managing employee (as defined in section 1320a-5(b) of this title) of such entity, is a person described in section 1320a-5(a) of this title, the Secretary—

(1) may bar from participation in the program under subchapter XVIII of this chapter, for such period as he may deem appropriate, each such entity otherwise eligible to participate in such program;

(2) shall promptly notify each appropriate State agency administering or supervising the administration of a State plan approved under subchapter XIX of this chapter of the fact and circumstances of the determination, and may require each such agency to bar the entity from participation under the State plan for such period as he specifies, which may not exceed the period established pursuant to paragraph (1); and

(3) shall promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of such entity of the fact and circumstances of such determination, request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and request that such State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to such request.

(c) Individuals subject to civil sanction for medicare or medicaid misconduct; exclusion determination; notice to State and local agencies

Whenever the Secretary makes a final determination to impose a civil money penalty or assessment against a person (including an organization, agency, or other entity) under section 1320a-7a of this title relating to a claim under subchapter XVIII or XIX of this chapter, the Secretary—

(1) may bar the person from participation in the program under subchapter XVIII of this chapter, and

(2)(A) shall promptly notify each appropriate State agency administering or supervising the administration of a State plan approved under subchapter XIX of this chapter of the fact and circumstances of such determination, and (except as provided in subparagraph (B)) may require each such agency to bar the person from participation in the program established by such plan for such period as he shall specify, which in the case of an individual shall be the period established pursuant to paragraph (1), and

(B) may waive the requirement of subparagraph (A) to bar a person from participation in such program where he receives and approves a request for such waiver with respect to that person from the State agency referred to in that subparagraph.

(d) Period of exclusion

A determination made by the Secretary under this section shall be effective at such time and upon such reasonable notice to the public and to the person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of inpatient hospital services, post-hospital extended care services, and home health services furnished under subchapter XVIII of this chapter, such determination shall be effective in the manner provided in paragraphs (3) and (4) of section 1395cc(b) of this title with respect to terminations of agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(e) Notice, hearing, and judicial review

Any person or entity who is the subject of an adverse determination made by the Secretary under subsection (a), (b), or (c) of this section shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2333(a), (b), 98 Stat. 1089.)

AMENDMENTS

1984—Subsecs. (b) to (d). Pub. L. 98-369, § 2333(a), added subsec. (b) and redesignated former subsecs. (b) to (d) as (c) to (e), respectively.

Subsec. (e). Pub. L. 98-369, § 2333(a)(1), (b), redesignated former subsec. (d) as (e), and substituted therein "Any person or entity" for "Any person" and "(a), (b), or (c)" for "(a) or (b)".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2333(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] become effective on the date of the enactment of this Act [July 18, 1984] and shall apply to convictions of persons occurring after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395y, 1396a of this title.

§ 1320a-7a. Civil monetary penalties

(a) Improperly filed claims

Any person (including an organization, agency, or other entity) that—

[*See main edition for text of (1)*]

(2) presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1395u(b)(3)(B)(ii) of this title, or (B) an agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged, or (C) an agreement to be a participating physician or supplier under section 1395u(h)(1) of this title,

shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each item or service. In addition, such a person shall be subject to an assessment of not more than twice the amount claimed for each such item or service in lieu of damages sustained by the United States or a State agency because of such claim.

[*See main edition for text of (b) to (f)*]

(g) Notification of appropriate entities of finality of determination

Whenever the Secretary's determination to impose a penalty or assessment under subsection (a) of this section becomes final, he shall notify the appropriate State or local medical or professional organization, and the appropriate utilization and quality control peer review organization, and the appropriate State or local licensing agency or organization (including the agency specified in section 1395aa(a) and 1396a(a)(33) of this title) that such a penalty or assessment has become final and the reasons therefor.

[*See main edition for text of (h)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2306(f)(1), 2354(a)(3), 98 Stat. 1073, 1100.)

AMENDMENTS

1984—Subsec. (a)(2)(C). Pub. L. 98-369, § 2306(f)(1), added cl. (C).

Subsec. (g). Pub. L. 98-369, § 2354(a)(3), substituted "utilization and quality control peer review organization" for "Professional Standards Review Organization".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(a)(3) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 707, 1320a-7, 1395u of this title; title 10 section 1094.

§ 1320a-8. Coordinated audits

(a) If an entity provides services reimbursable on a cost-related basis under subchapter XIX of this chapter, as well as services reimbursable on such a basis under subchapter XVIII of this chapter, the Secretary shall require, as a condition for payment to any State under subchapter XIX of this chapter with respect to administrative costs incurred in the performance of audits of the books, accounts, and records of that entity, that these audits be coordinated through common audit procedures with audits performed with respect to the entity for purposes of subchapter XVIII of this chapter. The Secretary shall specify by regulation such methods as he finds feasible and equitable for the apportionment of the cost of coordinated audits between the program established under subchapter XIX of this chapter and the program established under subchapter XVIII of this chapter. Where the Secretary finds that a State has declined to participate in such a common audit with respect to subchapter XIX of this chapter, he shall reduce the payments otherwise due such State under such subchapter by an amount which he estimates to be in excess of the amount that would have been apportioned to the State under the subchapter (for the expenses of the State incurred in the common audit) if it had participated in the common audit.

[*See main edition for text of (b)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(a)(4), 98 Stat. 1100.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "State" for "Sate".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

§ 1320b-1. Notification of social security claimant with respect to deferred vested benefits

(a) Whenever—

[*See main edition for text of* (*1*)]

(2) the Secretary is requested to do so—

(A) by any individual with respect to whom the Secretary holds information obtained under section 6057 of title 26, or

(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 404(d) of this title,

he shall transmit to the individual referred to in paragraph (1) or the individual making the request under paragraph (2) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Secretary pursuant to such section 6057 with respect to the individual referred to in paragraph (1) or (2)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

[*See main edition for text of* (*b*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(e)(7), 98 Stat. 1168.)

REFERENCES IN TEXT

Part A of subchapter XVIII of this chapter, referred to in subsec. (a)(1)(C), is classified to section 1395c et seq. of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2663(e)(7)(B), realigned margin of provisions following par. (2)(B).

Subsec. (a)(2)(B). Pub. L. 98-369, § 2663(e)(7)(A), substituted a comma for the period after "section 404(d) of this title".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1320b-6. Pilot projects to demonstrate the use of integrated service delivery systems for human services programs

(a) Establishment of pilot projects by States

In order to develop and demonstrate ways of improving the delivery of services to individuals and families who need them under the various human services programs, by eliminating programmatic fragmentation and thereby assuring that an applicant for services under any one such program will be informed of and have access to all of the services which may be available to him or his family under the other human services programs being carried out in the community involved, any State having an approved plan under part A of subchapter IV of this chapter may, subject to the provisions of this section, establish and conduct one or more pilot projects to demonstrate the use of integrated service delivery systems for human services programs in that State or in one or more political subdivisions thereof.

(b) Integration of service delivery systems for human services programs

The integration of service delivery systems for human services programs in any State or locality under a pilot project established under this section shall involve or include—

(1) the development of a common set of terms for use in all of the human services programs involved;

(2) the development for each applicant of a single comprehensive family profile which is suitable for use under all of the human services programs involved;

(3) the establishment and maintenance of a single resources directory by which the citizens of the community involved may be informed of and gain access to the services which are available under all such programs;

(4) the development of a unified budget and budgeting process, and a unified accounting system, with standardized audit procedures;

(5) the implementation of unified planning, needs assessment, and evaluation;

(6) the consolidation of agency locations and related transportation services;

(7) the standardization of procedures for purchasing services from nongovermental sources;

(8) the creation of communications linkages among agencies to permit the serving of individual and family needs across program and agency lines;

(9) the development, to the maximum extent possible, of uniform application and eligibility determination procedures; and

(10) any other methods, arrangements, and procedures which the Secretary determines are necessary or desirable for, and consistent with, the establishment and operation of an integrated service delivery system.

(c) Procedures for State establishment of pilot projects

(1) Any State which desires to establish and conduct a pilot project under this section, after having published a description of the proposed project and invited comments thereon from interested persons in the community or communities which would be affected, shall submit an application to the Secretary (in such form and containing such information as the Secretary may require) within 6 months after July 18, 1984. The proposed project may be statewide in operation or may be limited to one or more political subdivisions of the State; and the application shall in any event include or be accompanied by satisfactory assurances that the project as proposed would be permitted under applicable State and local law.

(2) The Secretary shall consider all applications and accompanying comments and materials which are submitted under paragraph (1), and, no later than 9 months after July 18, 1984, shall approve no fewer than 3 nor more than 5 of the proposed projects (including one such project to be operated on a statewide basis). In considering and approving such applications the Secretary shall take into account the size and characteristics of the population that would be served by each proposed project, the desirability of wide geographic distribution among the projects, the number and nature of the human services programs which are in active operation in the various communities involved, and such other factors as may tend to indicate whether or not a particular proposed project would provide a useful and effective demonstration of the value of an integrated service delivery system. Each project approved under this paragraph shall be deemed for purposes of this section to begin on the first day of the month following the month in which the application with respect to such project is approved.

(3) The Secretary shall approve any application for a project under this section only after determining that the conduct of such project will not lower or restrict the levels of aid, assistance, benefits, or services, or the income or resource standards, deductions, or exclusions, under any of the human services programs involved, and will not delay the provision of aid, assistance, benefits, or services under any of such programs.

(d) Requests by States for waiver of requirements

(1) Any State whose application is approved under subsection (c) of this section may submit to the Secretary a request for the waiver of any requirement which would otherwise apply with respect to the proposed project under any of the laws governing the human services programs to be included in the project; and—

(A) if the law involved is within the jurisdiction of the Secretary and authority to grant the waiver involved is otherwise available to the Secretary under this subchapter, subchapter IV of this chapter, or any other provision of law, the Secretary shall approve such request upon a determination that the waiver is necessary for the project to provide a useful and effective demonstration of the value of an integrated service delivery system; and

(B) if the law involved is within the jurisdiction of a Federal agency other than the Department of Health and Human Services and authority to grant the waiver involved is available to the head of such other agency under that law or any other provision of law, the Secretary shall transmit such request (on behalf of the requesting State) to the head of such other agency, who shall approve such request upon a determination that the waiver is necessary for the project to provide a useful and effective demonstration of the value of an integrated service delivery system and who shall certify such approval to the Secretary.

(2) If under the law governing any of the human services programs included within a project there are provisions establishing safeguards which limit or restrict the use or disclosure of information (concerning applicants for or recipients of benefits or services) which has been obtained or developed by the agency involved in the conduct of that program, and a waiver of such provisions is granted under paragraph (1) in order to make such information available for purposes of the project—

(A) the State shall provide each applicant for and recipient of aid, assistance, benefits, or services under the proposed integrated service delivery system with a clear and readily comprehensible notice that such information may be disclosed to and used by project personnel, or exchanged with the other agencies having responsibility for human services programs included within the project;

(B) the State shall take such steps as may be necessary to ensure that the information disclosed will be used only for purposes of, and by persons directly connected with, such project; and

(C) the State's application with respect to the project under subsection (c) of this section shall contain or be accompanied by satisfactory assurances that the preceding requirements of this paragraph will be fully complied with.

(e) Payments to States by Secretary

The Secretary shall from time to time pay to each State which has an approved pilot project under this section, in such manner and according to such schedule as may be agreed upon by the Secretary and such State, amounts equal in the aggregate to—

(1) 90 percent of the costs incurred by such State and its political subdivisions in carrying out such project during the first 18 months after the date on which the project begins,

(2) 80 percent of any such costs incurred during the 12-month period beginning with the nineteenth month after such date, and

(3) 70 percent of any such costs incurred during the 12-month period beginning with the thirty-first month after such date.

(f) "Human services program" defined; consultation by Secretary with other department heads

(1) For purposes of this section, the term "human services program" includes the program of aid to families with dependent children under part A of subchapter IV of this chapter, the supplemental security income benefits program under subchapter XVI of this chapter, the Federal food stamp program, and any other Federal or federally assisted program (other than a program under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.]) which provides aid, assistance, or benefits based wholly or partly on need or on income-related qualifications to specified classes or types of individuals or families or which is designed to help in crisis or emergency situations by meeting the basic human needs of individuals or families whose own resources are insufficient for that purpose.

(2) In carrying out this section the Secretary shall regularly consult with the Secretary of Labor, the Secretary of Agriculture, the Secretary of Housing and Urban Development, and

the head of any other Federal agency having jurisdiction over or responsibility for one or more human services programs, in order to ensure that the administrative efforts of the various agencies involved are coordinated with respect to all of the pilot projects being carried out under this section.

(g) Reports by States

The Secretary shall require each State which is carrying out a pilot project under this section to submit periodic reports on the progress of such project, giving particular attention to the cost-effectiveness of the integrated service delivery system involved and the extent to which such system is improving the delivery of services. No pilot project under this section shall be conducted for a period of longer than 42 months. The first such report shall be submitted no later than 3 months after the date on which the project begins.

(h) Report to Congress by Secretary

The Secretary shall from time to time submit to the Congress a report on the progress and current status of each of the approved pilot projects under this section. Each such report shall reflect the periodic reports theretofore submitted to the Secretary by the States involved under subsection (g) of this section, and shall contain such additional comments, findings, and recommendations with respect to the operation of the program under this section as the Secretary may determine to be appropriate.

(i) Study of program by Comptroller General

The Comptroller General shall, at such time or times as he determines to be appropriate, review and evaluate any or all of the pilot projects undertaken pursuant to this section, and shall from time to time report to the Congress on the results of such reviews and evaluations together with his findings and recommendations with respect thereto.

(j) Authorization of appropriations

There are authorized to be appropriated, for the four-fiscal-year period beginning with the fiscal year 1985, such sums, not to exceed $8,000,000 in the aggregate, as may be necessary to carry out this section.

(Aug. 14, 1935, ch. 531, title XI, § 1136, as added July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2630, 98 Stat. 1137.)

References in Text

Part A of subchapter IV of this chapter, referred to in subsecs. (a) and (f)(1), is classified to section 601 et seq. of this title.

The Rehabilitation Act of 1973, referred to in subsec. (f)(1), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Effective Date

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

§ 1320b–7. Income and eligibility verification system

(a) Requirements of State eligibility systems

In order to meet the requirements of this section, a State must have in effect an income and eligibility verification system under which—

(1) the State shall require, as a condition of eligibility for benefits under any program listed in subsection (b) of this section, that each applicant for or recipient of benefits under that program furnish to the State his social security account number (or numbers, if he has more than one such number), and the State shall utilize such account numbers in the administration of that program so as to enable the association of the records pertaining to the applicant or recipient with his account number;

(2) wage information from agencies administering State unemployment compensation laws available pursuant to section 3304(a)(16) of the Internal Revenue Code of 1954, wage information reported pursuant to paragraph (3) of this subsection, and wage, income, and other information from the Social Security Administration and the Internal Revenue Service available pursuant to section 6103(*l*)(7) of such Code, shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of, benefits available under any program listed in subsection (b) of this section, as determined by the Secretary of Health and Human Services (or, in the case of the unemployment compensation program, by the Secretary of Labor, or, in the case of the food stamp program, by the Secretary of Agriculture);

(3) employers in such State are required, effective September 30, 1988, to make quarterly wage reports to a State agency (which may be the agency administering the State's unemployment compensation law) except that the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provisions of this paragraph if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in paragraph (2);

(4) the State agencies administering the programs listed in subsection (b) of this section adhere to standardized formats and procedures established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) under which—

(A) the agencies will exchange with each other information in their possession which may be of use in establishing or verifying eligibility or benefit amounts under any other such program;

(B) such information shall be made available to assist in the child support program under part D of subchapter IV of this chapter, and to assist the Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under subchapters II and XVI of this chapter, but subject to the safeguards and restrictions established by the Secretary of the Treasury with respect to information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1954; and

(C) the use of such information shall be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility and incorrect payments;

(5) adequate safeguards are in effect so as to assure that—

(A) the information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and the information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1954 is only exchanged with agencies authorized to receive such information under such section 6103(*l*); and

(B) the information is adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Secretary of Health and Human Services, or, in the case of the unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture, or [4] in the case of information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1954, the Secretary of the Treasury;

(6) all applicants for and recipients of benefits under any such program shall be notified at the time of application, and periodically thereafter, that information available through the system will be requested and utilized; and

(7) accounting systems are utilized which assure that programs providing data receive appropriate reimbursement from the programs utilizing the data for the costs incurred in providing the data.

(b) Applicable programs

The programs which must participate in the income verification system are—

(1) the aid to families with dependent children program under part A of subchapter IV of this chapter;

(2) the medicaid program under subchapter XIX of this chapter;

(3) the unemployment compensation program under section 3304 of the Internal Revenue Code of 1954;

(4) the food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(5) any State program under a plan approved under subchapter I, X, XIV, or XVI of this chapter.

(c) Protection of applicants from improper use of information

(1) In order to protect applicants for and recipients of benefits under the programs identified in subsection (b) of this section, or under the supplemental security income program under subchapter XVI of this chapter, from the improper use of information obtained from the Secretary of the Treasury under section 6103(*l*)(7)(B) of the Internal Revenue Code of 1954, no Federal, State, or local agency receiving such information may terminate, deny, suspend, or reduce any benefits of an individual until such agency has taken appropriate steps to independently verify information relating to—

(A) the amount of the asset or income involved,

(B) whether such individual actually has (or had) access to such asset or income for his own use, and

(C) the period or periods when the individual actually had such asset or income.

(2) Such individual shall be informed by the agency of the findings made by the agency on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(Aug. 14, 1935, ch. 531, title XI, § 1137, as added July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2651(a), 98 Stat. 1147.)

REFERENCES IN TEXT

Parts A and D of subchapter IV of this chapter, referred to in subsecs. (a)(4)(B) and (b)(1), are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

The Internal Revenue Code of 1954, referred to in subsecs. (a)(2), (4)(B), (5), (b)(3), and (c)(1), is classified generally to Title 26, Internal Revenue Code.

The Food Stamp Act of 1977, referred to in subsec. (b)(4), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

EFFECTIVE DATE

Section 2651(*l*) of Pub. L. 98-369 provided that:

"(1) The amendments made by subsections (j) and (k) [amending section 1383 of this title and section 6103 of Title 26, Internal Revenue Code] shall become effective on the date of the enactment of this Act [July 18, 1984].

"(2) Except as otherwise specifically provided, the amendments made by subsections (a) through (i) [enacting section 1320b-7 of this title, amending sections 302, 503, 602, 1202, 1352, and 1396a of this title and section 2020 of Title 7, Agriculture, repealing section 611 of this title, and amending provisions set out as a note under section 1382 of this title] shall become effective on April 1, 1985. In the case of any State which submits a plan describing a good faith effort by such State to come into compliance with the requirements of such subsections, the Secretary of Health and Human Services (or, in the case of the State unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture) may by waiver grant a delay in the effective date of such subsections, except that no such waiver may delay the effective date of section 1137(c) of the Social Security Act [42 U.S.C. 1320b-7(c)] (as added by subsection (a) of this section), or delay the effective date of any other provision of or added by this section beyond September 30, 1986."

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[4] So in original. Probably should be followed by a comma.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 503, 602, 1202, 1352, 1383, 1396a of this title; title 7 section 2020.

PART B—PEER REVIEW OF THE UTILIZATION AND QUALITY OF HEALTH CARE SERVICES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300k-2, 1301, 1395b-1, 1395k, 1395x, 1395y, 1395cc, 1395ww, 1396a of this title.

§ 1320c. Purpose

EFFECTIVE DATE

Section 149 of Pub. L. 97-248, as amended by Pub. L. 98-369, div. B, title III, § 2354(c)(3)(C), July 18, 1984, 98 Stat. 1102, provided that: "The amendments made by this subtitle [subtitle C, §§ 141 to 150, of title I of Pub. L. 97-248, enacting this part, amending sections 1395b-1, 1395g, 1395k, 1395*l*, 1395x, 1395y, 1395cc, 1395pp, 1396a, and 1396b of this title, and enacting provisions set out as notes under sections 1305 and 1320c of this title] shall, subject to section 150 [section 150 of Pub. L. 97-248, set out as a note below], be effective with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Sept. 3, 1982]."

§ 1320c-2. Contracts with utilization and quality control peer review organizations

[*See main edition for text of* (*a*)]

(b) Organizations entitled to contract with Secretary

[*See main edition for text of* (*1*)]

(2)(A) Prior to November 15, 1984, the Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), an entity (other than a self-insured employer) which directly or indirectly makes payments to any practitioner or provider whose health care services are reviewed by such entity or would be reviewed by such entity if it entered into a contract with the Secretary under this part. For purposes of this paragraph, an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of one individual member of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an "eligible organization" as defined in section 1395mm(b) of this title.

(B) If, after November 14, 1984, the Secretary determines that there is no other entity available for an area with which the Secretary can enter into a contract under this part, the Secretary may then enter into a contract under this part with an entity described in subparagraph (A) for such area if such entity otherwise meets the requirements of this part.

(3)(A) The Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), a health care facility, or association of such facilities, within the area served by such entity or which would be served by such entity if it entered into a contract with the Secretary under this part.

(B) For purposes of subparagraph (A), an entity shall not be considered to be affiliated with a health care facility or association of facilities by reason of management, ownership, or common control if the management, ownership, or common control consists only of not more than 20 percent of the members of the governing board of the entity being affiliated (through management, ownership, or common control) with one or more of such facilities or associations.

[*See main edition for text of* (*c*) *to* (*f*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(a), 97 Stat. 163; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2334(a), (b), 2347(c), 98 Stat. 1090, 1097.)

AMENDMENTS

1984—Subsec. (b)(2)(A). Pub. L. 98-369, § 2347(c)(1), substituted "Prior to November 15, 1984" for "During the first twelve months in which the Secretary is entering into contracts under this section".

Pub. L. 98-369, § 2334(b), added "(other than a self-insured employer)" and provision that for purposes of this paragraph an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of one individual member of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an "eligible organization" as defined in section 1395mm(b) of this title.

Subsec. (b)(2)(B). Pub. L. 98-369, § 2347(c)(2), substituted "after November 14, 1984" for "after the expiration of the twelve-month period referred to in subparagraph (A)".

Subsec. (b)(2)(C). Pub. L. 98-369, § 2347(c)(3), struck out subpar. (C) which provided that the twelve-month period formerly referred to in subpar. (A) would be deemed to have begun not later than October 1983.

Subsec. (b)(3). Pub. L. 98-369, § 2334(a), designated existing provisions as subpar. (A) and added subpar. (B).

1983—Subsec. (b)(2)(C). Pub. L. 98-21 added subpar. (C).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2334(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (b) of this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Section 2347(d) of Pub. L. 98-369 provided that: "The provisions of, and amendments made by, this section [amending sections 1320c-2 and 1395cc of this title and enacting provisions set out as a note under section 1395cc of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

SUBCHAPTER XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 503, 1103 of this title; title 2 section 906; title 26 sections 3302, 3304.

§ 1322. Repayment by State; certification; transfer; interest on loan

[See main edition for text of (a)]

(b)(1) Except as otherwise provided in this subsection, each State shall pay interest on any advance made to such State under section 1321 of this title. Interest so payable with respect to periods during any calendar year shall be at the rate determined under paragraph (4) for such calendar year.

(2) No interest shall be required to be paid under paragraph (1) with respect to any advance or advances made during any calendar year if—

(A) such advances are repaid in full before the close of September 30 of the calendar year in which the advances were made, and

(B) no other advance was made to such State under section 1321 of this title during such calendar year and after the date on which the repayment of the advances was completed.

(3)(A) Interest payable under paragraph (1) which was attributable to periods during any fiscal year shall be paid by the State to the Secretary of the Treasury prior to the first day of the following fiscal year. If interest is payable under paragraph (1) on any advance (hereinafter in this subparagraph referred to as the "first advance") by reason of another advance made to such State after September 30 of the calendar year in which the first advance was made, interest on such first advance attributable to periods before such September 30 shall be paid not later than the day after the date on which the other advance was made.

[See main edition for text of (B)]

(C)(i) In the case of any State which meets the requirements of clause (ii) for any calendar year, any interest otherwise required to be paid under this subsection during such calendar year shall be paid as follows—

[See main edition for text of (I) and (II)]

No interest shall accrue on such deferred interest.

[See main edition for text of (ii), (4) to (6)]

(7) This subsection shall only apply to advances made on or after April 1, 1982.

(8)(A) With respect to interest due under this section on September 30 of 1983, 1984, or 1985 (other than interest previously deferred under paragraph (3)(C)), a State may pay 80 percent of such interest in four annual installments of at least 20 percent beginning with the year after the year in which it is otherwise due, if such State meets the criteria of subparagraph (B). No interest shall accrue on such deferred interest.

(B) To meet the criteria of this subparagraph a State must—

(i) have taken no action since October 1, 1982, which would reduce its net unemployment tax effort or the net solvency of its unemployment system (as determined for purposes of section 3302(f) of the Internal Revenue Code of 1954); and

(ii)(I) have taken an action (as certified by the Secretary of Labor) after March 31, 1982, which would have increased revenue liabilities and decreased benefits under the State's unemployment compensation system (hereinafter referred to as a "solvency effort") by a combined total of the applicable percentage (as compared to such revenues and benefits as would have been in effect without such State action) for the calendar year for which the deferral is requested; or

(II) have had, for taxable year 1982, an average unemployment tax rate which was equal to or greater than 2.0 percent of the total of the wages (as determined without any limitation on amount) attributable to such State subject to contribution under the State unemployment compensation law with respect to such taxable year.

In the case of the first year for which there is a deferral (over a 4-year period) of the interest otherwise payable for such year, the applicable percentage shall be 25 percent. In the case of the second such year, the applicable percentage shall be 35 percent. In the case of the third such year, the applicable percentage shall be 50 percent.

(C)(i) The base year is the first year for which deferral under this provision is requested and subsequently granted. The Secretary of Labor shall estimate the unemployment rate for the base year. To determine whether a State meets the requirements of subparagraph (B)(ii)(I), the Secretary of Labor shall determine the percentage by which the benefits and taxes in the base year with the application of the action referred to in subparagraph (B)(ii)(I) are lower or greater, as the case may be, than such benefits and taxes would have been without the application of such action. In making this determination, the Secretary shall deem the application of the action referred to in subparagraph (B)(ii)(I) to have been effective for the base year to the same extent as such action is effective for the year following the year for which the deferral is sought. Once a deferral is approved under clause (ii)(I) of subparagraph (B) a State must continue to maintain its solvency effort. Failure to do so shall result in the State being required to make immediate payment of all deferred interest.

(ii) Increases in the taxable wage base from $6,000 to $7,000 or increases after 1984 in the maximum tax rate to 5.4 percent shall not be counted for purposes of meeting the requirement of subparagraph (B).

(D) In the case of a State which produces a solvency effort of 50 percent, 80 percent, and 90 percent rather than the 25 percent, 35 percent, and 50 percent required under subparagraph (B), the interest shall be computed at an interest rate which is 1 percentage point less than the otherwise applicable interest rate.

(9) Any interest otherwise due from a State on September 30 of a calendar year after 1982 may be deferred (and no interest shall accrue on such deferred interest) for a grace period of not to exceed 9 months if, for the most recent 12-month period for which data are available before the date such interest is otherwise due, the State had an average total unemployment rate of 13.5 percent or greater.

(As amended Apr. 20, 1983, Pub. L. 98-21, title V, §§ 511, 514, 97 Stat. 144, 147; Oct. 11, 1983, Pub. L. 98-118, § 5(a), 97 Stat. 804.)

References in Text

The Internal Revenue Code, referred to in subsec. (b)(5), (8)(B)(i), is classified generally to Title 26, Internal Revenue Code.

Amendments

1983—Subsec. (b)(2). Pub. L. 98-118, § 5(a)(1), substituted "advance or advances" for "advance" in provisions preceding subpar. (A).

Subsec. (b)(2)(A). Pub. L. 98-118, § 5(a)(2), (3), substituted "advances are" for "advance is" and "advances were" for "advance was".

Subsec. (b)(2)(B). Pub. L. 98-118, § 5(a)(4), substituted "advances was completed" for "advance was completed".

Subsec. (b)(3)(A). Pub. L. 98-21, § 514, which directed the substitution of "prior to" for "not later than" was executed, as the probable intent of Congress, by making that substitution the first time the phrase appeared following "Secretary of Treasury" and not the second time that phrase appeared.

Subsec. (b)(3)(C)(i). Pub. L. 98-21, § 511(c), substituted, after subcl. II, provision that no interest shall accrue on such deferred interest for provision that any interest the time for payment of which was deferred under this subparagraph would bear interest in the same manner as if it had been an advance made on the day on which it would have been required to be paid but for this subparagraph.

Subsec. (b)(7). Pub. L. 98-21, § 511(b), struck out ", and before January 1, 1988" after "April 1, 1982".

Subsec. (b)(8), (9). Pub. L. 98-21, § 511(a), added pars. (8) and (9).

Effective Date of 1983 Amendment

Section 5(b) of Pub. L. 98-118 provided that: "The amendments made by this section [amending subsec. (b)(2) of this section] shall apply to advances made on or after April 1, 1982."

Section Referred to in Other Sections

This section is referred to in section 1321 of this title; title 26 section 3302.

§ 1323. Repayable advances to Federal Unemployment Account

There are hereby authorized to be appropriated to the Federal unemployment account, as repayable advances (without interest), such sums as may be necessary to carry out the purposes of this subchapter. Amounts appropriated as repayable advances shall be repaid, without interest, by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Any amount transferred as a repayment under this section shall be credited against, and shall operate to reduce, any balance of advances repayable under this section. Whenever, after the application of sections 1101(f)(3) and 1102(a) of this title with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited against, and shall operate to reduce, such balance of advances.

(As amended Oct. 24, 1983, Pub. L. 98-135, title II, § 205(a), 97 Stat. 861.)

Amendments

1983—Pub. L. 98-135 added provision requiring that amounts appropriated as repayable advances be repaid, without interest, by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose, and that any amount transferred as a repayment under this section be credited against, and operate to reduce, any balance of advances repayable under this section.

Retransfer of Amounts Transferred From Federal Unemployment Account to Employment Security Administration Account as of September 30, 1983

Section 205(b) of Pub. L. 98-135 provided that: "Any amounts transferred from the Federal unemployment account to the employment security administration account as of September 30, 1983, shall be transferred back to the Federal unemployment account."

Section Referred to in Other Sections

This section is referred to in sections 1103, 1104 of this title; title 2 section 906.

SUBCHAPTER XIII—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN

§§ 1331 to 1336. Repealed. Pub. L. 98-369, div. B, title VI, § 2663(f), July 18, 1984, 98 Stat. 1168

Section 1331, act Aug. 14, 1935, ch. 531, title XIII, § 1301, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, provided for the administration of this chapter by the Secretary of Labor.

Section 1332, act Aug. 14, 1935, ch. 531, title XIII, § 1302, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended July 16, 1949, ch. 342, §§ 1-3, 63 Stat. 445, defined the terms "reconversion period", "compensation", "Federal maritime service", and "Federal maritime wages".

Section 1333, act Aug. 14, 1935, ch. 531, title XIII, § 1303, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065, related to compensation for seamen, agreements with states, payments in absence of agreements, wage information, and determination of wages.

Section 1334, act Aug. 14, 1935, ch. 531, title XIII, § 1304, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to review of determinations and reports.

Section 1335, act Aug. 14, 1935, ch. 531, title XIII, § 1305, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to payments to the states, certification of such payments by the Secretary of Labor to the Secretary of the Treasury, and return of unused funds.

Section 1336, act Aug. 14, 1935, ch. 531, title XIII, § 1306, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to penalties.

Effective Date of Repeal

Repeal of sections effective July 18, 1984, but such repeal shall not be construed as changing or affecting any right, liability, status, or interpretation which existed before that date, see section 2664(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

SUBCHAPTER XIV—GRANTS TO STATES FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 428, 602, 671, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1320b-2, 1320b-3, 1320b-7, 1382, 1382c, 1395v, 1396a, 1396b, 1396d of this title; title 7 sections 2012, 2014; title 26 section 6103.

§ 1352. State plans for aid to the permanently and totally disabled

(a) A State plan for aid to the permanently and totally disabled must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title, aid to families with dependent children under the State plan approved under section 602 of this title, or aid to the blind under the State plan approved under section 1202 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than $7.50 of any income, (B) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (12) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (13) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

[*See main edition for text of* (*b*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2651(g), 98 Stat. 1150.)

AMENDMENTS

1984—Subsec. (a)(13). Pub. L. 98-369 added cl. (13).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

SUBCHAPTER XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 401, 404, 428, 602, 612, 670, 671, 673, 701, 909, 1301, 1306a, 1308, 1309, 1310, 1311, 1315, 1316, 1318, 1319, 1320a-6, 1320b-2, 1320b-3, 1320b-6, 1320b-7, 1382, 1382c, 1395v, 1395z, 1396a, 1396b, 1396d, 1396p, 1997, 3013, 6862, 8624 of this title; title 7 sections 2012, 2014, 2015, 2017, 2026; title 8 section 1522; title 26 sections 51, 6103; title 29 section 762a; title 48 section 1421q.

§ 1381a. Basic entitlement to benefits

Every aged, blind, or disabled individual who is determined under part A of this subchapter to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Secretary of Health and Human Services.

(Aug. 14, 1935, ch. 531, title XVI, § 1602, as added Oct. 30, 1972, Pub. L. 92-603, title III, § 301, 86 Stat. 1465, and amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(E), 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PART A—DETERMINATION OF BENEFITS

§ 1382. Eligibility for benefits

(a) "Eligible individual" defined

(1) Each aged, blind, or disabled individual who does not have an eligible spouse and—

[*See main edition for text of* (*A*)]

(B) whose resources, other than resources excluded pursuant to section 1382b(a) of this title, are not more than (i) in case such individual has a spouse with whom he is living, the applicable amount determined under paragraph (3)(A), or (ii) in case such individual has no spouse with whom he is living, the applicable amount determined under paragraph (3)(B),

shall be an eligible individual for purposes of this subchapter.

(2) Each aged, blind, or disabled individual who has an eligible spouse and—

[*See main edition for text of* (*A*)]

(B) whose resources (together with the resources of such spouse), other than resources excluded pursuant to section 1382b(a) of this title, are not more than the applicable amount determined under paragraph (3)(A),

shall be an eligible individual for purposes of this subchapter.

(3)(A) The dollar amount referred to in clause (i) of paragraph (1)(B), and in paragraph (2)(B), shall be $2,250 prior to January 1, 1985, and shall be increased to $2,400 on January 1, 1985, to $2,550 on January 1, 1986, to $2,700 on January 1, 1987, to $2,850 on January 1, 1988, and to $3,000 on January 1, 1989.

(B) The dollar amount referred to in clause (ii) of paragraph (1)(B), shall be $1,500 prior to January 1, 1985, and shall be increased to $1,600 on January 1, 1985, to $1,700 on January 1, 1986, to $1,800 on January 1, 1987, to $1,900 on January 1, 1988, and to $2,000 on January 1, 1989.

[*See main edition for text of* (*b*)]

(c) Period for determination of benefits

(1) An individual's eligibility for a benefit under this subchapter for a month shall be determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in such month, and, except as provided in paragraphs (2), (3), and (4), the amount of such benefit shall be determined for such month on the basis of income and other characteristics in the first or, if the Secretary so determines, second month preceding such month. Eligibility for and the amount of such benefits shall be redetermined at such time or times as may be provided by the Secretary.

[*See main edition for text of* (*2*) *to* (*6*); (*d*)]

(e) Limitation on eligibility of certain individuals

(1)(A) Except as provided in subparagraphs (B), (C), and (D), no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.

[*See main edition for text of* (*B*) *and* (*C*)]

(D) A person may be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month throughout which he is a resident of a public emergency shelter for the homeless (as defined in regulations which shall be prescribed by the Secretary); except that no person shall be an eligible individual or eligible spouse by reason of this subparagraph more than three months in any 12-month period.

[*See main edition for text of* (*2*) *to* (*4*); (*f*)]

(g) Individuals deemed to meet resources test

In the case of any individual or any individual and his spouse (as the case may be) who—

[*See main edition for text of* (*1*) *to* (*3*)]

the resources of such individual or such individual and his spouse (as the case may be) shall be deemed not to exceed the amount specified in subsections (a)(1)(B) and (a)(2)(B) of this section during any period that the resources of such individual or such individual and his spouse (as the case may be) does not exceed the maximum amount of resources specified in the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973.

[*See main edition for text of* (*h*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title IV, § 403(a), 97 Stat. 140; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2611(a)-(c), 2663(g)(1), (2), 98 Stat. 1130, 1166.)

CODIFICATION

Subsec. (c)(1) is set out in this supplement to correct typographical error appearing in the main edition.

AMENDMENTS

1984—Subsec. (a)(1)(B). Pub. L. 98-369, § 2611(a), substituted "the applicable amount determined under paragraph (3)(A)" for "$2,250" and "the applicable amount determined under paragraph (3)(B)" for "$1,500".

Subsec. (a)(2)(B). Pub. L. 98-369, § 2611(b), substituted "the applicable amount determined under paragraph (3)(A)" for "$2,250".

Subsec. (a)(3). Pub. L. 98-369, § 2611(c), added par. (3).

Subsec. (c). Pub. L. 98-369, § 2663(g)(1), amended heading.

Subsec. (g). Pub. L. 98-369, § 2663(g)(2), substituted "or such individual" for "or individuals" in provisions following par. (3).

1983—Subsec. (e)(1)(A). Pub. L. 98-21, § 403(a)(1), added reference to subpar. (D).

Subsec. (e)(1)(D). Pub. L. 98-21, § 403(a)(2), added subpar. (D).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2611(a)-(c) of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 403(b) of Pub. L. 98-21 provided that: "The amendments made by subsection (a) [amending subsec. (e)(1) of this section] shall be effective with respect to months after the month in which this Act is enacted [April 1983]."

NOTIFICATION OF POSSIBLE BENEFIT AVAILABILITY TO POTENTIAL SUPPLEMENTAL SECURITY INCOME RECIPIENTS

Section 405 of Pub. L. 98-21 provided that: "Prior to July 1, 1984, the Secretary of Health and Human Services shall notify all elderly recipients of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] who may be eligible for supplemental security income benefits under title XVI of such Act [this subchapter] of the availability of the supplemental security income program, and shall encourage such recipients to contact the Social Security district office. Such notification shall also be made to all recipients prior to attainment of age 65, with the notification made with respect to eligibility for supplementary medical insurance."

MANDATORY MINIMUM STATE SUPPLEMENTATION OF SUPPLEMENTAL SECURITY INCOME BENEFITS PROGRAM; DECEMBER 1973 INCOME; TITLE XVI BENEFIT PLUS OTHER INCOME; REDUCTION OF AMOUNT; ADMINISTRATION AGREEMENT; PAYMENTS TO SECRETARY; STATE CONSTITUTIONAL RESTRICTION

Section 212 of Pub. L. 93-66, as amended by Pub. L. 93-233, § 10, Dec. 31, 1973, 87 Stat. 957; Pub. L. 93-335, § 2(a), July 8, 1974, 88 Stat. 291; Pub. L. 96-265, title II, § 201(b)(2), June 9, 1980, 94 Stat. 446, provided that:

[*See main edition for text of note*]

Enactment of subsec. (a)(4) of section 212 of Pub. L. 93-66 effective Jan. 1, 1981, but to remain in effect only through June 30, 1987, see section 201(d) of Pub. L. 96-265, as amended, set out as an Effective and Termination Dates note under section 1382h of this title.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1602 of the Social Security Act [this section] by Pub. L. 92-603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92-603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1602 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92-603, and as amended, continues to apply and reads as follows:

§ 1382. State plans for aid to aged, blind, or disabled

(a) Contents

A State plan for aid to the aged, blind, or disabled, must—

[*See main edition for text of* (*1*) *to* (*12*)]

(13) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of aid or assistance under the plan;

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than $7.50 of any income; and

(15) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

Notwithstanding paragraph (3), if on January 1, 1962, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter was different from the State agency which administered or supervised the administration of the plan of such State approved under subchapter I of this chapter and the State agency which administered or supervised the administration of the plan of such State approved under subchapter XIV of this chapter, the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter may be designated to administer or supervise the administration of the portion of the State plan for aid to the aged, blind, or disabled which relates to blind individuals and a separate State agency may be established or designated to administer or supervise the administration of the rest of such plan; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter.

[*See main edition for text of* (*b*) *and* (*c*)]

(Aug. 14, 1935, ch. 531, title XVI, § 1602, as added July 25, 1962, Pub. L. 87-543, title I, § 141(a), 76 Stat. 198, and amended Oct. 13, 1964, Pub. L. 88-650, § 5(b), 78 Stat. 1078; July 30, 1965, Pub. L. 89-97, title II, § 221(d)(3), title IV, § 403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub. L. 90-248, title II, §§ 210(a)(5), 213(a)(4), 241(d), 81 Stat. 896, 898, 917; Oct. 30, 1972, Pub. L. 92-603, title IV, §§ 405(d), 406(d), 407(d), 410(d), 413(d), 86 Stat. 1488, 1489, 1491, 1492; Aug. 13, 1981, Pub. L. 97-35, title XXI, § 2184(d)(4), 95 Stat. 817; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2651(h), 98 Stat. 1150.)

§ 1382a. Income; earned and unearned income defined; exclusions from income

[*See main edition for text of* (*a*)]

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

[*See main edition for text of* (*1*)]

(2) [*See main edition for text of* (*A*)]

(B) monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973 (or any program established prior to such date but subsequently amended so as to conform to State or Federal constitutional standards), if (i) such payments are made by the State of which the individual receiving such payments is a resident, (ii) eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 or any other age set by the State and residency in such State by such individual, and (iii) on or before September 30, 1985, such individual (I) first becomes an eligible individual or an eligible spouse under this title, and (II) satisfies the twenty-five-year residency requirement of such program as such program was in effect prior to January 1, 1983.[3]

[*See main edition for text of* (*3*) *to* (*8*)]

(9) if such individual is a child, one-third of any payment for his support received from an absent parent;

[*See main edition for text of* (*10*) *to* (*12*)]

(13) any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy.

(As amended Apr. 20, 1983, Pub. L. 98-21, title IV, § 404(a), 97 Stat. 140; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2616(a), 2639(b), (c), 2663(g)(3), (4), 98 Stat. 1133, 1144, 1145, 1168.)

References in Text

Section 43 of the Internal Revenue Code of 1954, referred to in subsec. (a)(1)(C), was renumbered section 32 of the Internal Revenue Code of 1954 by Pub. L. 98-369, div. A, title IV, § 471(c)(1), July 18, 1984, 98 Stat. 826.

Amendments

1984—Subsec. (b)(2)(B). Pub. L. 98-369, § 2663(g)(3), realigned the margin of subpar. (B).

Pub. L. 98-369, § 2616(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual;".

Subsec. (b)(9). Pub. L. 98-369, § 2663(g)(4), added a comma after "child".

Subsec. (b)(13). Pub. L. 98-369, § 2639(b), temporarily amended par. (13) generally, redesignating former cls. (i) and (ii) as (A) and (B), respectively. See Effective and Termination Dates of 1984 Amendment note below.

1983—Subsec. (b)(13). Pub. L. 98-21 temporarily substituted "any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which" for "any assistance received to assist in meeting the costs of home energy, including both heating and cooling, which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) (A) is based on need for such assistance, and (B)". See Effective and Termination Dates of 1983 Amendments note below.

Effective and Termination Dates of 1984 Amendment

Section 2616(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment of subsec. (b)(13) of this section by section 2639(b) of Pub. L. 98-369 effective with respect to months which begin after Sept. 30, 1984, but subsec. (b)(13) as so amended, effective only with respect to months which end before Oct. 1, 1987, see section 2639(d) of Pub. L. 98-369, set out as a note under section 602 of this title.

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[3] So in original. The period probably should be a semicolon.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

Effective and Termination Dates of 1983 Amendments

Section 545(c) of Pub. L. 97-424 and section 404(c) of Pub. L. 98-21, which had provided for the effective and termination dates covering the enactment and subsequent amendment of subsec. (b)(13) of this section by section 545(a) of Pub. L. 97-424 and section 404(a) of Pub. L. 98-21, were repealed by section 2639(c), (d) of Pub. L. 98-369, effective with respect to months beginning after Sept. 30, 1984, see note set out under section 602 of this title.

Section Referred to in Other Sections

This section is referred to in sections 612, 1382, 1382b, 1382e, 1382h, 1382j, 1383, 1396b, 8624 of this title.

§ 1382b. Resources

(a) Exclusions from resources

In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

[See main edition for text of (1) to (4)]

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 1606(h) and section 1607(c) of title 43;

(6) assistance referred to in section 1382a(b)(11) of this title for the 9-month period beginning on the date such funds are received (or for such longer period as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of this paragraph, the term "assistance" includes interest thereon which is excluded from income under section 1382a(b)(12) of this title; and

(7) any amount received from the United States which is attributable to underpayments of benefits due for one or more prior months, under this subchapter or subchapter II of this chapter, to such individual (or spouse) or to any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this subchapter; but the application of this paragraph in the case of any such individual (and eligible spouse if any), with respect to any amount so received from the United States, shall be limited to the first 6 months following the month in which such amount is received, and written notice of this limitation shall be given to the recipient concurrently with the payment of such amount.

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account.

[See main edition for text of (b)]

(c) Disposal of resources for less than fair market value

[See main edition for text of (c) and (d)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2614, 2663(g)(5), 98 Stat. 1132, 1168.)

Amendments

1984—Subsec. (a)(7). Pub. L. 98-369, § 2614, added par. (7).

Subsec. (c). Pub. L. 98-369, § 2663(g)(5), amended heading.

Effective Date of 1984 Amendment

Amendment by section 2614 of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1382c. Definitions

(a) *[See main edition for text of (1) and (2)]*

(3) *[See main edition for text of (A) to (F)]*

(G) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

(H) In making determinations with respect to disability under this subchapter, the provisions of sections 421(h), 421(k), and 423(d)(5) of this title shall apply in the same manner as they apply to determinations of disability under subchapter II of this chapter.

[See main edition for text of (4)]

(5) A recipient of benefits based on disability under this subchapter may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(A) substantial evidence which demonstrates that—

(i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity; or

(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1382h of this title) which—

(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(I) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(II) the individual is now able to engage in substantial gainful activity, or

(ii) demonstrates that—

(I) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(II) the individual is now able to engage in substantial gainful activity; or

(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(D) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability under this subchapter is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) In determining whether two individuals are husband and wife for purposes of this subchapter, appropriate State law shall be applied; except that—

(1) if a man and woman have been determined to be husband and wife under section 416(h)(1) of this title for purposes of subchapter II of this chapter they shall be considered (from and after the date of such determination or the date of their application for benefits under this subchapter, whichever is later) to be husband and wife for purposes of this subchapter, or

[*See main edition for text of* (*2*); (*e*) *and* (*f*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(g)(6), (7), 98 Stat. 1168, 1169; Oct. 9, 1984, Pub. L. 98-460, §§ 2(c), 3(a)(2), 4(b), 8(b), 10(b), 98 Stat. 1796, 1799, 1800, 1804, 1805.)

AMENDMENTS

1984—Subsec. (a)(3)(E). Pub. L. 98-369, § 2663(g)(6), realigned margin of subpar. (E).

Subsec. (a)(3)(G). Pub. L. 98-460, § 4(b), added subpar. (G).

Subsec. (a)(3)(H). Pub. L. 98-460, § 8(b), added subpar. (H).

Pub. L. 98-460, § 3(a)(2), inserted reference to section 423(d)(5) of this title.

Pub. L. 98-460, § 10(b), inserted reference to section 421(k) of this title.

Subsec. (a)(5). Pub. L. 98-460, § 2(c), added par. (5).

Subsec. (d)(1). Pub. L. 98-369, § 2663(g)(7), substituted "man and woman" for "man and women".

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 2(c) of Pub. L. 98-460 applicable to determinations made by the Secretary on or after Oct. 9, 1984, with certain enumerated exceptions and qualifications, see section 2(d) of Pub. L. 98-460, set out as a note under section 423 of this title.

Amendment by section 3(a)(2) of Pub. L. 98-460 applicable to determinations made prior to Jan. 1, 1987, see section 3(a)(3) of Pub. L. 98-460, set out as a note under section 423 of this title.

Amendment by section 4(b) of Pub. L. 98-460 applicable with respect to determinations made on or after the first day of the first month beginning after 30 days after Oct. 9, 1984, see section 4(c) of Pub. L. 98-460, set out as a note under section 423 of this title.

Amendment by section 8(b) of Pub. L. 98-460 applicable to determinations made after 60 days after Oct. 9, 1984, see section 8(c) of Pub. L. 98-460, set out as a note under section 421 of this title.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

RETROACTIVE BENEFITS

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98-460, which added subsec. (a)(5) of this section, see section 2(f) of Pub. L. 98-460, set out as a note under section 423 of this title.

PROMULGATION OF REGULATIONS

For provisions requiring the Secretary of Health and Human Services to prescribe regulations necessary to implement amendment to this section [adding subsec. (a)(5)] by section 2(c) of Pub. L. 98-460 not later than 180 days after Oct. 9, 1984, see section 2(g) of Pub. L. 98-460, set out as a note under section 423 of this title.

§ 1382d. Rehabilitation services for blind and disabled individuals

(a) Referral by Secretary of eligible individuals to appropriate State agency; review by Secretary of individual's blindness or disability and need for services

In the case of any blind or disabled individual who—

(1) has not attained age 65, and

(2) is receiving benefits (or with respect to whom benefits are paid) under this subchapter,

the Secretary shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], or, in the case of any such individual who has not attained age 16, to the State agency administering the State program under subchapter V of this chapter, and (except for individuals who have not attained age 16 and except in such other cases as he may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the services made available to him under such plan.

(b) Repealed. Pub. L. 97–35, title XXI, § 2193(c)(8)(B), Aug. 13, 1981, 95 Stat. 828

(c) Refusal by referred individuals to accept services

Every individual age 16 or over with respect to whom the Secretary is required to make provision for referral under subsection (a) of this section shall accept such services as are made available to him under the State plan for vocational and rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.]; and no such individual shall be an eligible individual or eligible spouse for purposes of this subchapter if he refuses without good cause to accept services for which he is referred under subsection (a) of this section.

(d) Reimbursement by Secretary to State agency of costs of providing services to referred individuals

The Secretary is authorized to reimburse the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.] for the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) of this section (1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1383(a)(6) of this title (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 422(d)(1) of this title.

(As amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(g)(8), 98 Stat. 1169; Oct. 9, 1984, Pub. L. 98–460, § 11(b), 98 Stat. 1806.)

References in Text

The Rehabilitation Act of 1973, referred to in subsecs. (a), (c), and (d), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended. Title I of the Rehabilitation Act of 1973 is classified generally to subchapter I (§ 720 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Amendments

1984—Subsecs. (a), (c). Pub. L. 98–369, § 2663(g)(8), substituted "title I of the Rehabilitation Act of 1973" for "the Vocational Rehabilitation Act".

Subsec. (d). Pub. L. 98–460, § 11(b), designated existing provisions of first sentence as cl. (1), added cls. (2) and (3), and added requirement that the determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity and the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 422(d)(1) of this title.

Pub. L. 98–369, § 2663(g)(8), substituted "title I of the Rehabilitation Act of 1973" for "the Vocational Rehabilitation Act".

Effective Date of 1984 Amendments

Amendment by Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after November 1984, see section 11(c) of Pub. L. 98–460, set out as a note under section 422 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 1382e. Supplementary assistance by State or subdivision to needy individuals

Effective and Termination Dates of 1980 Amendment

Enactment of subsec. (c)(3) of this section by Pub. L. 96–265 effective Jan. 1, 1981, and to remain in effect only through June 30, 1987, see section 201(d) of Pub. L. 96-265, as amended, set out as an Effective and Termination Dates note under section 1382h of this title.

Section Referred to in Other Sections

This section is referred to in sections 1310, 1320a-6, 1382, 1382g, 1382h, 1382i, 1383, 3022 of this title; title 7 sections 2012, 2015; title 12 section 1715w; title 26 sections 51, 6103.

§ 1382f. Cost-of-living adjustments in benefits

(a) Increase of dollar amounts

Whenever benefit amounts under subchapter II of this chapter are increased by any percentage effective with any month as a result of a determination made under section 415(i) of this title—

[*See main edition for text of* (*1*)]

(2) the amount obtained under paragraph (1) with respect to each subsection shall be further increased by the same percentage by which benefit amounts under subchapter II of this chapter are increased for such month, or, if greater (in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage), the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, (and rounded, when not a multiple of $12, to the next lower multiple of $12), effective with respect to benefits for months after such month.

(b) Publication in Federal Register of new dollar amounts

The new dollar amounts to be in effect under section 1382 of this title and under section 211 of Public Law 93-66 by reason of subsection (a) of this section shall be published in the Federal Register together with, and at the same time as, the material required by section 415(i)(2)(D) of this title to be published therein by reason of the determination involved.

(c) Additional increases

Effective July 1, 1983—

(1) each of the dollar amounts in effect under subsections (a)(1)(A) and (b)(1) of section 1382 of this title, as previously increased under this section, shall be increased by $240 (and the dollar amount in effect under subsection (a)(1)(A) of section 211 of Public Law 93-66, as previously so increased, shall be increased by $120); and

(2) each of the dollar amounts in effect under subsections (a)(2)(A) and (b)(2) of section 1382 of this title, as previously increased under this section, shall be increased by $360.

(As amended Apr. 20, 1983, Pub. L. 98-21, title IV, § 401, 97 Stat. 138.)

References in Text

Section 211 of Pub. L. 93-66, referred to in subsecs. (a)(1), (b), and (c)(1), is section 211 of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 154, as amended, which is set out as a note under section 1382 of this title.

Amendments

1983—Subsec. (a)(2). Pub. L. 98-21, § 401(b), added provision that the amount obtained under par. (1) with respect to each subsection shall be further increased by the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, if greater, in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage.

Subsec. (b). Pub. L. 98-21, § 401(a)(2), substituted "subsection (a) of this subsection" for "this section".

Subsec. (c). Pub. L. 98-21, § 401(a)(1), added subsec. (c).

Cost-of-Living Increases; Cost-of-Living Computation Quarter Determinations

Payment of increased benefits under program covered in subchapter II of this chapter, see section 1 of Pub. L. 98-604, set out as a note under section 415 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1382, 1382g of this title.

§ 1382g. Payments to State for operation of supplementation program

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Election to apply subsection (a)(4)

Any State which satisfies the requirements of this section solely by reason of subsection (b) of this section for a particular month or months in any 12-month period (described in such subsection) ending on or after June 30, 1982, may elect, with respect to any month in any subsequent 12-month period (so described), to apply subsection (a)(4) of this section as though the reference to December 1976 in such subsection were a reference to the month of December which occurred in the 12-month period immediately preceding such subsequent period.

(d) Determinations respecting any portion of period July 1, 1980, through June 30, 1981

The Secretary shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for any portion of the period July 1, 1980, through June 30, 1981, if the State's expenditures for such payments in that twelve-month period were not less than its expenditures for such payments for the period July 1, 1976, through June 30, 1977 (or, if the State made no supplementary payments in the period July 1, 1976, through June 30, 1977, the expenditures for the first twelve-month period extending from July 1 through June 30 in which the State made such payments).

(e) Meeting subsection (a)(4) requirements for any month after March 1983

(1) For any particular month after March 1983, a State which is not treated as meeting the requirements imposed by paragraph (4) of subsection (a) of this section by reason of subsection (b) of this section shall be treated as meeting such requirements if and only if—

(A) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93-66, for that particular month,

is not less than—

(B) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93-66, for March 1983, increased by the amount of all cost-of-living adjustments under section 1382f of this title (and any other benefit increases under this subchapter) which have occurred after March 1983 and before that particular month.

(2) In determining the amount of any increase in the combined level involved under paragraph (1)(B) of this subsection, any portion of such amount which would otherwise be attributable to the increase under section 1382f(c) of this title shall be deemed instead to be equal to the amount of the cost-of-living adjustment which would have occurred in July 1983 (without regard to the 3-percent limitation contained in section 415(i)(1)(B) of this title) if section 111 of the Social Security Amendments of 1983 had not been enacted.

(As amended Apr. 20, 1983, Pub. L. 98-21, title IV, § 402, 97 Stat. 139; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(g)(9), 98 Stat. 1169.)

REFERENCES IN TEXT

Sections 211(a)(1)(A) and 212(a) of Pub. L. 93-66, referred to in subsecs. (a) and (e)(1), are sections 211(a)(1)(A) and 212(a) of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 154, 155, as amended, which are set out as notes under section 1382 of this title.

Section 111 of the Social Security Amendments of 1983, referred to in subsec. (e)(2), is section 111 of Pub. L. 98-21, title I, Apr. 20, 1983, 97 Stat. 72, which amended sections 402, 403, 415, and 430 of this title and enacted provisions set out as notes under sections 402 and 415 of this title and section 3023 of Title 38, Veterans' Benefits.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369, § 2663(g)(9)(A), realigned margin of subsec. (d).

Pub. L. 98-369, § 2663(g)(9)(B), (C), struck out the comma after "levels of its", and added a comma after "1980" and after "1976", wherever appearing.

1983—Subsecs. (c), (d). Pub. L. 98-21 redesignated subsec. (c), added by Pub. L. 97-377, as (d).

Subsec. (e). Pub. L. 98-21 added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1382h. Benefits for individuals who perform substantial gainful activity despite severe medical impairment

[See main edition for text of (a) and (b)]

(c) Information and training programs

The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this subchapter and shall conduct such programs for the staffs of the district offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.

(As amended Oct. 9, 1984, Pub. L. 98-460, § 14(b), 98 Stat. 1808.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-460 added subsec. (c).

EFFECTIVE AND TERMINATION DATES

Section 201(d) of Pub. L. 96-265, as amended by Pub. L. 98-460, § 14(a), Oct. 9, 1984, 98 Stat. 1808, provided that: "The amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] shall become effective on January 1, 1981, but shall remain in effect only through June 30, 1987."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 1382c, 1382e, 1382i of this title.

§ 1382j. Attribution of sponsor's income and resources to aliens

[See main edition for text of (a)]

(b) Determination of amount and resources

[See main edition for text of (1)]

(2) The amount of resources of a sponsor (and his spouse) which shall be deemed to be the resources of an alien for any year shall be determined as follows:

[See main edition for text of (A)]

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the applicable amount determined under section 1382(a)(3)(B) of this title in the case of a sponsor who has no spouse with whom he is living, or (ii) the applicable amount determined under section 1382(a)(3)(A) of this title in the case of a sponsor who has a spouse with whom he is living.

[See main edition for text of (C); (c) and (d)]

(e) Joint and several liability of alien and sponsor for overpayments

Any sponsor of an alien, and such alien, shall be jointly and severally liable for an amount equal to any overpayment made to such alien during the period of three years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid to the Secretary or recovered in accordance with section 1383(b) of this title shall be withheld from any subsequent payment to which such alien or such sponsor is entitled under any provision of this chapter.

[*See main edition for text of (f)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2611(d), 2663(g)(10), 98 Stat. 1131, 1169.)

AMENDMENTS

1984—Subsec. (b)(2)(B). Pub. L. 98-369, § 2611(d), substituted "the applicable amount determined under section 1382(a)(3)(B) of this title" for "$1,500" and "the applicable amount determined under section 1382(a)(3)(A) of this title" for "$2,250".

Subsec. (e). Pub. L. 98-369, § 2663(g)(10), substituted "severally" for "severably".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2611(d) of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by section 2663(g)(10) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PART B—PROCEDURAL AND GENERAL PROVISIONS

§ 1383. Procedure for payment of benefits

(a) Time, manner, form, and duration of payments; promulgation of regulations

[*See main edition for text of (1)*]

(2)(A) Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1382(e)(3)(A) of this title, the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).

(B) Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.

(C)(i) In any case where payment is made under this subchapter to a person other than the individual or spouse entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(ii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

(iii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

(iv) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

(D) The Secretary shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after October 9, 1984. The Secretary shall include in the annual report required under section 904 of this title, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Secretary's report under section 405(j)(4)(B) of this title.

[*See main edition for text of (3) to (6)*]

(7)(A) In any case where—

(i) an individual is a recipient of benefits based on disability or blindness under this subchapter,

(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after October 9, 1984, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(b) Overpayments and underpayments; adjustment, recovery, or payment of amounts by Secretary

(1) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary (A) shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity and good conscience, or (because of the small amount involved) impede efficient or effective administration of this subchapter, and (B) shall in any event make the adjustment or recovery (in the case of payment of more than the correct amount of benefits), in the case of an individual or eligible spouse receiving benefit payments under this subchapter (including supplementary payments of the type described in section 1382e(a) of this title and payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), in amounts which in the aggregate do not exceed (for any month) the lesser of (i) the amount of his or their benefit under this subchapter for that month or (ii) an amount equal to 10 percent of his or their income for that month (including such benefit but excluding any other income excluded pursuant to section 1382a(b) of this title), unless fraud, willful misrepresentation, or concealment of material information was involved on the part of the individual or spouse in connection with the overpayment, or unless the individual requests that such adjustment or recovery be made at a higher or lower rate and the Secretary determines that adjustment or recovery at such rate is justified and appropriate. The availability (in the case of an individual who has been paid more than the correct amount of benefits) of procedures for adjustment or recovery at a limited rate under clause (B) of the preceding sentence shall not, in and of itself, prevent or restrict the provision (in such case) of more substantial relief under clause (A) of such sentence.

(2) In any case in which advance payments for a taxable year made by all employers to an individual under section 3507 of the Internal Revenue Code of 1954 (relating to advance payment of earned income credit) exceed the amount of such individual's earned income credit allowable under section 32 of such Code for such year, so that such individual is liable under section 32(g) of such Code for a tax equal to such excess, the Secretary shall provide for an appropriate adjustment of such individual's benefit amount under this subchapter so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such excess advance payments.

(3) If any overpayment with respect to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by such individual (and spouse if any) of resources having a value which exceeds the applicable dollar figure specified in paragraph (1)(B) or (2)(B) of section 1382(a) of this title by $50 or less, such individual (and spouse if any) shall be deemed for purposes of the second sentence of paragraph (1) to have been without fault in connection with the overpayment, and no adjustment or recovery shall be made under the first sentence of such paragraph, unless the Secretary finds that the failure of such individual (and spouse if any) to report such value correctly and in a timely manner was knowing and willful.

(4) For payments for which adjustments are made by reason of a retroactive payment of benefits under subchapter II of this chapter, see section 1320a-6 of this title.

[*See main edition for text of* (c)]

(d) Procedures applicable; prohibition on assignment of payments; representation of claimants; maximum fees; penalties for violations

(1) The provisions of section 407 of this title and subsections (a), (d), and (e) of section 405

of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter.

[*See main edition for text of* (2)]

(e) Administrative requirements prescribed by Secretary; criteria; reduction of benefits to individual for noncompliance with requirements

(1) [*See main edition for text of* (A)]

(B) The requirements prescribed by the Secretary pursuant to subparagraph (A) shall require that eligibility for benefits under this subchapter will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct. For this purpose and for purposes of federally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), the Secretary shall, as may be necessary, request and utilize information available pursuant to section 6103(*l*)(7) of the Internal Revenue Code of 1954, and any information which may be available from State systems under section 1320b-7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(*l*)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b-7 of this title.

[*See main edition for text of* (2); (*f*) *to* (*i*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2612(a), 2613, 2651(j), 2663(g)(11), (12), 98 Stat. 1131, 1150, 1169; Oct. 9, 1984, Pub. L. 98-460, §§ 7(b), 16(b), 98 Stat. 1803, 1809.)

REFERENCES IN TEXT

Section 212 of Pub. L. 93-66, referred to in subsecs. (b)(1), (e)(1)(B), (g)(2), and (i)(2), is section 212 of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out in a note under section 1382 of this title.

The Internal Revenue Code of 1954, referred to in subsecs. (b)(2) and (e)(1)(B), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-460, § 16(b), redesignated existing provisions as subpar. (A) and added subpars. (B) to (D).

Subsec. (a)(7). Pub. L. 98-460, § 7(b), added par. (7).

Pub. L. 98-369, § 2612(a), inserted "(A)" before "shall make such provision" in second sentence, and added cl. (B).

Subsec. (b)(1). Pub. L. 98-369, § 2663(g)(11)(A), substituted "equity and good conscience" for "equity or good conscience".

Subsec. (b)(2). Pub. L. 98-369, § 2663(g)(11)(B), substituted "section 32" and "section 32(g)" for "section 43" and "section 43(g)", respectively.

Subsec. (b)(3), (4). Pub. L. 98-369, § 2613, added par. (3) and redesignated former par. (3) as (4).

Subsec. (d)(1). Pub. L. 98-369, § 2663(g)(12), substituted "and (e)" for "(e), and (f)".

Subsec. (e)(1)(B). Pub. L. 98-369, § 2651(j), added provision that for this purpose and for purposes of federally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), the Secretary shall, as may be necessary, request and utilize information available pursuant to section 6103(*l*)(7) of the Internal Revenue Code of 1954, and any information which may be available from State systems under section 1320b-7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(*l*)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b-7 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 16(b) of Pub. L. 98-460 effective Oct. 9, 1984, see section 16(d) of Pub. L. 98-460, set out as a note under section 405 of this title.

Amendment by sections 2612(a), 2613 of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by section 2651(j) of Pub. L. 98-369, effective July 18, 1984, see section 2651(*l*)(1) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PAYMENT OF TRAVEL EXPENSES

Pub. L. 99-178, title II, § 200, Dec. 12, 1985, 99 Stat. 1116, provided in part that: "Travel expense payments under section 1631(h) of such Act [subsec. (h) of this section] may be made only when travel of more than seventy-five miles is required."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 98-619, title II, § 200, Nov. 8, 1984, 98 Stat. 3318.

Pub. L. 98-139, title II, § 200, Oct. 31, 1983, 97 Stat. 884.

Pub. L. 97-377, title I, § 101(e)(1), Dec. 21, 1982, 96 Stat. 1891.

NOTIFICATION OF ADJUSTMENT OF BENEFITS BY SECRETARY

Section 2612(b) of Pub. L. 98-369 provided that: "If an adjustment referred to in section 1631(b)(1) of the Social Security Act [subsec. (b)(1) of this section] is in effect with respect to an individual or eligible spouse on the effective date of this subsection [Oct. 1, 1984], and the amount of such adjustment for a month is greater than the amount described in section 1631(b)(1)(B)(ii) of such Act [subsec. (b)(1)(B)(ii) of this section], as added by subsection (a), the Secretary shall notify the individual whose benefits are being adjusted, in writing, of his or her right to have the adjustment reduced to the amount described in such section 1631(b)(1)(B)(ii)."

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment to sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98-460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1984, see section 11(c) of Pub. L. 98-460, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 643, 909, 1306a, 1318, 1319, 1382c, 1382d, 1382j, 1383a, 1396a of this title.

§ 1383a. Fraudulent acts; penalties; restitution

(a) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit under this subchapter,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized, or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person,

shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a) of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1383(a)(2) of this title on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a) of this section—

(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

(3) Any person or entity convicted of a felony under this section or under section 408 of this title may not be certified as a payee under section 1383(a)(2) of this title.

(As amended Oct. 9, 1984, Pub. L. 98-460, § 16(c)(1), 98 Stat. 1810.)

AMENDMENTS

1984—Pub. L. 98-460 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98-460, set out as a note under section 405 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 408 of this title.

§ 1383b. Administration

[See main edition for text of (a) and (b)]

(c) Notification of review

In any case in which the Secretary initiates a review under this subchapter, similar to the continuing disability reviews authorized for purposes of subchapter II of this chapter under section 421(i) of this title, the Secretary shall notify the individual whose case is to be reviewed in the same manner as required under section 421(i)(4) of this title.

(As amended Oct. 9, 1984, Pub. L. 98-460, § 6(b), 98 Stat. 1802.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-460 added subsec. (c).

INSTITUTION OF NOTIFICATION SYSTEM

For provisions requiring the Secretary to institute the system of notification required by subsec. (c) of this section as soon as practicable after Oct. 9, 1984, see section 6(c) of Pub. L. 98-460, set out as a note under section 421 of this title.

SUBCHAPTER XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 242b, 254b, 254c, 254e, 254h, 273, 274c, 300e-6, 300m-6, 300n, 300t-12, 401, 416, 417, 423, 426-1, 907a, 1301, 1306, 1320a-1, 1320a-2, 1320a-3, 1320a-5, 1320a-7, 1320a-7a, 1320a-8, 1320b-4, 1320b-5, 1320c-2, 1320c-3, 1320c-4, 1320c-5, 1320c-10, 1395x, 1395gg, 1396a, 1396b, 1396i, 1396*l*, 1396m, 1997, 3013, 3035b of this title; title 2 section 906; title 7 sections 2012, 3178; title 10 section 1079; title 12 sections 1715w, 1715z-7; title 24 section 170a; title 25 section 1622; title 26 section 1402; title 38 sections 4108, 5053; title 45 section 231r; title 49 App. section 1607a.

§ 1395b-1. Incentives for economy while maintaining or improving quality in the provision of health services

(a) Grants and contracts to develop and engage in experiments and demonstration projects

(1) The Secretary of Health and Human Services is authorized, either directly or through grants to public or private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations, to develop and engage in experiments and demonstration projects for the following purposes:

[See main edition for text of (A) to (K)]

For purposes of this subsection, "health programs established by this chapter" means the program established by this subchapter and a program established by a plan of a State approved under subchapter XIX of this chapter.

[*See main edition for text of* (*2*); (*b*)]

(As amended Pub. L. 98-369, div. B, title III, § 2331(b), July 18, 1984, 98 Stat. 1088.)

Amendments

1984—Subsec. (a)(1). Pub. L. 98-369 substituted "grants to public or private agencies" for "grants to public or nonprofit private agencies" in provisions preceding subpar. (A).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, see section 2331(c) of Pub. L. 98-369, set out as a note under section 1310 of this title.

Payment for Costs of Hospital-Based Mobile Intensive Care Units

Section 2320 of Pub. L. 98-369 provided that:

"(a)(1) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall provide, except as provided in paragraph (2), that the amount of payments to hospitals covered under the project during the period described in paragraph (3) shall include payments for their operation of hospital-based mobile intensive care units (as defined by State statute) if the State provides satisfactory assurances that the total amount of payments to such hospitals under titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] under the demonstration project (including any such additional amount of payment) would not exceed the total amount of payments which would have been paid under such titles if the demonstration project were not in effect.

"(2) Paragraph (1) shall not apply if the State in which the project is located notifies the Secretary, within 30 days after the date of the enactment of this section [July 18, 1984], that the State does not want paragraph (1) to apply to that project.

"(3) The period referred to in paragraph (1) begins on the date of the enactment of this section and continues so long as the Secretary continues the Statewide waiver referred to in subsection (b), but in no case ends earlier than 90 days after the date final regulations to implement section 1886(c) of the Social Security Act [42 U.S.C. 1395ww(c)] are published.

"(b) The project referred to in subsection (a) is the statewide demonstration project established in the State of New Jersey under section 402 of the Social Security Amendments of 1967, as amended by section 222(b) of the Social Security Amendments of 1972 (Public Law 92-603) [this section], which project provides for payments to hospitals in the State on a prospective basis and related to a classification of patients by diagnosis-related groups.

"(c) Payment for services described in this section shall be considered to be payments for services under part A of title XVIII of the Social Security Act [part A of this subchapter]."

Continuation of Secretary's Authority Regarding Experiments and Demonstration Projects

Pub. L. 98-21, title VI, § 603(b), Apr. 20, 1983, 97 Stat. 167, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this title [amending sections 1320a-1, 1320c-2, 1395f, 1395i-2, 1395n, 1395r, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395ww, and 1395xx of this title, enacting provisions set out as notes under sections 1395b-1, 1395r, 1395x, 1395y, 1395cc, and 1395ww of this title, and amending provisions set out as a note under section 1395x of this title] shall not affect the authority of the Secretary to develop, carry out, or continue experiments and demonstration projects.

"(2) The Secretary shall provide that, upon the request of a State which has a demonstration project, for payment of hospitals under title XVIII of the Social Security Act [this subchapter] approved under section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section] or section 222(a) of the Social Security Amendments of 1972 [set out as a note below], which (A) is in effect as of March 1, 1983, and (B) was entered into after August 1982 (or upon the request of another party to demonstration project agreement), the terms of the demonstration agreement shall be modified so that the demonstration project is not required to maintain the rate of increase in medicare hospital costs in that State below the national rate of increase in medicare hospital costs."

Alternative Care Demonstration Projects in Hospitals Short of Skilled Nursing Facilities

Pub. L. 98-21, title VI, § 603(d), Apr. 20, 1983, 97 Stat. 168, provided that: "The Secretary shall conduct demonstrations with hospitals in areas with critical shortages of skilled nursing facilities to study the feasibility of providing alternative systems of care or methods of payment."

Section Referred to in Other Sections

This section is referred to in sections 1395*ll*, 1395ww of this title.

Part A—Hospital Insurance Benefits for the Aged and Disabled

Part Referred to in Other Sections

This part is referred to in sections 254n, 402, 426, 426-1, 426a, 907, 1320a-3, 1320b-1, 1395*l*, 1395*o*, 1395p, 1395q, 1395u, 1395x, 1395y, 1395aa, 1395cc, 1395ff, 1395*ll*, 1395mm, 1395pp, 1395rr, 1395ss, 1395vv, 1395ww, 1396b, 1396n of this title; title 10 sections 1086, 1087; title 38 section 613; title 45 section 231f.

§ 1395d. Scope of benefits

Section Referred to in Other Sections

This section is referred to in sections 1395e, 1395f, 1395x, 1396b of this title.

§ 1395f. Conditions of and limitations on payment for services

(a) Requirement of requests and certifications

Except as provided in subsections (d) and (g) of this section and in section 1395mm of this title, payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc of this title and only if—

[*See main edition for text of* (*1*)]

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifications shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

[*See main edition for text of* (*A*)]

(B) in the case of post-hospital extended care services, such services are or were required to be given because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services;

(C) in the case of home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m)(7) of this title) and needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician; or

(D) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period;

[*See main edition for text of (4)*]

(5) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations, there was not in effect, at the time of admission of such individual to the hospital or skilled nursing facility, as the case may be, a decision under section 1395cc(d) of this title (based on a finding that utilization review of long-stay cases is not being made in such hospital or facility);

(6) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1395x(k)(4) of this title, including any finding made in the course of a sample or other review of admissions to the institution) pursuant to the system of utilization review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or skilled nursing facility, as the case may be, received notice of such finding; and

(7) in the case of hospice care provided an individual—

(A)(i) in the first 90-day period—

(I) the individual's attending physician (as defined in section 1395x(dd)(3)(B) of this title), and

(II) the medical director (or physician member of the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program providing (or arranging for) the care,

each certify, not later than two days after hospice care is initiated, that the individual is terminally ill (as defined in section 1395x(dd)(3)(A) of this title), and

(ii) in a subsequent 90- or 30-day period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;

(B) a written plan for providing hospice care with respect to such individual has been established (before such care is provided by, or under arrangements made by, that hospice program) and is periodically reviewed by the individual's attending physician and by the medical director (and the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program; and

(C) such care is being or was provided pursuant to such plan of care.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes certification of the kind provided in subparagraph (A), (B), (C), or (D) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a

overnmental entity) and with respect to the
stablishment and review of a plan for such
ervices, the Secretary shall prescribe regula-
ions which shall become effective no later
han July 1, 1981, and which prohibit a physi-
ian who has a significant ownership interest
n, or a significant financial or contractual rela-
ionship with, such home health agency from
erforming such certification and from estab-
ishing or reviewing such plan, except that such
rohibition shall not apply with respect to a
ome health agency which is a sole community
ome health agency (as determined by the Sec-
etary). For purposes of the preceding sentence,
ervice by a physician as an uncompensated of-
icer or director of a home health agency shall
ot constitute having a significant ownership
nterest in, or a significant financial or contrac-
ual relationship with, such agency.

b) Amount paid to provider of services

The amount paid to any provider of services
other than a hospice program providing hos-
ice care and other than a home health agency
vith respect to durable medical equipment)
vith respect to services for which payment may
e made under this part shall, subject to the
rovisions of sections 1395e and 1395ww of this
itle, be—

[See main edition for text of (1)]

(2) if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), free of charge or at nominal charges to the public, the amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such reasonable cost which the Secretary finds will provide fair compensation to such provider for such services; or

[See main edition for text of (3)]

In the case of any State which has had such a demonstration project reimbursement system in continuous operation since July 1, 1977, the Secretary shall provide under paragraph (3) for continuation of reimbursement to hospitals in the State under such system until the first day of the seventh month beginning after the date the Secretary determines and notifies the Governor of the State that either of the conditions described in subparagraph (A) or (B) of such paragraph has occurred.

[See main edition for text of (c) to (f)]

g) Payments to physicians for services rendered in teaching hospitals

For purposes of services for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

[See main edition for text of (1) and (2)]

(h) Payment for specified hospital services provided in Veterans' Administration hospitals; amount of payment

[See main edition for text of (1)]

(2) Payment for services described in paragraph (1) shall be in an amount equal to the charge imposed by the Veterans' Administration for such services, or (if less) the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title (as estimated by the Secretary). Any such payment shall be made to the entity to which payment for the services involved would have been payable, if payment for such services had been made by the individual receiving the services involved (or by another private person acting on behalf of such individual).

(i) Payment for hospice care

(1)(A) Subject to the limitation under paragraph (2) and the provisions of section 1395e(a)(4) of this title, the amount paid to a hospice program with respect to hospice care for which payment may be made under this part shall be an amount equal to the costs which are reasonable and related to the cost of providing hospice care or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations (including those authorized under section 1395x(v)(1)(A) of this title), except that no payment may be made for bereavement counseling and no reimbursement may be made for other counseling services (including nutritional and dietary counseling) as separate services.

(B) Notwithstanding subparagraph (A), the rate of payment per day for routine home care furnished during fiscal year 1985 shall be $53.17.

(C) With respect to care and services furnished on or after October 1, 1985, the Secretary shall, not less often than annually, review and make appropriate adjustments to the payment rate for routine home care and the payment rates for other services included in hospice care based on the costs that are reasonable and related to the costs of furnishing such care and services. The Secretary shall report to Congress on October 1 each year on such review and such adjustments and on the adequacy of the rates under this paragraph to ensure participation by an adequate number of hospice programs under this subchapter.

(2)(A) The amount of payment made under this part for hospice care provided by (or under arrangements made by) a hospice program for an accounting year may not exceed the "cap amount" for the year (computed under subparagraph (B)) multiplied by the number of medicare beneficiaries in the hospice program in that year (determined under subparagraph (C)).

(B) For purposes of subparagraph (A), the "cap amount" for a year is $6,500, increased or decreased, for accounting years that end after October 1, 1984, by the same percentage as the percentage increase or decrease, respectively, in the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, from March 1984 to the fifth month of the accounting year.

[*See main edition for text of* (*C*)]

(j) Elimination of lesser-of-cost-or-charges provision

(1) The lesser-of-cost-or-charges provisions (described in paragraph (2)) will not apply in the case of services provided by a class of provider of services if the Secretary determines and certifies to Congress that the failure of such provisions to apply to the services provided by that class of providers will not result in any increase in the amount of payments made for those services under this subchapter. Such change will take effect with respect to services furnished, or cost reporting periods of providers, on or after such date as the Secretary shall provide in the certification. Such change for a class of provider shall be discontinued if the Secretary determines and notifies Congress that such change has resulted in an increase in the amount of payments made under this subchapter for services provided by that class of provider.

(2) The lesser-of-cost-or-charges provisions referred to in paragraph (1) are as follows:

(A) Clause (B) of paragraph (1) and paragraph (2) of subsection (b) of this section.

(B) Subsection (k)(1)(B) of this section.

(C) So much of subparagraph (A) of section 1395*l*(a)(2) of this title as provides for payment other than of the reasonable cost of such services, as determined under section 1395x(v) of this title.

(D) Subclause (II) of clause (i) and clause (ii) of section 1395*l*(a)(2)(B) of this title.

(k) Payments to home health agencies for durable medical equipment

The amount paid to any home health agency with respect to durable medical equipment for which payment may be made under this part shall be—

(1) the lesser of—

(A) the reasonable cost of such equipment, as determined under section 1395x(v) of this title, or

(B) the customary charges with respect to such equipment,

less the amount the home health agency may charge as described in section 1395cc(a)(2)(A)(ii) of this title, but in no case may the payment for such equipment exceed 80 percent of such reasonable cost, or

(2) if such equipment is furnished by a public home health agency, or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), free of charge or at nominal charge to the public, 80 percent of the amount which the Secretary finds will provide fair compensation to the home health agency.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, §§ 601(d), 602(b), (c), 97 Stat. 152, 163; Aug. 29, 1983, Pub. L. 98-90, 97 Stat. 606; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2308(b)(2)(A), 2321(a), (f), 2335(a), 2336(a), (b), 2354(b)(1), (c)(1)(A), 98 Stat. 1074, 1084, 1085, 1090, 1091, 1100, 1102; Nov. 8, 1984, Pub. L. 98-617, §§ 1(a), 3(a)(3), (b)(1), 98 Stat. 3294, 3295.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2354(b)(1), as amended by Pub. L. 98-617, § 3(a)(3), in concluding provisions, substituted "contractual" for "contractural".

Pub. L. 98-369, § 2336(b), in concluding provisions, added provision that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary).

Pub. L. 98-369, § 2336(a), in concluding provisions, added provision that for purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

Pub. L. 98-369, § 2335(a)(4), in concluding provisions, substituted "or (D)" for "(D), or (E)".

Subsec. (a)(2)(B) to (E). Pub. L. 98-369, § 2335(a)(1), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that payment could be made only if a physician certified, in the case of inpatient tuberculosis hospital services, that such services were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and that such treatment could reasonably be expected to improve the condition for which such treatment was necessary or render the condition noncommunicable.

Subsec. (a)(3). Pub. L. 98-369, § 2335(a)(2), struck out "and inpatient tuberculosis hospital services" after "psychiatric hospital services".

Subsec. (a)(5) to (8). Pub. L. 98-369, § 2335(a)(3), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out former par. (5) which had provided that payment would be made only if, in the case of inpatient tuberculosis hospital services, the services were those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to improve his condition or render it noncommunicable.

Subsec. (b). Pub. L. 98-369, § 2321(a)(1), inserted in provisions preceding par. (1) "and other than a home health agency with respect to durable medical equipment" after "hospice care".

Subsec. (b)(2). Pub. L. 98-369, § 2308(b)(2)(A), inserted ", or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph),".

Subsec. (b)(3). Pub. L. 98-369, § 2354(c)(1)(A), amended directory language of Pub. L. 96-449, § 903(a)(4), resulting in no change in text. See 1980 Amendment note below.

Subsec. (i)(1). Pub. L. 98-617, § 1(a), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j)(2)(B) to (D). Pub. L. 98-369, § 2321(f), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (k). Pub. L. 98-369, § 2321(a)(2), added subsec. (k).

Subsec. (k)(2). Pub. L. 98-617, § 3(b)(1), added ", or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph)," after "public home health agency" and "80 percent of" before "the amount".

1983—Subsec. (g). Pub. L. 98-21, § 602(b), added "(or would be if section 1395ww of this title did not apply)" after "section 1395x(v)(1)(D) of this title".

Subsec. (h)(2). Pub. L. 98-21, § 602(c), substituted "the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title" for "the reasonable costs for such services".

Subsec. (i)(2)(A). Pub. L. 98-90, § 1(1), struck out "located in a region (as defined by the Secretary)" after "a hospice program" and "for the region" after " 'the cap amount' ".

Subsec. (i)(2)(B). Pub. L. 98-90, § 1(2), amended subpar. (B) generally, substituting provisions establishing a hospice reimbursement cap amount of $6,500, indexed by the medical care component of the Consumer Price Index, for provisions which had established a cap of 40% of the estimated regional average medicare expenditure per beneficiary in the regular medicare program during the six months of life for persons dying of cancer.

Subsec. (j). Pub. L. 98-21, § 601(d)(2), added subsec. (j) by transferring and redesignating provisions formerly classified to subsec. (d) of section 1395ww of this title.

Subsec. (j)(2)(A). Pub. L. 98-21, § 601(d)(1), substituted "subsection (b) of this section" for "section 1395f(b) of this title".

1980—Subsec. (b)(3). Pub. L. 96-499, § 903(a)(4), as amended by Pub. L. 98-369, § 2354(c)(1)(A), added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 1(b) of Pub. L. 98-617 provided that: "The amendments made by this Act [probably means section 1 of Pub. L. 98-617, amending subsec. (i) of this section] shall apply to routine home care and other services included in hospice care furnished on or after October 1, 1984."

Section 3(c) of Pub. L. 98-617 provided that: "The amendments made by this section [amending sections 1395f, 1395*l*, 1395n, 1395r, 1395u, 1395x, 1395rr, 1395ww, 1396a, and 1396b of this title and amending provisions set out as notes under sections 1395h and 1395mm of this title] shall be effective as if they had been originally included in the Deficit Reduction Act of 1984 [Pub. L. 98-369]."

Section 2321(g) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting section 1395zz of this title and amending sections 1395f, 1395*l*, 1395x, and 1395cc of this title] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Section 2335(g) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395f, 1395x, 1395z, 1395cc, 1396a, and 1396d of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Section 2336(c)(1) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending sections 1395f and 1395n of this title] shall apply to certifications and plans of care made or established on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(1) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2354(c)(1)(A) of Pub. L. 98-369 effective as if originally included in Pub. L. 96-499, see section 2354(e)(2) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 602 of Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

PROVIDERS OF SERVICES TO CALCULATE AND REPORT LESSER-OF-COST-OR-CHARGES DETERMINATIONS SEPARATELY WITH RESPECT TO PAYMENTS UNDER PARTS A AND B OF THIS SUBCHAPTER; ISSUANCE OF REGULATIONS

Section 2308(a) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall issue regulations which require, for purposes of title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], that providers of services calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under part A and services under part B of such title [42 U.S.C. 1395c et seq., 1395j et seq.] (other than clinical diagnostic laboratory tests paid under section 1833(h) [42 U.S.C. 1395*l*(h)]), and that payment under such title be based upon such separate determinations. Such regulations shall apply to cost reporting periods beginning on or after October 1, 1984."

DETERMINATION OF NOMINAL CHARGES FOR APPLYING NOMINALITY TEST

Section 2308(b)(1) of Pub. L. 98-369 provided that: "For purposes of applying the nominality test under sections 1814(b)(2) [42 U.S.C. 1395f(b)(2)] and 1833(a)(2)(B)(ii) [42 U.S.C. 1395*l*(a)(2)(B)(ii)] of the Social Security Act, the Secretary shall, in addition to those rules for establishing nominality which the Secretary determines to be appropriate, provide that charges representing 60 percent or less of costs shall be considered nominal. The charges used in making such determinations shall be the charges actually billed to charge-paying patients who are not entitled to benefits under either part of such title [42 U.S.C. 1395c et seq., 1395j et seq.]. Such determination shall be made separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h) [42 U.S.C. 1395*l*(h)]), or on the basis of inpatient and outpatient services, except that the determination need not be made separately for home health services if the Secretary finds that such separation is not appropriate."

REVISION OF REGULATIONS REGARDING ACCESS TO HOME HEALTH SERVICES

Section 2336(c)(2) of Pub. L. 98-369 provided that: "The Secretary shall provide, not later than 90 days after the date of the enactment of this Act [July 18, 1984], for such revision of regulations as may be required to reflect the amendments made by subsection (b) [amending sections 1395f and 1395n of this title]."

§ 1395h. Use of public or private agencies or organizations to facilitate payment to providers of services

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Terms and conditions of agreements

An agreement with any agency or organization under this section may contain such terms and conditions as the Secretary finds necessary or appropriate, may provide for advances of funds to the agency or organization for the making of payments by it under subsection (a)

of this section, and shall provide for payment of so much of the cost of administration of the agency or organization as is determined by the Secretary to be necessary and proper for carrying out the functions covered by the agreement. The Secretary shall provide that in determining the necessary and proper cost of administration, the Secretary shall, with respect to each agreement, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated agency or organization in carrying out the terms of its agreement.

[*See main edition for text of* (*d*)]

(e) Assignment or reassignment of provider of services; designation of agency or organization to perform provider services and home health agency functions

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Notwithstanding subsections (a) and (d) of this section and paragraphs (1), (2), and (3) of this subsection, the Secretary shall designate regional agencies or organizations which have entered into an agreement with him under this section to perform functions under such agreement with respect to home health agencies (as defined in section 1395x(*o*) of this title) in the region, except that in assigning such agencies to such designated regional agencies or organizations the Secretary shall assign a home health agency which is a subdivision of a hospital (and such agency and hospital are affiliated or under common control) only if, after applying such criteria relating to administrative efficiency and effectiveness as he shall promulgate, he determines that such assignment would result in the more effective and efficient administration of this subchapter. By not later than July 1, 1987, the Secretary shall limit the number of such regional agencies or organizations to not more than ten.

[*See main edition for text of* (*5*)]

(f) Development of standards, criteria, and procedures by Secretary for evaluation of agency or organization performance

In order to determine whether the Secretary should enter into, renew, or terminate an agreement under this section with an agency or organization, whether the Secretary should assign or reassign a provider of services to an agency or organization, and whether the Secretary should designate an agency or organization to perform services with respect to a class of providers of services, the Secretary shall develop standards, criteria, and procedures to evaluate such agency's or organization's (1) overall performance of claims processing and other related functions required to be performed by such an agency or organization under an agreement entered into under this section, and (2) performance of such functions with respect to specific providers of services, and the Secretary shall establish standards and criteria with respect to the efficient and effective administration of this part. No agency or organization shall be found under such standards and criteria not to be efficient or effective or to be less efficient or effective solely on the ground that the agency or organization serves only providers located in a single State. Such standards and criteria shall be published in the Federal Register, and opportunity shall be provided for public comment prior to implementation.

[*See main edition for text of* (*g*) *to* (*i*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2326(b), (c)(1), (d)(1), 98 Stat. 1087.)

Amendments

1984—Subsec. (c). Pub. L. 98-369, § 2326(d)(1), added provision that the Secretary, in determining the necessary and proper cost of administration with respect to each agreement, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated agency or organization in carrying out the terms of its agreement.

Subsec. (e)(4). Pub. L. 98-369, § 2326(b), added provision that not later than July 1, 1987, the Secretary limit the number of regional agencies or organizations to not more than ten.

Subsec. (f). Pub. L. 98-369, § 2326(c)(1), struck out in cl. (2) ", by regulation," after "Secretary shall establish" and inserted provision that the standards and criteria be published in the Federal Register and an opportunity be provided for public comment prior to implementation.

Effective Date of 1984 Amendment

Section 2326(d)(3) of Pub. L. 98-369 provided that: "The amendments made by this subsection [amending sections 1395h and 1395u of this title] shall apply to agreements and contracts entered into or renewed after September 30, 1984."

Replacement of Agency, Organization, or Carrier Processing Medicare Claims; Number of Agreements and Contracts Authorized for Fiscal Years 1985 and 1986

Section 2326(a) of Pub. L. 98-369, as amended by Pub. L. 98-617, § 3(a)(2), Nov. 8, 1984, 98 Stat. 3295, provided that: "During each of the fiscal years 1985 and 1986, the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act [42 U.S.C. 1395h], and not more than two contracts under section 1842 of such Act [42 U.S.C. 1395u], on the basis of competitive bidding, without regard to the nominating process under section 1816(a) of such Act during the term of the agreement. Such procedure may be used only for the purpose of replacing an agency or organization or carrier which over a period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary's cost and performance criteria. Any agency or organization or carrier selected on the basis of competitive bidding must perform all of the duties listed in section 1816(a) of such Act, or the duties listed in paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insuring organization (as determined by the Secretary)."

§ 1395i. Federal Hospital Insurance Trust Fund

(a) Creation; deposits; transfers from Treasury

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Hospital Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Secretary of Health and Human Services on the basis of records of wages established and maintained by the Secretary of Health and Human Services in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1954 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Secretary of Health and Human Services on the basis of records of self-employment established and maintained by the Secretary of Health and Human Services in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

[*See main edition for text of* (*1*) *to* (*4*)]

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable: *Provided*, That the certification shall not refer to economic assumptions underlying the Trustee's report. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

[*See main edition for text of* (*d*) *and* (*e*)]

(f) Payment of estimated taxes

(1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health and Human Services in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary of Health and Human Services shall furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.

[*See main edition for text of* (*2*)]

(g) Transfers from other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(h) Payments from Trust Fund amounts certified by Secretary

The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(1) of this title.

[*See main edition for text of* (*i*)]

(j) Loans from other Funds; interest; repayment; report to Congress

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Hospital Insurance Trust Fund, the Managing Trustee may, subject to paragraph (5), borrow such amounts as he determines to be appropriate from either the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund for transfer to and deposit in the Federal Hospital Insurance Trust Fund.

(2) In any case where a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from such Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (c) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Hospital Insurance Trust Fund, the Managing Trustee determines that the Hospital Insurance Trust Fund ratio exceeds 15 percent, he shall transfer from such Trust Fund to the lending trust fund an amount that—

(I) together with any amounts transferred to another lending trust fund under this paragraph for such year, will reduce the Hospital Insurance Trust Fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term "Hospital Insurance Trust Fund ratio" means, with respect to any calendar year, the ratio of—

(I) the balance in the Federal Hospital Insurance Trust Fund, as of the last day of such calendar year; to

(II) the amount estimated by the Secretary to be the total amount to be paid from the Federal Hospital Insurance Trust Fund during the calendar year following such calendar year (other than payments of interest on, and repayments of, loans from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under paragraph (1)), and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from the Railroad Retirement Account.

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987 and before January 1, 1990, the Managing Trustee shall transfer each month from the Federal Hospital Insurance Trust Fund to any Trust Fund that is owed any amount by the Federal Hospital Insurance Trust Fund on a loan made under paragraph (1), an amount not less than an amount equal to (I) the amount owed to such Trust Fund by the Federal Hospital Insurance Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

[*See main edition for text of* (*4*)]

(5)(A) No amounts may be loaned by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund under paragraph (1) during any month if the OASDI trust fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term "OASDI trust fund ratio" means, with respect to any month, the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Trust Fund from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the month for which such ratio is to be determined for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account.

(Aug. 14, 1935, ch. 531, title XVIII, § 1817, as added July 30, 1965, Pub. L. 89-97, title I, § 102(a), 79 Stat. 299, and amended Jan. 2, 1968, Pub. L. 90-248, title I, § 169(a), 81 Stat. 875; Oct. 30, 1972, Pub. L. 92-603, title I, § 132(d), 86 Stat. 1361; June 13, 1978, Pub. L. 95-292, § 5, 92 Stat. 315; June 9, 1980, Pub. L. 96-265, title III, § 310(c), 94 Stat. 460; Dec. 29, 1981, Pub. L. 97-123, § 1(b), 95 Stat. 1659; Apr. 20, 1983, Pub. L. 98-21, title I, §§ 141(b), 142(b)(1), (2)(A), (3), (4), 154(b), title III, § 341(b), 97 Stat. 98, 100, 101, 107, 135; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2337(a), 2354(b)(2), title VI, § 2663(j)(2)(F)(i), 98 Stat. 1091, 1100, 1170.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2337(a), in the provisions following par. (2) substituted "from time to time" for "monthly on the first day of each calendar month", "paid to or deposited into the Treasury" for "to be paid to or deposited into the Treasury during such month", and struck out provision that all amounts transferred to the Trust Fund under the preceding sentence had to be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund, and the Trust Fund had to pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsec. (c).

Subsec. (a)(1), (2). Pub. L. 98-369, § 2663(j)(2)(F)(i), substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

Subsec. (c). Pub. L. 98-369, § 2354(b)(2), substituted "under chapter 31 of title 31" for "under the Second Liberty Bond Act, as amended".

Subsecs. (f)(1), (g), (h). Pub. L. 98-369, § 2663(j)(2)(F)(i), substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

1983—Subsec. (a). Pub. L. 98-21, § 141(b)(1)(A), in provisions following par. (2) substituted "monthly on the first day of each calendar month" for "from time to time", substituted "to be paid to or deposited into the Treasury during such month" for "paid to or deposited into the Treasury", and added provision that all amounts transferred to the Trust Fund under existing provisions shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund; and the Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on Jan. 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsection (c).

Subsec. (b). Pub. L. 98-21, § 341(b)(1), substituted in provisions preceding par. (1) "Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate" for "Secretary of Health, Education, and Welfare, all ex officio".

Pub. L. 98-21, § 154(b), added provision following par. (4) that the report referred to in par. (2) shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Pub. L. 98-21, § 341(b)(2), added at the end thereof provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

Subsec. (j)(1). Pub. L. 98-21, § 142(b)(1), substituted reference to January 1988 for reference to January

1983 and added ", subject to paragraph (5)," after "may".

Subsec. (j)(2). Pub. L. 98-21, § 142(b)(2)(A), substituted "on the last day of each month after such loan is made" for "from time to time", substituted "the total interest accrued to such day" for "interest", and added "(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)".

Subsec. (j)(3)(A). Pub. L. 98-21, § 142(b)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j)(5). Pub. L. 98-21, § 142(b)(4), added par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2337(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending this section] shall become effective on the first day of the month following the month in which this Act is enacted [July 1984]."

Amendment by section 2354(b)(2) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 141(b) of Pub. L. 98-21 effective on the first day of the month following April 1983, see section 141(c) of Pub. L. 98-21, set out as a note under section 401 of this title.

Section 142(b)(2)(B) of Pub. L. 98-21 provided that: "The amendment made by this paragraph [amending subsec. (j)(2) of this section] shall apply with respect to months beginning more than 30 days after the date of enactment of this Act [Apr. 20, 1983]."

Amendment by section 154(b) of Pub. L. 98-21 effective Apr. 20, 1983, see section 154(e) of Pub. L. 98-21, set out as a note under section 401 of this title.

Amendment by section 341(b) of Pub. L. 98-21 effective Apr. 20, 1983, see section 341(d) of Pub. L. 98-21, set out as a note under section 401 of this title.

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Notwithstanding subsec. (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98-21, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 417, 418, 426a, 429, 910, 1320a-7a, 1395b-1, 1395i-1, 1395gg, 1395vv, 1396m of this title.

§ 1395i-2. Hospital insurance benefits for uninsured individuals not otherwise eligible

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Period of enrollment; scope of coverage

The provisions of section 1395p of this title (except subsection (f) thereof), section 1395q of this title, subsection (b) of section 1395r of this title, and subsections (f) and (h) of section 1395s of this title shall apply to persons authorized to enroll under this section except that—

(1) individuals who meet the conditions of subsection (a)(1), (3), and (4) of this section on or before the last day of the seventh month after October 1972 may enroll under this part and (if not already so enrolled) may also enroll under part B of this subchapter during an initial general enrollment period which shall begin on the first day of the second month which begins after October 30, 1972, and shall end on the last day of the tenth month after October 1972;

[*See main edition for text of* (*2*) *to* (*6*)]

(d) Monthly premiums

(1) The monthly premium of each individual for each month in his coverage period before July 1974 shall be $33.

(2) The Secretary shall, during the next to last calendar quarter of each year [1] determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums for months occurring in the following calendar year. Such amount shall be equal to $33, multiplied by the ratio of (A) the inpatient hospital deductible for that following calendar year, as promulgated under section 1395e(b)(2) of this title, to (B) such deductible promulgated for 1973. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1, or, if a multiple of 50 cents but not a multiple of $1, to the next higher multiple of $1.

[*See main edition for text of* (*e*) *and* (*f*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 606(a)(3)(D), (b), 97 Stat. 170, 171; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2315(e), 2354(b)(3), (4), 98 Stat. 1080, 1100.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 2315(e), substituted "subsection (b) of section 1395r of this title" for "subsection (a) of section 1395r of this title".

Subsec. (c)(1). Pub. L. 98-369, § 2354(b)(3), substituted "October 1972" for "the month in which this Act is enacted".

Subsec. (d)(2). Pub. L. 98-369, § 2354(b)(4), substituted ", if a multiple of 50 cents but not a multiple of $1," for "if midway between multiples of $1".

1983—Subsec. (c). Pub. L. 98-21, § 606(a)(3)(D), substituted "subsection (a) of section 1395r" for "subsection (c) of section 1395r".

Subsec. (d)(2). Pub. L. 98-21, § 606(b), substituted "during the next to last calendar quarter of each year" for "during the last calendar quarter of each year, beginning in 1973,", "the following calendar year" for "the 12-month period commencing July 1 of the next year", and "for that following calendar year" for "for such next year".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2315(e) of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2315(g) of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 1395ww of this title.

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[1] So in original. Probably should be followed by a comma.

Amendment by section 2354(b)(3), (4), of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Effective Date of 1983 Amendment; Transitional Rule

Amendment by Pub. L. 98-21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98-21, set out as a note under section 1395r of this title.

Part B—Supplementary Medical Insurance Benefits for the Aged and Disabled

Part Referred to in Other Sections

This part is referred to in sections 254n, 426-1, 1320a-3, 1395b-1, 1395i-2, 1395x, 1395y, 1395cc, 1395ff, 1395*ll*, 1395mm, 1395pp, 1395rr, 1395ss, 1395uu, 1395xx, 1396a, 1396b, 1396n of this title; title 2 section 906; title 26 section 213.

§ 1395k. Scope of benefits; definitions

(a) The benefits provided to an individual by the insurance program established by this part shall consist of—

[*See main edition for text of (1)*]

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

[*See main edition for text of (A) to (E)*]

(F) facility services furnished in connection with surgical procedures specified by the Secretary—

[*See main edition for text of (i)*]

(ii) pursuant to section 1395*l*(i)(1)(B) of this title and performed by a physician, described in paragraph (1), (2), or (3) of section 1395x(r) of this title, in his office, if the Secretary has determined that—

[*See main edition for text of (I)*]

(II) the particular physician involved has agreed to make available to such organization such records as the Secretary determines to be necessary to carry out the review, and

(III) the physician is authorized to perform the procedure in a hospital located in the area in which the office is located,

and if the physician agrees to accept the amount determined under section 1395*l*(i)(2)(B) of this title as full payment for such services and to accept an assignment described in section 1395u(b)(3)(B)(ii) of this title with respect to payment for all services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1395x(s) of this title and furnished in connection with such surgical procedure to individuals enrolled under this part.

[*See main edition for text of (b)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2341(b), 2354(b)(6), 98 Stat. 1094, 1100.)

Amendments

1984—Subsec. (a)(2)(F)(ii). Pub. L. 98-369, § 2341(b), substituted "paragraph (1), (2), or (3) of section 1395x(r) of this title" for "section 1395x(r)(1) of this title".

Subsec. (a)(2)(F)(ii)(II). Pub. L. 98-369, § 2354(b)(6), substituted "organization" for "Organization".

Effective Date of 1984 Amendment

Section 2341(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395k and 1395x of this title] apply to services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(6) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1395*l*, 1395n, 1395x, 1395z, 1395aa, 1395bb, 1395gg of this title.

§ 1395*l*. Payment of benefits

(a) Amounts

Except as provided in section 1395mm of this title, and subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1395k(a)(1) of this title—80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b) of this section, (B) with respect to items and services described in section 1395x(s)(10)(A) of this title, the amounts paid shall be 100 percent of the reasonable charges for such items and services, (C) with respect to expenses incurred for those physicians' services for which payment may be made under this part that are described in section 1395y(a)(4) of this title, the amounts paid shall be subject to such limitations as may be prescribed by regulations, (D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule under subsection (h)(1)

of this section, the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title or under the procedure described in section 1395gg(f)(1) of this title) of the lesser of the amount determined under such fee schedule or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate, (E) with respect to services furnished to individuals who have been determined to have end stage renal disease, the amounts paid shall be determined subject to the provisions of section 1395rr of this title, and (F) with respect to expenses incurred for services described in subsection (i)(3) of this section under the conditions specified in such subsection, the amounts paid shall be the reasonable charge for such services,

(2) in the case of services described in section 1395k(a)(2) of this title (except those services described in subparagraphs (D), (E), and (F) of such section and unless otherwise specified in section 1395rr of this title)—

(A) with respect to home health services (other than durable medical equipment) and to items and services described in section 1395x(s)(10)(A) of this title, the lesser of—

(i) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

(ii) the customary charges with respect to such services,

or, if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision), free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title;

(B) with respect to other items and services (except those described in subparagraph (C) or (D) of this paragraph and except as may be provided in section 1395ww of this title)—

[*See main edition for text of* (*i*)]

(ii) if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause), free of charge or at nominal charges to the public, 80 percent of the amount determined in accordance with section 1395f(b)(2) of this title, or

(iii) if (and for so long as) the conditions described in section 1395f(b)(3) of this title are met, the amounts determined under the reimbursement system described in such section;

(C) with respect to services described in the second sentence of section 1395x(p) of this title, 80 percent of the reasonable charges for such services; and

(D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule determined under subsection (h)(1) of this section, the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title, or to a provider having an agreement under section 1395cc of this title) of the lesser of the amount determined under such fee schedule or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate for such tests;

(3) in the case of services described in subparagraphs (D) and (E) of section 1395k(a)(2) of this title, the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1395x(v)(1)(A) of this title, less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such services (other than for items and services described in section 1395x(s)(10)(A) of this title) exceed 80 percent of such costs; and

(4) in the case of facility services described in subparagraph (F) of section 1395k(a)(2) of this title, the applicable amount described in paragraph (2) of subsection (i) of this section.

(b) Deductible provision

Before applying subsection (a) of this section with respect to expenses incurred by an individual during any calendar year, the total amount of the expenses incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which benefits payable under subsection (a) of this section are determinable) shall be reduced by a deductible of $75; except that (1) such total amount shall not include expenses incurred for items and services described in section 1395x(s)(10)(A) of this title, (2) such deductible shall not apply with respect to home health services, (3) such total amount shall not include expenses incurred for services the amount of payment for which is determined under subsection (a)(1)(F) of this section or under subsection (i)(2) or (i)(4) of this section, and (4) such deductible shall not apply with respect to clinical diagnostic laboratory tests for which payment is made under this part (A) under subsection (a)(1)(D)(i) or (a)(2)(D)(i) of this section on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section

1395gg(f)(1) of this title, or to a provider having an agreement under section 1395cc of this title, or (B) on the basis of a negotiated rate determined under subsection (h)(6) of this section. The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.

[*See main edition for text of* (*c*) *to* (*e*)]

(f) Transferred

[*See main edition for text of* (*g*)]

(h) Fee schedules for clinical diagnostic laboratory tests; percentage of prevailing charge level; nominal fee for samples; adjustments; recipients of payments; negotiated payment rate

(1)(A) The Secretary shall establish fee schedules for clinical diagnostic laboratory tests for which payment is made under this part, other than such tests performed by a provider of services for an inpatient of such provider.

(B) In the case of clinical diagnostic laboratory tests performed by a physician or by a laboratory (other than tests performed by a hospital laboratory for outpatients of such hospital), the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished during the period beginning on July 1, 1984, and ending on June 30, 1987. For such tests furnished on or after July 1, 1987, the fee schedule shall be established on a nationwide basis.

(C) In the case of clinical diagnostic laboratory tests performed by a hospital laboratory for outpatients of such hospital, the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished during the period beginning on July 1, 1984, and ending on June 30, 1987. For such tests furnished on or after July 1, 1987, the fee schedule under subparagraph (A) shall not apply with respect to clinical diagnostic laboratory tests performed by a hospital laboratory for outpatients of such hospital.

(2) Except as provided in paragraph (4), the Secretary shall set the fee schedules at 60 percent (or, in the case of a test performed by a hospital laboratory for outpatients of such hospital, 62 percent) of the prevailing charge level determined pursuant to the third and fourth sentences of section 1395u(b)(3) of this title for similar clinical diagnostic laboratory tests for the applicable region, State, or area (or, effective July 1, 1987, for the United States) for the 12-month period beginning July 1, 1984, adjusted annually by a percentage increase or decrease equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average), and subject to such other adjustments as the Secretary determines are justified by technological changes. The Secretary may make further adjustments or exceptions to the fee schedules to assure adequate reimbursement of (A) emergency laboratory tests needed for the provision of bona fide emergency services, and (B) certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality.

(3) In addition to the amounts provided under the fee schedules, the Secretary shall provide for and establish a nominal fee to cover the appropriate costs in collecting the sample on which a clinical diagnostic laboratory test was performed and for which payment is made under this part, except that not more than one such fee may be provided under this paragraph with respect to samples collected in the same encounter.

(4) In establishing any fee schedule under this subsection, the Secretary may provide for an adjustment to take into account, with respect to the portion of the expenses of clinical diagnostic laboratory tests attributable to wages, the relative difference between a region's or local area's wage rates and the wage rate presumed in the data on which the schedule is based.

(5)(A) In the case of a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title, or under a provider agreement under section 1395cc of this title, payment may be made only to the person or entity which performed or supervised the performance of such test; except that—

(i) if a physician performed or supervised the performance of such test, payment may be made to another physician with whom he shares his practice, and

(ii) in the case of a test performed at the request of a laboratory by another laboratory, payment may be made to the referring laboratory.

(B) In the case of such a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part, and which is not described in subparagraph (A), payment may be made to the beneficiary only on the basis of the itemized bill of the person or entity which performed or supervised the performance of the test.

(C) Payment for a clinical diagnostic laboratory test performed by a laboratory which is independent of a physician's office or a rural health clinic may only be made on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, in accordance with section 1395u(b)(6)(B) of this title, under the procedure described in section 1395gg(f)(1) of this title, or to a provider of services with an agreement in effect under section 1395cc of this title.

(6) In the case of any diagnostic laboratory test payment for which is not made on the basis of a fee schedule under paragraph (1), the Secretary may establish a payment rate which is acceptable to the person or entity performing the test and which would be considered the full charge for such tests. Such negotiated rate shall be limited to an amount not in excess of the total payment that would have been made for the services in the absence of such rate.

(i) Outpatient surgery

[*See main edition for text of (1) and (2)*]

(3) In the case of services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1395x(s) of this title and furnished in connection with surgical procedures (specified pursuant to paragraph (1) of this subsection) in a physician's office, an ambulatory surgical center described in such paragraph, or a hospital outpatient department, payment for such services shall be determined in accordance with subsection (a)(1)(F) of this section if the physician accepts an assignment described in section 1395u(b)(3)(B)(ii) of this title with respect to payment for such services.

[*See main edition for text of (4); (j)*]

(k) Hepatitis B vaccine

With respect to services described in section 1395x(s)(10)(B) of this title, the Secretary may provide, instead of the amount of payment otherwise provided under this part, for payment of such an amount or amounts as reasonably reflects the general cost of efficiently providing such services.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2303(a)-(d), 2305(a)-(d), 2308(b)(2)(B), 2321(b), (d)(4)(A), 2323(b)(1), (2), (4), 2354(b)(5), (7), 98 Stat. 1064, 1069, 1070, 1074, 1084-1086, 1100; Nov. 8, 1984, Pub. L. 98-617, § 3(b)(2), (3), 98 Stat. 3295.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 2354(b)(7), struck out "and" at the end.

Subsec. (a)(1)(B). Pub. L. 98-369, § 2323(b)(1), substituted "section 1395x(s)(10)(A) of this title" for "section 1395x(s)(10) of this title".

Subsec. (a)(1)(D). Pub. L. 98-369, § 2303(a), amended cl. (D) generally. Prior to amendment, cl. (D) read as follows: "with respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the amounts paid shall be equal to 100 percent of the negotiated rate for such tests (as determined pursuant to subsection (h) of this section),".

Subsec. (a)(1)(F), (G). Pub. L. 98-369, § 2305(a), redesignated cl. (G) as (F), and struck out former cl. (F) which related to payment of reasonable charges for preadmission diagnostic services furnished by a physician to individuals enrolled under this part which are furnished in the outpatient department of a hospital within seven days of such individual's admission to the same hospital or another hospital or furnished in the physician's office within seven days of such individual's admission to a hospital as an inpatient.

Subsec. (a)(2). Pub. L. 98-369, § 2305(c), struck out "and in paragraph (5) of this subsection" after "of such section".

Subsec. (a)(2)(A). Pub. L. 98-617, § 3(b)(2), added ", or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision),".

Pub. L. 98-369, § 2354(b)(5), realigned margin of subpar. (A).

Pub. L. 98-369, § 2321(b)(1), inserted in provision preceding cl. (i) "(other than durable medical equipment)".

Pub. L. 98-369, § 2323(b)(1), substituted "section 1395x(s)(10)(A) of this title" for "section 1395x(s)(10) of this title".

Subsec. (a)(2)(B). Pub. L. 98-369, § 2354(b)(5), realigned margin of subpar. (B).

Pub. L. 98-369, § 2321(b)(2), inserted in provision preceding cl. (i) "items and" after "to other".

Pub. L. 98-369, § 2303(b)(1), inserted "or (D)" after "subparagraph (C)".

Subsec. (a)(2)(B)(ii). Pub. L. 98-369, § 2308(b)(2)(B), inserted ", or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause),".

Subsec. (a)(2)(D). Pub. L. 98-369, § 2303(b)(2)-(4), added subpar. (D).

Subsec. (a)(3). Pub. L. 98-369, § 2323(b)(1), substituted "section 1395x(s)(10)(A) of this title" for "section 1395x(s)(10) of this title".

Subsec. (a)(5). Pub. L. 98-369, § 2305(b), struck out par. (5) which related to payment of reasonable costs for preadmission diagnostic services described in section 1395x(s)(2)(C) of this title furnished to an individual by the outpatient department of a hospital within seven days of such individual's admission to the same hospital as an inpatient or to another hospital.

Subsec. (b)(1). Pub. L. 98-369, § 2323(b)(2), substituted "section 1395x(s)(10)(A) of this title" for "section 1395x(s)(10) of this title".

Subsec. (b)(3). Pub. L. 98-369, § 2305(d), substituted "subsection (a)(1)(F)" for "subsection (a)(1)(G)".

Subsec. (b)(4). Pub. L. 98-369, § 2303(c), added cl. (4).

Subsec. (f). Pub. L. 98-369, § 2321(d)(4)(A), transferred subsec. (f) to part C of this subchapter and redesignated its provisions as section 1889 of the Social Security Act, which is classified to section 1395zz of this title.

Subsec. (h). Pub. L. 98-369, § 2303(d), amended subsec. (h) generally, substituting provisions directing the Secretary to establish fee schedules for clinical diagnostic laboratory tests at a percentage of the prevailing charge level and nominal fees to cover costs in collecting samples and authorizing the Secretary to make adjustments in the fee schedule, setting forth the recipients of payments, and authorizing the Secretary to establish a negotiated payment rate for provision authorizing the Secretary to establish a negotiated rate of payment with the laboratory which would be considered the full charge for such tests.

Subsec. (h)(5)(C). Pub. L. 98-617, § 3(b)(3), added a comma before "under the procedure described in section".

Subsec. (i)(3). Pub. L. 98-369, § 2305(d), substituted "subsection (a)(1)(F)" for "subsection (a)(1)(G)".

Subsec. (k). Pub. L. 98-369, § 2323(b)(4), added subsec. (k).

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Section 2303(j) of Pub. L. 98-369 provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending sections 1395*l*, 1395u, 1395cc, 1396a, and 1396b of this title and enacting provisions set out as notes under sections 1395*l* and 1395u of this title] shall apply to clinical diagnostic laboratory tests furnished on or after July 1, 1984.

"(2) The amendments made by subsection (g)(2) [amending section 1396b of this title] shall apply to payments for calendar quarters beginning on or after October 1, 1984.

"(3) The amendments made by this section shall not apply to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of the Social Security Amendments of 1983 [section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title]. Payment for such services shall be made under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] at 80 percent (or 100 percent in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii) of the Social Security Act [42 U.S.C. 1395u(b)(3)(B)(ii)] or under the procedure described in section 1870(f)(1) of such Act [42 U.S.C. 1395gg(f)(1)]) of the reasonable charge for such service. The deductible under section 1833(b) of such Act [42 U.S.C. 1395*l*(b)] shall not apply to such tests if payment is made on the basis of such an assignment or procedure."

Section 2305(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section and enacting provisions set out as a note below] shall apply to services performed after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2321(b) and (d)(4)(A) of Pub. L. 98-369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Section 2323(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395*l*, 1395x, 1395cc, and 1395rr of this title and enacting provisions set out as a note below] apply to services furnished on or after September 1, 1984."

Amendment by section 2354(b)(5), (7) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Extension of Medicare Physician Payment Provisions

Amount of payment under this part for physicians' services furnished between Oct. 1, 1985, and Mar. 14, 1986, to be determined on the same basis as the amount of such services furnished on Sept. 30, 1985, see section 5(b) of Pub. L. 99-107, as amended, set out as a note under section 1395ww of this title.

Fee Schedules for Diagnostic Laboratory Tests and Feasibility of Direct Payments to Physicians; Report to Congress

Section 2303(i) of Pub. L. 98-369 provided that:

"(1) The Comptroller General shall report to the Congress on—

"(A) the appropriateness of the fee schedules under section 1833(h) of the Social Security Act [42 U.S.C. 1395*l*(h)] and their impact on the volume and quality of clinical diagnostic laboratory tests;

"(B) the potential impact of the adoption of a national fee schedule; and

"(C) the potential impact of applying a national fee schedule to clinical diagnostic laboratory tests provided by hospitals to their outpatients.

"(2) The Secretary of Health and Human Services shall report to the Congress with respect to the advisability and feasibility of a system of direct payment to any physician for all clinical diagnostic laboratory tests ordered by such physician.

"(3) The reports required by paragraphs (1) and (2) shall be submitted not later than January 1, 1987."

Pacemaker Reimbursement Review and Reform

Section 2304(a) of Pub. L. 98-369 provided that:

"(1) The Secretary of Health and Human Services shall issue revisions to the current guidelines for the payment under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] for the transtelephonic monitoring of cardiac pacemakers. Such revised guidelines shall include provisions regarding the specifications for and frequency of transtelephonic monitoring procedures which will be found to be reasonable and necessary.

"(2)(A) Except as provided in subparagraph (B), if the guidelines required by paragraph (1) have not been issued and put into effect by October 1, 1984, and until such guidelines have been issued and put into effect, payment may not be made under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] for transtelephonic monitoring procedures, with respect to a single-chamber cardiac pacemaker powered by lithium batteries, conducted more frequently than—

"(i) weekly during the first month after implantation,

"(ii) once every two months during the period representing 80 percent of the estimated life of the implanted device, and

"(iii) monthly thereafter.

"(B) Subparagraph (A) shall not apply in cases where the Secretary determines that special medical factors (including possible evidence of pacemaker or lead malfunction) justify more frequent transtelephonic monitoring procedures."

Payment for Preadmission Diagnostic Testing Performed in Physician's Office

Section 2305(f) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section and enacting provisions set out as a note above] shall not be construed as prohibiting payment, subject to the applicable copayments, under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] for preadmission diagnostic testing performed in a physician's office to the extent such testing is otherwise reimbursable under regulations of the Secretary."

Providers of Services To Calculate and Report Lesser-of-Cost-or-Charges Determinations Separately With Respect to Payments Under Parts A and B of This Subchapter; Issuance of Regulations

For provision directing the Secretary to issue regulations requiring providers of services to calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under parts A and B of this subchapter other than diagnostic tests under subsec. (h) of this section, see section 2308(a) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Determination of Nominal Charges for Applying Nominality Test

For provision directing the Secretary to provide, in addition to other rules deemed appropriate, that charges representing 60 percent or less of costs be considered nominal for purposes of applying the nominality test under subsec. (a)(2)(B)(ii) of this section, see section 2308(b)(1) of Pub. L. 98-369, set out as a note under section 1395f of this title.

STUDY OF MEDICARE PART B PAYMENTS; COMPILATION OF CENTRALIZED CHARGE DATA BASE; REPORT TO CONGRESS

Section 2309 of Pub. L. 98-369 provided that:

"(a)(1) The Director of the Office of Technology Assessment shall conduct a study of physician reimbursement under the medicare program and report to Congress on such study not later than December 31, 1985. The report shall include specific findings and recommendations on methods by which payment amounts and other program policies under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] may be modified—

"(A) to eliminate inequities in the relative amounts paid to physicians by type of service, locality, and specialty, with particular attention to any inequities between cognitive services and medical procedures; and

"(B) to increase incentives for physicians and other suppliers under such part to accept assignment for services covered under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

The study shall also examine the influence of payment methodology and payment levels on the utilization of services.

"(2) In carrying out the study under paragraph (1)(A), the Director shall take into account the relative time, complexity, investment in professional training, and overhead expenses necessary to the provision of various medical services and procedures, as well as the influence of the changes in technology.

"(3) The report under paragraph (1)(A) shall include information on methodologies which could be applied in the development of fee schedules on a national or regional basis for payments under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] in a manner consistent with the findings of the study under this subsection.

"(4) In preparing the report and recommendations, the Director shall consult with the Secretary of Health and Human Services and, as appropriate, with national organizations of physicians and other interested associations and individuals.

"(b) In order to assist the Director in completing the study and to facilitate Congressional review, the Secretary of Health and Human Services shall compile a centralized medicare part B charge data base, utilizing information gathered by the medicare carriers for charges in 1983. Such data shall include information, by procedure, on—

"(1) utilization,

"(2) assignment rates of physicians and suppliers,

"(3) actual, customary, and prevailing charges, and

"(4) the differences in charges by physician specialty and locality.

Such information shall be provided to the Director of the Office of Technology Assessment.

"(c) The Secretary shall review the report submitted under subsection (a)(1) and shall report to the Congress his comments on the report and recommendations for legislative amendments."

MONITORING PROVISION OF HEPATITIS B VACCINE; REVIEW OF CHANGES IN MEDICAL TECHNOLOGY

Section 2323(e) of Pub. L. 98-369 provided that: "The Secretary shall monitor the provision of hepatitis B vaccine under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.], and shall review any changes in medical technology which may have an effect on the amounts which should be paid for such service."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395f, 1395k, 1395n, 1395x, 1395cc, 1395mm, 1395rr, 1395uu, 1396a, 1396b of this title.

§ 1395n. Procedure for payment of claims of providers of services

(a) Conditions for payment for services described in section 1395k(a)(2) of this title

Except as provided in subsections (b), (c), and (e) of this section, payment for services described in section 1395k(a)(2) of this title furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc(a) of this title, and only if—

[*See main edition for text of (1)*]

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that—

[*See main edition for text of (A)*]

(B) in the case of medical and other health services, except services described in subparagraphs (B), (C), and (D) of section 1395x(s)(2) of this title, such services are or were medically required;

(C) in the case of outpatient physical therapy services, (i) such services are or were required because the individual needed physical therapy services, (ii) a plan for furnishing such services has been established by a physician or by the qualified physical therapist providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

[*See main edition for text of (D) and (E)*]

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title, or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title, but only with respect to the furnishing of outpatient physical therapy services (as therein defined). With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

[*See main edition for text of* (*b*) *to* (*d*)]

(e) Payment to fund designated by medical staff or faculty of medical school

For purposes of services (1) which are inpatient hospital services by reason of paragraph (7) of section 1395x(b) of this title or for which entitlement exists by reason of clause (II) of section 1395k(a)(2)(B)(i) of this title, and (2) for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(A) such hospital has an agreement with the Secretary under section 1395cc of this title, and

(B) the Secretary has received written assurances that (i) such payment will be used by such fund solely for the improvement of care to patients in such hospital or for educational or charitable purposes and (ii) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged provision will be made for return of any moneys incorrectly collected).

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(b), 97 Stat. 163; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2336(a), (b), 2342(b), 2354(b)(1), (8), (9), 98 Stat. 1091, 1094, 1100; Nov. 8, 1984, Pub. L. 98-617, § 3(a)(3), 98 Stat. 3295.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2354(b)(1), as amended by Pub. L. 98-617, § 3(a)(3), in concluding provisions, substituted "contractual" for "contractural".

Pub. L. 98-369, § 2336(b), in concluding provisions, added provision that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary).

Pub. L. 98-369, § 2336(a), in concluding provisions, added provision that for purposes of the fourth sentence in subsec. (a), service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

Subsec. (a)(2)(B), (C). Pub. L. 98-369, § 2354(b)(8)(A), struck out "and" at the end.

Subsec. (a)(2)(C)(ii). Pub. L. 98-369, § 2342(b), substituted "by a physician or by the qualified physical therapist providing such services and is periodically reviewed by a physician" for ", and is periodically reviewed, by a physician".

Subsec. (a)(2)(D). Pub. L. 98-369, § 2354(b)(8)(B), realigned margin of subpar. (D).

Subsec. (e)(2). Pub. L. 98-369, § 2354(b)(9), designated concluding pars. (1) and (2) as (A) and (B), respectively, and in par. (B), inserted "(i)" after "written assurances that" and substituted "(ii) the individuals who" for "(B) the individuals who" and "return of" for "return for".

1983—Subsec. (e). Pub. L. 98-21 added "(or would be if section 1395ww of this title did not apply)" after "section 1395(v)(1)(D) of this title".

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Amendment by section 2336(a) of Pub. L. 98-369 applicable to certifications and plans of care made or established on or after July 18, 1984, see section 2336(c)(1) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Section 2342(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395n and 1395x of this title] apply to plans of care established on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(1), (8), (9), of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

REVISION OF REGULATIONS REGARDING ACCESS TO HOME HEALTH SERVICES

Secretary of Health and Human Services required to provide, not later than 90 days after July 18, 1984, for revision of regulations as may be required to reflect amendment to subsec. (a) by section 2336(b) of Pub. L. 98-369, see section 2336(c)(2) of Pub. L. 98-369, set out as a note under section 1395f of this title.

§ 1395p. Enrollment periods

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Commencement of enrollment period

All of the provisions of this section shall apply to individuals satisfying subsection (f) of this section, except that—

(1) in the case of an individual who satisfies subsection (f) of this section by reason of entitlement to disability insurance benefits described in section 426(b) of this title, his initial enrollment period shall begin on the first day of the later of (A) April 1973 or (B) the third month before the 25th month of such entitlement, and shall reoccur with each continuous period of eligibility (as defined in sec-

tion 1395r(d) of this title) and upon attainment of age 65;

[*See main edition for text of* (*2*) *and* (*3*); (*h*)]

(i) Special enrollment periods

(1) In the case of an individual who—

(A) meets the conditions described in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title,

(B) at the time the individual first satisfies paragraph (1) or (2) of section 1395*o* of this title, is enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title by reason of the individual's (or the individual's spouse's) current employment, and

(C) has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period,

there shall be a special enrollment period described in paragraph (3).

(2) In the case of an individual who—

(A) meets the conditions described in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title,

(B) has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period and any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title by reason of the individual's (or individual's spouse's) current employment, and

(C) has not terminated enrollment under this section at any time at which the individual is not enrolled in such a group health plan by reason of the individual's (or individual's spouse's) current employment,

there shall be a special enrollment period described in paragraph (3).

(3) The special enrollment period referred to in paragraphs (1) and (2) is the period—

(A) beginning with the first day of the third month before the month in which the individual attains the age of 70 and ending seven months later, or

(B) beginning with the first day of the first month in which the individual is no longer enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title by reason of current employment and ending seven months later,

whichever period results in earlier coverage.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2338(b), 2354(b)(10), 98 Stat. 1092, 1101.)

AMENDMENTS

1984—Subsec. (g)(1). Pub. L. 98-369, § 2354(b)(10), substituted "section 426(b) of this title" for "section 426(a)(2)(B) of this title" and "section 1395r(d) of this title" for "section 1395(e) of this title".

Subsec. (i). Pub. L. 98-369, § 2338(b), added subsec. (i).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2338(d)(2) of Pub. L. 98-369 provided that:

"(A) The amendments made by subsections (b) and (c) [amending sections 1395p and 1395q of this title] shall apply to enrollments in months beginning with the first effective month, except that in the case of any individual who would have had a special enrollment period under section 1837(i) of the Social Security Act [subsec. (i) of this section] that would have begun before such first effective month, such period shall be deemed to begin with the first day of such first effective month.

"(B) For purposes of subparagraph (A), the term 'first effective month' means the first month which begins more than 90 days after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(10) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

§ 1395q. Coverage period

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Commencement of coverage for special enrollment periods

Notwithstanding subsection (a) of this section, in the case of an individual who enrolls during a special enrollment period pursuant to—

(1) subparagraph (A) of section 1395p(i)(3) of this title—

(A) before the month in which he attains the age of 70, the coverage period shall begin on the first day of the month in which he has attained the age of 70, or

(B) in or after the month in which he attains the age of 70, the coverage period shall begin on the first day of the month following the month in which he so enrolls; or

(2) subparagraph (B) of section 1395p(i)(3) of this title—

(A) in the first month of the special enrollment period, the coverage period shall begin on the first day of such month, or

(B) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which he so enrolls.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2338(c), 98 Stat. 1092.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-369, § 2338(c), added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

For effective date of amendment by Pub. L. 98-369, see section 2338(d)(2) of Pub. L. 98-369, set out as a note under section 1395p of this title.

§ 1395r. Amount of premiums for individuals enrolled under this part

(a) Determination of monthly actuarial rates and premiums

(1) The Secretary shall, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for enrollees age 65 and over which shall be applicable for the succeeding calendar year. Such actuarial rate shall be

the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to those enrollees age 65 and older will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate, the Secretary shall include an appropriate amount for a contingency margin.

(2) The monthly premium of each individual enrolled under this part for each month after December 1983 shall, except as provided in subsections (b) and (e) of this section, be the amount determined under paragraph (3).

(3) The Secretary shall, during September of 1983 and of each year thereafter, determine and promulgate the monthly premium applicable for individuals enrolled under this part for the succeeding calendar year. The monthly premium shall (except as otherwise provided in subsection (e) of this section) be equal to the smaller of—

(A) the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1) of this subsection, for that calendar year, or

(B) the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a)(1) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on November 1 of the year before the year of the promulgation. He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals for the following November 1.

Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and older as provided in paragraph (1) and the derivation of the dollar amounts specified in this paragraph.

(4) The Secretary shall also, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for disabled enrollees under age 65 which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to disabled enrollees under age 65 which will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.

(b) Increase in monthly premiums

In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1395p of this title), the monthly premium determined under subsection (a) or (e) of this section shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period in which he reenrolled, but there shall not be taken into account months in which the individual has met the conditions specified in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section by reason of the individual's (or the individual's spouse's) current employment. Any increase in an individual's monthly premium under the first sentence of this subsection with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which such individual may have.

(c) Premiums rounded to the nearest multiple of ten cents

If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

(d) "Continuous period of eligibility" defined

For purposes of subsection (b) of this section (and section 1395p(g)(1) of this title), an individual's "continuous period of eligibility" is the period beginning with the first day on which he is eligible to enroll under section 1395*o* of this title and ending with his death; except that any period during all of which an individual satisfied paragraph (1) of section 1395*o* of this title and which terminated in or before the month preceding the month in which he attained age 65 shall be a separate "continuous period of eligibility" with respect to such individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this section).

(e) Monthly premium for individuals enrolled for each month after December 1983 and prior to January 1988

(1) Notwithstanding the provisions of subsection (a) of this section, the monthly premium for each individual enrolled under this part for

each month after December 1983 and prior to January 1988 shall be an amount equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, as determined under subsection (a)(1) of this section and applicable to such month.

(2) Any increases in premium amounts taking effect prior to January 1988 by reason of paragraph (1) shall be taken into account for purposes of determining increases thereafter under subsection (a)(3) of this section.

(f) Monthly premiums for individuals enrolled for each month in 1986 and 1987; conditions

(1) If no cost-of-living increase becomes effective under section 415(i) of this title in December of 1985 or 1986, the monthly premium of each individual enrolled under this part for each month in the succeeding year shall (except as otherwise provided in subsection (b) of this section) be the same as the monthly premium (disregarding subsection (b) of this section) of the individual for such December.

(2) If paragraph (1) does not apply to the monthly premiums for 1986 or 1987, if an individual is entitled to monthly benefits under section 402 or 423 of this title for November and for December in the preceding year, and if the monthly premium for that December and for the following January is deducted from those benefits under section 1395s(a)(1) of this title, the monthly premium for that individual for that January and for each of the succeeding 11 months for which he is entitled to benefits under section 402 or 423 of this title shall (except as otherwise provided in subsection (b) of this section) be the greater of—

(A) the monthly premium amount determined under subsection (a)(2) of this section for that January reduced by the amount (if any) necessary to make the monthly benefits under section 402 or 423 of this title for that December after the deduction of the monthly premium (disregarding subsection (b) of this section) for that January at least equal to the monthly benefits under section 402 or 423 of this title for the preceding November after the deduction of the premium (disregarding subsection (b) of this section) for that individual for that December, or

(B) the monthly premium (disregarding subsection (b) of this section) for that individual for that December.

For purposes of this subsection, retroactive adjustments or payments and deductions on account of work shall not be taken into account in determining the monthly benefits to which an individual is entitled under section 402 or 423 of this title.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 606(a)(1)-(3)(C), 97 Stat. 169, 170; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2302(a), (b), 2338(a), 98 Stat. 1063, 1091; Nov. 8, 1984, Pub. L. 98-617, § 3(b)(4), 98 Stat. 3295.)

Amendments

1984—Subsec. (b). Pub. L. 98-369, § 2338(a), added provision that there shall not be taken into account months in which the individual has met the conditions specified in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section by reason of the individual's (or the individual's spouse's) current employment.

Subsec. (e). Pub. L. 98-369, § 2302(a), substituted "1988" for "1986" in pars. (1) and (2).

Subsec (f). Pub. L. 98-369, § 2302(b), added subsec. (f).

Subsec. (f)(2)(A). Pub. L. 98-617, § 3(b)(4), substituted "for that December after the deduction" for "for that January after the deduction" and "for that December" for "for that November".

1983—Subsec. (a). Pub. L. 98-21, § 606(a)(1), added subsec. (a) and struck out former subsec. (a), which had provided that the monthly premium of each individual enrolled under this part for each month before 1968 would be $3.

Subsec. (b). Pub. L. 98-21, § 606(a)(3)(A), substituted "subsection (a) or (e)" for "subsection (b), (c), or (g)".

Pub. L. 98-21, § 606(a)(1), (2), redesignated subsec. (d) as (b), and struck out former subsec. (b), which had provided for the determination by the Secretary of the monthly premium for each individual enrolled under this part for each month after 1967 and before July 1, 1973.

Subsec. (c). Pub. L. 98-21, § 606(a)(1), (2), redesignated subsec. (e) as (c), and struck out former subsec. (c), which had directed the Secretary to determine during December of each year after 1972 the monthly actuarial rate for enrollees age 65 and over applicable to the succeeding fiscal year (beginning July 1), provided for his determination of the monthly premium for such period, and directed him to determine the monthly actuarial rate for disabled enrollees under age 65.

Subsec. (d). Pub. L. 98-21, § 606(a)(3)(B), which directed that "purposes of subsection (b)" be substituted for "purposes of subsection (c)" was executed by substituting "purposes of subsection (b)" for "purposes of subsection (d)", as the probable intent of Congress in view of previous substitution of "subsection (d)" for "subsection (c)" by Pub. L. 92-603, § 203(d)(2).

Pub. L. 98-21, § 606(a)(2), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 98-21, § 606(a)(2), redesignated subsec. (g) as (e). Former subsec. (e) redesignated (c).

Subsec. (e)(1). Pub. L. 98-21, § 606(a)(3)(C), substituted "(a)" for "(c)", "(a)(1)" for "(c)(1)", "December 1983" for "June 1983", and "January 1986" for "July 1985".

Subsec. (e)(2). Pub. L. 98-21, § 606(a)(3)(C)(i), (iii), substituted "(a)(3)" for "(c)(3)" and "January 1986" for "July 1985".

Subsecs. (f), (g). Pub. L. 98-21, § 606(a)(2), redesignated subsecs. (f) and (g) as (d) and (e), respectively.

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Section 2302(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to premiums for months beginning with Janaury 1986."

Section 2338(d)(1) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (b) of this section] shall apply to months beginning with January 1983 for premiums for months beginning with the first month which begins more than 30 days after the date of the enactment of this Act [July 18, 1984]."

Effective Date of 1983 Amendments; Transitional Rule

Section 606(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending sections 1395i-2, 1395r, 1395v, 1395w, and 1395mm of this title] shall apply to premiums for months beginning with

January 1984, and for months after June 1983 and before January 1984—

"(1) the monthly premiums under part A and under part B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.] for individuals enrolled under each respective part shall be the monthly premium under that part for the month of June 1983, and

"(2) the amount of the Government contributions under section 1844(a)(1) of such Act [42 U.S.C. 1395w(a)(1)] shall be computed on the basis of the actuarially adequate rate which would have been in effect under part B of title XVIII of such Act for such months without regard to the amendments made by this section, but using the amount of the premium in effect for the month of June 1983."

§ 1395s. Payment of premiums

(a) Deductions from section 402 or 423 monthly benefits

[*See main edition for text of* (*1*)]

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates from benefits under section 402 or 423 of this title which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Secretary of Health and Human Services and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Deductions from civil service retirement annuities

(1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of title 5 or any other law administered by the Director of the Office of Personnel Management providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (b) of this section applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) of this section applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health and Human Services to the Director of the Office of Personnel Management, be collected by deducting the amount thereof from each installment of such annuity. Such deduction shall be made in such manner and at such times as the Director of the Office of Personnel Management may determine. The Director of the Office of Personnel Management shall furnish such information as the Secretary of Health and Human Services may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 or 8903a of title 5 may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law administered by the Director of the Office of Personnel Management, to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the Director of the Office of Personnel Management and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

[*See main edition for text of* (*e*) *to* (*h*)]

(Aug. 14, 1935, ch. 531, title XVIII, § 1840, as added July 30, 1965, Pub. L. 89-97, title I, § 102(a), 79 Stat. 306, and amended Apr. 8, 1966, Pub. L. 89-384, § 4(c), 80 Stat. 106; Jan. 2, 1968, Pub. L. 90-248, title I, § 166, title IV, § 403(g), 81 Stat. 874, 932; Oct. 30, 1972, Pub. L. 92-603, title II, §§ 201(c)(6), 263(a)-(c), (d)(1)-(3), 86 Stat. 1373, 1448, 1449; Oct. 16, 1974, Pub. L. 93-445, title III, § 306, 88 Stat. 1358; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(11), title VI, § 2663(j)(2)(F)(ii), 98 Stat. 1101, 1170; June 17, 1985, Pub. L. 99-53, § 2(g), 99 Stat. 94.)

Amendments

1985—Subsec. (d)(1). Pub. L. 99-53 inserted reference to section 8903a of title 5.

1984—Subsec. (a)(2). Pub. L. 98-369, § 2663(j)(2)(F)(ii), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (d)(1). Pub. L. 98-369, § 2354(b)(11), substituted "Director of the Office of Personnel Management" for "Civil Service Commission".

Pub. L. 98-369, § 2663(j)(2)(F)(ii), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (d)(2). Pub. L. 98-369, § 2354(b)(11), substituted "Director of the Office of Personnel Management" for "Civil Service Commission".

Effective Date of 1984 Amendment

Amendment by section 2354(b)(11) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Section Referred to in Other Sections

This section is referred to in sections 415, 428, 1395i-2, 1395r, 1395t of this title.

§ 1395t. Federal Supplementary Medical Insurance Trust Fund

[*See main edition for text of* (*a*)]

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

[*See main edition for text of* (*1*) *to* (*4*)]

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable: *Provided*, That the certification shall not refer to economic assumptions underlying the Trustee's report. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

[*See main edition for text of* (*d*) *and* (*e*)]

(f) Transfers to other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(g) Payments from Trust Fund of amounts provided for by this part or with respect to administrative expenses

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(1) of this title.

(h) Payments from Trust Fund of costs incurred by Director of the Office of Personnel Management

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to pay the costs incurred by the Director of the Office of Personnel Management in making deductions pursuant to section 1395s(d) of this title. During each fiscal year, or after the close of such fiscal year, the Director of the Office of Personnel Management shall certify to the Secretary the amount of the costs the Director incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(i) Payments from Trust Fund of costs incurred by Railroad Retirement Board

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the

Secretary of Health and Human Services certifies are necessary to pay the costs incurred by the Railroad Retirement Board for services performed pursuant to section 1395s(b)(1) and section 1395u(g) of this title. During each fiscal year or after the close of such fiscal year, the Railroad Retirement Board shall certify to the Secretary the amount of the costs it incurred in performing such services and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(Aug. 14, 1935, ch. 531, title XVIII, § 1841, as added July 30, 1965, Pub. L. 89-97, title I, § 102(a), 79 Stat. 308, and amended Jan. 2, 1968, Pub. L. 90-248, title I, § 169(a), 81 Stat. 875; Oct. 30, 1972, Pub. L. 92-603, title I, § 132(e), title II, § 263(d)(4), (e), 86 Stat. 1361, 1449; June 13, 1978, Pub. L. 95-292, § 5, 92 Stat. 315; Apr. 20, 1983, Pub. L. 98-21, title I, § 154(c), title III, § 341(c), 97 Stat. 107, 135; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(2), (11), (12), title VI, § 2663(j)(2)(F)(iii), 98 Stat. 1100, 1101, 1170.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 2354(b)(2), substituted "under chapter 31 of title 31" for "under the Second Liberty Bond Act, as amended".

Subsecs. (f), (g). Pub. L. 98-369, § 2663(j)(2)(F)(iii), substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

Subsec. (h). Pub. L. 98-369, § 2663(j)(2)(F)(iii), substituted "Health and Human Services" for "Health, Education, and Welfare".

Pub. L. 98-369, § 2354(b)(11), substituted "Director of the Office of Personnel Management" for "Civil Service Commission" in two places.

Pub. L. 98-369, § 2354(b)(12), substituted "the Director" for "it".

Subsec. (i). Pub. L. 98-369, § 2663(j)(2)(F)(iii), substituted "Health and Human Services" for "Health, Education, and Welfare".

1983—Subsec. (b). Pub. L. 98-21, § 341(c)(1), substituted in provisions preceding par. (1) "Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate" for "Secretary of Health, Education, and Welfare, all ex officio".

Pub. L. 98-21, § 154(c), added provision following par. (4) that the report referred to in par. (2) shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable, and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Pub. L. 98-21, § 341(c)(2), added at end thereof provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(b)(11), 12), of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 154(c) of Pub. L. 98-21 effective Apr. 20, 1983, see section 154(e) of Pub. L. 98-21, set out as a note under section 401 of this title.

Amendment by section 341(c) of Pub. L. 98-21 effective Apr. 20, 1983, see section 341(d) of Pub. L. 98-21, set out as a note under section 401 of this title.

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Notwithstanding subsec. (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98-21, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 910, 1320a-7a, 1395b-1, 1395gg, 1395vv, 1396m of this title.

§ 1395u. Use of carriers for administration of benefits

[*See main edition for text of* (*a*)]

(b) Applicability of competitive bidding provisions; findings as to financial responsibility, etc., of carrier; contractual duties imposed by contract

[*See main edition for text of* (*1*)]

(2) No such contract shall be entered into with any carrier unless the Secretary finds that such carrier will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent. The Secretary shall publish in the Federal Register standards and criteria for the efficient and effective performance of contract obligations under this section, and opportunity shall be provided for public comment prior to implementation.

(3) Each such contract shall provide that the carrier—

[*See main edition for text of* (*A*)]

(B) will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier, and such payment will (except as otherwise provided in section 1395gg(f) of this title) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which (I) the reasonable charge is the full charge for the service and (II) the physician or other person furnishing such service agrees not to charge for such service if payment may not be made therefor by reason of the provisions of paragraph (1) of section 1395y(a) of this title, and if the individual to whom such service was furnished was without fault in incurring the expenses of such service, and if the Secretary's determination that payment (pursuant to such assignment) was incorrect and was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter (except in the case of physicians' services and ambulance service furnished as described in section 1395y(a)(4) of this title, other than for purposes of section 1395gg(f) of this title);

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year);

[*See main edition for text of* (*C*) *to* (*E*)]

(F) will take such action as may be necessary to assure that where payment under this part for a service rendered is on a charge basis, such payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year (ending on September 30) in which the bill is submitted or request for payment is made, on the basis of such levels in effect for the 12-month period preceding such year;

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services. No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the 12-month period ending on the March 31 last preceding the start of the twelve-month period (beginning October 1 of each year) in which the service is rendered. In the case of physician services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1395x(s)(6) of this title, charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (I) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health and Human Services performing functions under this subchapter and acting within the scope of his or its authority, and (II) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such third and fourth sentences for the twelve-month period beginning on October 1 in any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975. The amount of any charges for outpatient services which shall be considered reasonable shall be subject to the limitations established by regulations issued by the Secretary pursuant to section 1395x(v)(1)(K) of this title, and in determining the reasonable charge for such services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility.

(4)(A) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(B) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983.

(C) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during periods beginning after September 30, 1985, the Secretary shall treat the level as set under subparagraph (A) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A).

(D) In determining the customary charges for physicians' services furnished during the 12-month period beginning October 1, 1985, or October 1, 1986, by a physician who at no time for any services furnished during the 12-month period beginning October 1, 1984, was a participating physician (as defined in subsection (h)(1) of this section), the Secretary shall not recognize increases in actual charges for services furnished during the 15-month period beginning on July 1, 1984, above the level of the physician's actual charges billed in the 3-month period ending on June 30, 1984.

(5) Each contract under this section shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the carrier involved as he may provide in regulations) if he finds that the carrier has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

(6) No payment under this part for a service provided to any individual shall (except as provided in section 1395gg of this title) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that payment may be made (A)(i) to the employer of such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (ii) (where the service was provided in a hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service, or (B) to an entity (i) which provides coverage of the services under a health benefits plan, but only to the extent that payment is not made under this part, (ii) which has paid the person who provided the service an amount (including the amount payable under this part) which that person has accepted as payment in full for the service, and (iii) to which the individual has agreed in writing that payment may be made under this part. No payment which under the preceding sentence may be made directly to the physician or other person providing the service involved (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or facility as described in clause (A) of such sentence); but nothing in this subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physician or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

(7)(A) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, the carrier shall not provide (except on the basis described in subparagraph (C)) for payment for such services under this part—

(i) unless—

(I) the physician renders sufficient personal and identifiable physicians' services to the patient to exercise full, personal control over the management of the portion of the case for which the payment is sought,

(II) the services are of the same character as the services the physician furnishes to patients not entitled to benefits under this subchapter, and

(III) at least 25 percent of the hospital's patients (during a representative past period, as determined by the Secretary) who were not entitled to benefits under this subchapter and who were furnished services described in subclauses (I) and (II) paid all or a substantial part of charges (other than nominal charges) imposed for such services; and

(ii) to the extent that the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B).

(B) The customary charge for such services in a hospital shall be determined in accordance with regulations issued by the Secretary and taking into account the following factors:

(i) In the case of a physician who is not a teaching physician (as defined by the Secretary), the carrier shall take into account the amounts the physician charges for similar services in the physician's practice outside the teaching setting.

(ii) In the case of a teaching physician, if the hospital, its physicians, or other appropriate billing entity has established one or more schedules of charges which are collected for medical and surgical services, the carrier shall base payment under this subchapter on the greatest of—

(I) the charges (other than nominal charges) which are most frequently collected in full or substantial part with respect to patients who were not entitled to benefits under this subchapter and who were furnished services described in subclauses (I) and (II) of subparagraph (A)(i),

(II) the mean of the charges (other than nominal charges) which were collected in full or substantial part with respect to such patients, or

(III) 85 percent of the prevailing charges paid for similar services in the same locality.

(iii) If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished to patients in such hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, the customary charge for such services shall be equal to 90 percent of the prevailing charges paid for similar services in the same locality.

(C) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, if the conditions described in subclauses (I) and (II) of subparagraph (A)(i) are met and if the physician elects payment to be determined under this subparagraph, the carrier shall provide for payment for such services under this part on the basis of regulations of the Secretary governing reimbursement for the services of hospital-based physicians (and not on any other basis).

(D)(i) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title, but which does not meet the conditions described in section 1395x(b)(7) of this title, no payment shall be made under this part for services of assistants at surgery with respect to a surgical procedure if such hospital has a training program relating to the medical specialty required for such surgical procedure and a qualified individual on the staff of the hospital is available to provide such services; except that payment may be made under this part for such services, to the extent that such payment is otherwise allowed under this paragraph, if such services, as determined under regulations of the Secretary—

(I) are required due to exceptional medical circumstances,

(II) are performed by team physicians needed to perform complex medical procedures, or

(III) constitute concurrent medical care relating to a medical condition which requires the presence of, and active care by, a physician of another specialty during surgery,

and under such other circumstances as the Secretary determines by regulation to be appropriate.

(ii) For purposes of this subparagraph, the term "assistant at surgery" means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

(iii) The Secretary shall determine appropriate methods of reimbursement of assistants at surgery where such services are reimbursable under this part.

(c) Advances of funds to carrier

Any contract entered into with a carrier under this section shall provide for advances of funds to the carrier for the making of payments by it under this part, and shall provide for payment of the cost of administration of the carrier, as determined by the Secretary to be necessary and proper for carrying out the functions covered by the contract. The Secretary shall provide that in determining a carrier's necessary and proper cost of administration, the Secretary shall, with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated carrier in carrying out the terms of its contract.

[*See main edition for text of* (*d*) *to* (*g*)]

(h) Participating physician or supplier; agreement with Secretary

(1) Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term "participating physician or supplier" means a physician or supplier (excluding any provider of services) who, before October 1 of any year beginning with 1984, enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title for all items and services furnished to individuals enrolled under this part during the 12-month period beginning on October 1 of such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, or in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after October 1 of a year, for items and services furnished during the remainder of the 12-month period beginning on such October 1.

(2) Each carrier having an agreement with the Secretary under subsection (a) of this section shall maintain a toll-free telephone number or numbers at which individuals enrolled under this part may obtain the names,

addresses, specialty, and telephone numbers of participating physicians and suppliers.

(3) In any case in which a carrier having an agreement with the Secretary under subsection (a) of this section is able to develop a system for the electronic transmission to such carrier of bills for services, such carrier shall establish direct lines for the electronic receipt of claims from participating physicians and suppliers.

(i) Publication of list and directory of physicians and suppliers; availability

(1) Each year the Secretary shall publish a list containing the name, address, specialty, and percent of claims submitted with respect to each physician and supplier during the preceding year that were paid on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title. The Secretary may limit such list to those physicians and suppliers who accepted such an assignment in a certain percentage of such physician's or supplier's billings or who provide at least a certain volume of services, as the Secretary may determine to be appropriate. Such list shall be organized by such geographical area as the Secretary determines, after consultation with carriers, would facilitate the use of such list by individuals enrolled under this part.

(2) At the beginning of each fiscal year the Secretary shall publish a directory containing the name, address, and specialty of all participating physicians and suppliers (as defined in subsection (h)(1) of this section) for that fiscal year. The directory shall be organized to make the most useful presentation of the information (as determined by the Secretary) for individuals enrolled under this part.

(3) The Secretary shall promptly notify individuals enrolled under this part of the publication of such list and directory and shall make such list and directory available in each district and branch office of the Social Security Administration, in the offices of carriers, and to senior citizen organizations.

(4) The Secretary shall provide that the list and directory shall be available for purchase by the public.

(j) Monitoring of charges of nonparticipating physicians; sanctions; restitution

(1) In the case of a physician who is not a participating physician, the Secretary shall monitor each such physician's actual charges to individuals enrolled under this part for physicians' services furnished during the 15-month period beginning July 1, 1984. If such physician knowingly and willfully bills individuals enrolled under this part for actual charges in excess of such physician's actual charges for the calendar quarter beginning on April 1, 1984, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(2) Subject to paragraph (3), the sanctions which the Secretary may apply under paragraph (1) are—

(A) barring a physician from participation under the program under this subchapter for a period not to exceed 5 years, in accordance with the procedures of paragraphs (2) and (3) of section 1395y(d) of this title, or

(B) the imposition of civil monetary penalties and assessments, in the same manner as such penalties are authorized under section 1320a-7a(a) of this title,

or both. No payment may be made under this subchapter with respect to any item or service furnished by a physician during the period when he is barred from participation in the program under this subchapter pursuant to this subsection.

(3)(A) The Secretary may not bar a physician pursuant to paragraph (2)(A) if such physician is a sole community physician or sole source of essential specialized services in a community.

(B) The Secretary shall take into account access of beneficiaries to physicians' services for which payment may be made under this part in determining whether to bar a physician from participation under paragraph (2)(A).

(4) The Secretary may, out of any civil monetary penalty or assessment collected from a physician pursuant to this subsection, make a payment to a beneficiary enrolled under this part in the nature of restitution for amounts paid by such beneficiary to such physician which was determined to be an excess charge under paragraph (1).

(Aug. 14, 1935, ch. 531, title XVIII, § 1842, as added July 30, 1965, Pub. L. 89-97, title I, § 102(a), 79 Stat. 309, and amended Jan. 2, 1968, Pub. L. 90-248, title I, §§ 125(a), 154(d), 81 Stat. 845, 863; Oct. 30, 1972, Pub. L. 92-603, title II, §§ 211(c)(3), 224(a), 227(e)(3), 236(a), 258(a), 262(a), 263(d)(5), 281(d), 86 Stat. 1384, 1395, 1407, 1414, 1447-1449, 1455; Oct. 16, 1974, Pub. L. 93-445, title III, § 307, 88 Stat. 1358; Dec. 31, 1975, Pub. L. 94-182, title I, § 101(a), 89 Stat. 1051; July 16, 1976, Pub. L. 94-368, §§ 2, 3(a), (b), 90 Stat. 997; Oct. 25, 1977, Pub. L. 95-142, § 2(a)(1), 91 Stat. 1175; Dec. 20, 1977, Pub. L. 95-216, title V, § 501(b), 91 Stat. 1565; Dec. 5, 1980, Pub. L. 96-499, title IX, §§ 918(a)(1), 946(a), (b), 948(b), 94 Stat. 2625, 2642, 2643; Aug. 13, 1981, Pub. L. 97-35, title XXI, § 2142(b), 95 Stat. 798; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 104(a), 113(a), 128(d)(1), 96 Stat. 336, 340, 367; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2303(e), 2306(a), (b)(1), (c), 2307(a)(1), (2), 2326(c)(2), (d)(2), 2339, 2354(b)(13), (14), title VI, 2663(j)(2)(F)(iv), 98 Stat. 1066, 1070, 1071, 1073, 1087, 1088, 1093, 1101, 1170; Nov. 8, 1984, Pub. L. 98-617, § 3(a)(1), (b)(5), (6), 98 Stat. 3295, 3296.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-369, § 2326(c)(2), inserted provision that the Secretary publish in the Federal Register standards and criteria for efficient and effective performance of contract obligations under this section and provide an opportunity for public comment prior to implementation.

Subsec. (b)(3). Pub. L. 98-369, § 2306(b)(1)(B), (C), in concluding provisions substituted "during the 12-month period ending on the March 31 last preceding" for "during the last preceding calendar year elapsing prior to" and substituted "October 1" for "July 1" wherever appearing.

Pub. L. 98-369, § 2354(b)(14), substituted "(I)" and "(II)" for "(i)" and "(ii)", respectively in concluding provisions.

Pub. L. 98-369, § 2663(j)(2)(F)(iv), substituted "Health and Human Services" for "Health, Education, and Welfare" in concluding provisions.

Subsec. (b)(3)(B)(ii)(II). Pub. L. 98-369, § 2354(b)(13), struck out the period after "subchapter".

Subsec. (b)(3)(F). Pub. L. 98-369, § 2306(b)(1)(A), substituted "September 30" for "June 30".

Subsec. (b)(4), (5). Pub. L. 98-369, § 2306(a), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (b)(6). Pub. L. 98-369, § 2339, redesignated cl. (A) as cl. (A)(i) and former cl. (B) as cl. (A)(ii) added a new cl. (B), and in the provisions after cl. (B), substituted "clause (A) of such sentence" for "clause (A) or (B) of such sentence".

Pub. L. 98-369, § 2306(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 98-369, § 2306(a), redesignated par. (6) as (7).

Subsec. (b)(7)(A). Pub. L. 98-617, § 3(b)(5)(B), struck out "If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality." at the end.

Pub. L. 98-369, § 2307(a)(1), as amended by Pub. L. 98-617, § 3(a)(1), added "If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality." at the end.

Subsec. (b)(7)(A)(ii). Pub. L. 98-617, § 3(b)(5)(A), substituted "the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B)" for "the amount of the payment exceeds the reasonable charge for the services (with the customary charge determined consistent with subparagraph (B))".

Subsec. (b)(7)(B)(i). Pub. L. 98-369, § 2307(a)(2)(A), (B), substituted "physician who is not a teaching physician (as defined by the Secretary)" for "physician who has a substantial practice outside the teaching setting" and "practice outside the teaching setting" for "outside practice".

Subsec. (b)(7)(B)(ii). Pub. L. 98-369, § 2307(a)(2)(C), (D), substituted "In the case of a teaching physician" for "In the case of a physician who does not have a practice described in clause (i)" and "greatest" for "greater".

Subsec. (b)(7)(B)(ii)(III). Pub. L. 98-369, § 2307(a)(2)(E)-(G), added subcl. (III).

Subsec. (b)(7)(B)(iii). Pub. L. 98-617, § 3(b)(6), added cl. (iii).

Subsec. (c). Pub. L. 98-369, § 2326(d)(2), added provision that the Secretary, in determining a carrier's necessary and proper cost of administration with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated carrier in carrying out the terms of its contract.

Subsec. (h). Pub. L. 98-369, § 2306(c), added subsec. (h).

Pub. L. 98-369, § 2303(e), struck out subsec. (h) providing for payment for laboratory tests.

Subsecs. (i), (j). Pub. L. 98-369, § 2306(c), added subsecs. (i) and (j).

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Amendment by section 2303(e) of Pub. L. 98-369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title, see section 2303(j)(1), (3), of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

Section 2306(b)(2) of Pub. L. 98-369 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to items and services furnished on or after October 1, 1985."

Section 2307(a)(3) of Pub. L. 98-369 provided that: "The amendments made by this subsection [amending this section] shall apply to services furnished on or after July 1, 1984."

Amendment by section 2326(d)(2) of Pub. L. 98-369 applicable to agreements and contracts entered into or renewed after Sept. 30, 1984, see section 2326(d)(3) of Pub. L. 98-369, set out as a note under section 1395h of this title.

Amendment by section 2354(b)(13), (14) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Extension of Medicare Physician Payment Provisions

Period of 15 months referred to in subsec. (j)(1) of this section for monitoring the charges of nonparticipating physicians to be deemed to include the period Oct. 1, 1985, to Mar. 14, 1986, see section 5(b) of Pub. L. 99-107, set out as a note under section 1395ww of this title.

Simplification of Procedures With Respect to Claims and Payments for Clinical Diagnostic Laboratory Tests

Section 2303(h) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall simplify the procedures under section 1842 of the Social Security Act [42 U.S.C. 1395u] with respect to claims and payments for clinical diagnostic laboratory tests so as to reduce unnecessary paperwork while assuring that sufficient information is supplied to identify instances of fraud and abuse."

Study of Amounts Billed for Physician Services and Paid by Carriers Under Subsection (b)(7) of This Section; Report to Congress

Section 2307(c) of Pub. L. 98-369 provided that: "The Comptroller General shall conduct a study of the amounts billed for physician services and paid by carriers under section 1842(b)(7) of the Social Security Act [42 U.S.C. 1395u(b)(7)] to determine whether such payments have been made only where the physician satisfies the requirements of section 1842(b)(7)(A)(i) of such Act. The Comptroller General shall submit to the Committees on Ways and Means and on Energy and Commerce of the House of Representatives and to the Committee on Finance of the Senate a report on the results of such study not later than 18 months after the date of the enactment of this Act [July 18, 1984]."

Replacement of Agency, Organization, or Carrier Processing Medicare Claims; Number of Agreements and Contracts Authorized for Fiscal Years 1985 and 1986

For provision authorizing two agreements under section 1395h of this title and two contracts under this section for replacement of an agency, organization, or carrier in the lowest 20th percentile, see section 2326(a) of Pub. L. 98-369, set out as a note under 1395h of this title.

Report on Reimbursement of Clinical Laboratories

Section 918(a)(3) of Pub. L. 96-499 provided that not later than 24 months after an effective date (not later than Apr. 1, 1981) which was to have been prescribed by the Secretary of Health and Human Services, the Secretary was to report to the Congress (A) the proportion of bills and requests for payment submitted (during the 18-month period beginning on such effective date) under this subchapter for laboratory tests which did not identify who performed the tests, (B) the proportion of bills and requests for payment submitted during such period for laboratory tests with respect to which the amount paid under this subchapter was less than the amount that would otherwise have been payable in the absence of subsec. (h) of this section, (C) with respect to requests for payment described in subparagraph (B) which were submitted by patients, the average additional cost per laboratory test to patients resulting from reductions in payment that would otherwise have been made for such tests in the absence of such subsec. (h), and (D) with respect to bills described in subparagraph (B) which were submitted by physicians, the average reduction in payment per laboratory test to physicians resulting from the application of such subsec. (h).

Section Referred to in Other Sections

This section is referred to in sections 254n, 1320a-3, 1320a-7a, 1320c-3, 1395k, 1395*l*, 1395t, 1395v, 1395mm, 1395nn, 1395pp, 1395vv, 1396m of this title; title 2 section 906.

§ 1395v. Agreements with States

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Monthly premiums; coverage periods

In the case of any individual enrolled pursuant to this section—

(1) the monthly premium to be paid by the State shall be determined under section 1395r of this title (without any increase under subsection (b) thereof);

[*See main edition for text of* (*2*)]

(3) his coverage period attributable to the agreement with the State under this section shall end on the last day of whichever of the following first occurs:

[*See main edition for text of* (*A*)]

(B) the month preceding the first month for which he becomes entitled to monthly benefits under subchapter II of this chapter or to an annuity or pension under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

[*See main edition for text of* (*e*) *to* (*h*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 606(a)(3)(E), 97 Stat. 171; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(15), 98 Stat. 1101.)

References in Text

Part A of subchapter IV of this chapter, referred to in subsecs. (b)(2) and (f), is classified to section 601 et seq. of this title.

The Railroad Retirement Act of 1974, referred to in subsec. (d)(3)(B), is title I of Pub. L. 93-444, Oct. 16, 1974, 88 Stat. 1305, as amended, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see section 231t of Title 45 and Tables.

Amendments

1984—Subsec. (d)(3)(B). Pub. L. 98-369 substituted "1974" for "1937".

1983—Subsec. (d)(1). Pub. L. 98-21 substituted "without any increase under subsection (b) thereof" for "without any increase under subsection (c) thereof".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Effective Date of 1983 Amendment; Transitional Rule

Amendment by Pub. L. 98-21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98-21, set out as a note under section 1395r of this title.

§ 1395w. Appropriations to cover Government contributions and contingency reserve

(a) There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1)(A) a Government contribution equal to the aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 and over as determined under section 1395r(a)(1) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1395r(a)(3) or 1395r(e) of this title, as the case may be, to

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for a month for enrollees under age 65 under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee under age 65 as determined under section 1395r(a)(4) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section

1395r(a)(3) or 1395r(e) of this title, as the case may be, to

(ii) the dollar amount of the premium per enrollee for such month; plus

[*See main edition for text of* (*2*); (*b*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 606(a)(3)(F), (G), 97 Stat. 171; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(16), 98 Stat. 1101.)

AMENDMENTS

1984—Subsec. (a)(1)(B)(ii). Pub. L. 98-369 substituted "; plus" for a period.

1983—Subsec. (a)(1)(A)(i). Pub. L. 98-21, § 606(a)(3)(F), substituted "section 1395r(a)(1)" for "section 1395r(c)(1)" and "section 1395r(a)(3) or 1395r(e)" for "section 1395r(c)(3) or 1395r(g)".

Subsec. (a)(1)(B)(i). Pub. L. 98-21, § 606(a)(3)(G), substituted "1395r(a)(4)" for "1395r(c)(4)" and "1395r(a)(3) or 1395r(e)" for "1395r(c)(3) or 1395r(g)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98-21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the amount of Government contributions under subsec. (a)(1) of this section shall be computed with the actuarially adequate rate which would have been in effect but for the amendments made by this section and using the amount of the premium in effect for June 1983, see section 606(c) of Pub. L. 98-21, set out as a note under section 1395r of this title.

PART C—MISCELLANEOUS PROVISIONS

§ 1395x. Definitions

For purposes of this subchapter—

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Repealed. Pub. L. 98-369, div. B, title III, § 2335(b)(1), July 18, 1984, 98 Stat. 1090

(e) Hospital

The term "hospital" (except for purposes of sections 1395f(d), 1395f(f), and 1395n(b) of this title, subsection (a)(2) of this section, paragraph (7) of this subsection, and subsection (i) of this section) means an institution which—

[*See main edition for text of* (*1*) *to* (*9*)]

For purposes of subsection (a)(2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection. For purposes of sections 1395f(d) and 1395n(b) of this title (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), section 1395f(f)(2) of this title, and subsection (i) of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in subsection (j)(1)(A) of this section and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of subsection (r) of this section, to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. For purposes of section 1395f(f)(1) of this title, such term includes an institution which (i) is a hospital for purposes of sections 1395f(d), 1395f(f)(2), and 1395n(b) of this title and (ii) is accredited by the Joint Commission on Accreditation of Hospitals, or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such program to be essentially equivalent to those of the Joint Commission on Accreditation of Hospitals. Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a)(2) of this section, include any institution which is primarily for the care and treatment of mental diseases unless it is a psychiatric hospital (as defined in subsection (f) of this section). The term "hospital" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to items and services ordinarily furnished by such institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations. For provisions deeming certain requirements of this subsection to be met in the case of accredited institutions, see section 1395bb of this title. The term "hospital" also includes a facility of fifty beds or less which is located in an area determined by the Secretary to meet the definition relating to a rural area described in subparagraph (A) of paragraph (5) of this subsection and which meets the other requirements of this subsection, except that—

[*See main edition for text of* (*A*) *to* (*C*)]

(f) Psychiatric hospital

The term "psychiatric hospital" means an institution which—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A of this subchapter; and

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sen-

nce and which contains a distinct part which
so satisfies paragraphs (3) and (4) of such sen-
nce, such distinct part shall be considered to
a "psychiatric hospital".

Repealed. Pub. L. 98-369, div. B, title III,
§ 2335(b)(1), July 18, 1984, 98 Stat. 1090

[*See main edition for text of* (*h*) *and* (*i*)]

Skilled nursing facility

The term "skilled nursing facility" means
xcept for purposes of subsection (a)(2) of this
ction) an institution (or a distinct part of an
stitution) which has in effect a transfer
reement (meeting the requirements of sub-
ction (*l*) of this section) with one or more hos-
tals having agreements in effect under sec-
on 1395cc of this title and which—

[*See main edition for text of* (*1*)]

(2) has policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides;

[*See main edition for text of* (*3*) *to* (*12*)]

(13) meets such provisions of such edition (as is specified by the Secretary in regulations) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon an institution, but only if such waiver will not adversely affect the health and safety of the patients; except that the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in nursing facilities;

[*See main edition for text of* (*14*) *and* (*15*)]

xcept that such term shall not (other than for
urposes of subsection (a)(2) of this section) in-
ude any institution which is primarily for the
are and treatment of mental diseases. For pur-
oses of subsection (a)(2) of this section, such
rm includes any institution which meets the
equirements of paragraph (1) of this subsec-
on. The term "skilled nursing facility" also in-
udes an institution described in paragraph (1)
f subsection (y) of this section, to the extent
nd subject to the limitations provided in such
ubsection. To the extent that paragraph (6) of
his subsection may be deemed to require that
ny skilled nursing facility engage the services
f a registered professional nurse for more than
0 hours a week, the Secretary is authorized to
aive such requirement if he finds that—

[*See main edition for text of* (*A*) *to* (*C*);
(*k*) *and* (*l*)]

(m) Home health services

The term "home health services" means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual's home—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) medical supplies (other than drugs and biologicals) and durable medical equipment, while under such a plan;

[*See main edition for text of* (*6*) *and* (*7*)]

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital.

(n) Durable medical equipment

The term "durable medical equipment" includes iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient's home (including an institution used at his home other than an institution that meets the requirements of subsection (e)(1) or (j)(1) of this section), whether furnished on a rental basis or purchased.

[*See main edition for text of* (*o*)]

(p) Outpatient physical therapy services

The term "outpatient physical therapy services" means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient—

(1) who is under the care of a physician (as defined in paragraph (1) or (3) of subsection (r) of this section), and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established by a physician (as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined);

excluding, however—

[*See main edition for text of* (*3*) *and* (*4*)]

The term "outpatient physical therapy services" also includes physical therapy services furnished an individual by a physical therapist (in his office or in such individual's home) who meets licensing and other standards prescribed by the Secretary in regulations, otherwise than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, if the furnishing of such services meets such conditions relating to health and safety as the Secretary may find necessary. In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility. The term "outpatient physical therapy services" also includes speech pathology services furnished by a provider of services, a clinic, rehabilitation agency, or by a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient, subject to the conditions prescribed in this subsection.

[*See main edition for text of* (*q*)]

(r) Physician

The term "physician", when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1301(a)(7) of this title), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions, (3) a doctor of podiatric medicine for the purposes of subsection (s) of this section but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them; and for the purposes of subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only if his performance of functions under subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform, (4) a doctor of optometry who is legally authorized to practice optometry by the State in which he performs such function, but only with respect to services related to the condition of aphakia, or (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only for the purpose of subsections (s)(1) and (s)(2)(A) of this section and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation demonstrated by X-ray to exist) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided. For the purposes of section 1395y(a)(4) of this title and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1395y(a)(4) of this title) are furnished.

(s) Medical and other health services

The term "medical and other health services" means any of the following items or services:

(1) physicians' services;

(2) [*See main edition for text of* (*A*) *to* (*F*)]

(G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in subsection (r)(1) of this section, for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician;

(H)(i) services furnished pursuant to a contract under section 1395mm of this title to a member of an eligible organization by a physician assistant or by a nurse practitioner (as defined in subsection (aa)(3) of this section) and such services and supplies furnished as an incident to his service to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service; and

(ii) services furnished pursuant to a risk-sharing contract under section 1395mm(g) of this title to a member of an eligible organization by a clinical psychologist (as defined by the Secretary), and such services and supplies furnished as an incident to his services to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service; and

(I) blood clotting factors, for hemophilia patients competent to use such factors to control bleeding without medical or other supervision, and items related to the administration of such factors, subject to utilization controls deemed necessary by the Secretary for the efficient use of such factors;

[*See main edition for text of* (*3*) *to* (*5*)]

(6) durable medical equipment;

[*See main edition for text of* (*7*) *to* (*9*)]

(10)(A) pneumococcal vaccine and its administration; and

(B) hepatitis B vaccine and its administration, furnished to an individual who is at high or intermediate risk of contracting hepatitis B (as determined by the Secretary under regulations).

No diagnostic tests performed in any laboratory which is independent of a physician's office, a rural health clinic, or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1395f(d) of this title) shall be included within paragraph (3) unless such laboratory—

[*See main edition for text of* (*11*) *and* (*12*)]

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which—

[*See main edition for text of* (*13*) *and* (*14*)]

None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section 1395f(d) of this title shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

[*See main edition for text of* (*t*)]

(u) Provider of services

The term "provider of services" means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, or, for purposes of section 1395f(g) and section 1395n(e) of this title, a fund.

(v) Reasonable costs

(1)(A) The reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services, may provide for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this subchapter, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (i) take into account both direct and indirect costs of providers of services (excluding therefrom any such costs, including standby costs, which are determined in accordance with regulations to be unnecessary in the efficient delivery of services covered by the insurance programs established under this subchapter) in order that, under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by this subchapter will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (ii) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

(B) Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any fiscal period shall not exceed one and one-half times the average of the rates of interest, for each of the months any part of which is included in such fiscal period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(C) Where a hospital has an arrangement with a medical school under which the faculty of such school provides services at such hospital, an amount not in excess of the reasonable cost of such services to the medical school shall be included in determining the reasonable cost to the hospital of furnishing services—

(i) for which payment may be made under part A of this subchapter, but only if—

[*See main edition for text of* (*I*) *and* (*II*), (*ii*)]

(D) Where (i) physicians furnish services which are either inpatient hospital services (including services in conjunction with the teaching programs of such hospital) by reason of paragraph (7) of subsection (b) of this section or for which entitlement exists by reason of clause (II) of section 1395k(a)(2)(B)(i) of this title, and (ii) such hospital (or medical school under arrangement with such hospital) incurs no actual cost in the furnishing of such services, the reasonable cost of such services shall (under regulations of the Secretary) be deemed to be the cost such hospital or medical school would have incurred had it paid a salary to such physicians rendering such services approximately equivalent to the average salary paid to all physicians employed by such hospital (or if such employment does not exist, or is minimal in such hospital, by similar hospitals in a geographic area of sufficient size to assure reasonable inclusion of sufficient physicians in development of such average salary).

(E) Such regulations may, in the case of skilled nursing facilities in any State, provide for the use of rates, developed by the State in which such facilities are located, for the payment of the cost of skilled nursing facility services furnished under the State's plan approved under subchapter XIX of this chapter (and such rates may be increased by the Secretary on a class or size of institution or on a geographical basis by a percentage factor not in excess of 10 percent to take into account determinable items or services or other requirements under this subchapter not otherwise included in the computation of such State rates), if the Secretary finds that such rates are reasonably related to (but not necessarily limited to) analyses undertaken by such State of costs of care in comparable facilities in such State.

[*See main edition for text of* (*F*)]

(G)(i) In any case in which a hospital provides inpatient services to an individual that would constitute post-hospital extended care services if provided by a skilled nursing facility and a quality control and peer review organization (or, in the absence of such a qualified organization, the Secretary or such agent as the Secretary may designate) determines that inpatient hospital services for the individual are not medically necessary but post-hospital extended care services for the individual are medically necessary and such extended care services are not otherwise available to the individual (as determined in accordance with criteria established by the Secretary) at the time of such determination, payment for such services provided to the individual shall continue to be made under this subchapter at the payment rate described in clause (ii) during the period in which—

[*See main edition for text of* (*I*) *to* (*III*)]

except that if the Secretary determines that there is not an excess of hospital beds in such hospital and (subject to clause (iv)) there is not an excess of hospital beds in the area of such hospital, such payment shall be made (during such period) the amount otherwise payable under part A with respect to inpatient hospital services.

[*See main edition for text of* (*ii*) *to* (*iv*), (*H*)]

(I) In determining such reasonable cost, the Secretary may not include any costs incurred by a provider with respect to any services furnished in connection with matters for which payment may be made under this subchapter and furnished pursuant to a contract between the provider and any of its subcontractors which is entered into after December 5, 1980, and the value or cost of which is $10,000 or more over a twelve-month period unless the contract contains a clause to the effect that—

(i) until the expiration of four years after the furnishing of such services pursuant to such contract, the subcontractor shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the contract, and books, documents and records of such subcontractor that are necessary to certify the nature and extent of such costs, and

(ii) if the subcontractor carries out any of the duties of the contract through a subcontract, with a value or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

The Secretary shall prescribe in regulation[1] criteria and procedures which the Secretary shall use in obtaining access to books, documents, and records under clauses required in contracts and subcontracts under this subparagraph.

[*See main edition for text of* (*J*)]

(K)(i) The Secretary shall issue regulations that provide, to the extent feasible, for the establishment of limitations on the amount of any costs or charges that shall be considered reasonable with respect to services provided on an outpatient basis by hospitals (other than bona fide emergency services as defined in clause (ii)) or clinics (other than rural health clinics), which are reimbursed on a cost basis or on the basis of cost related charges, and by physicians utilizing such outpatient facilities. Such limitations shall be reasonably related to the charges in the same area for similar services provided in physicians' offices. Such regulations shall provide for exceptions to such limitations in cases where similar services are not generally available in physicians' offices in the area to individuals entitled to benefits under this subchapter.

(ii) For purposes of clause (i), the term "bona fide emergency services" means services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(I) placing the patient's health in serious jeopardy;

(II) serious impairment to bodily functions; or

(III) serious dysfunction of any bodily organ or part.

[*See main edition for text of* (*L*) *to* (*N*)]

(O)(i) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness and (if applicable) a return on equity capital with respect to an asset of a hospital or skilled nursing facility which has undergone a change of ownership, such regulations shall provide that the valuation of the asset after such change of ownership shall be the lesser of the allowable acquisition cost of such asset to the owner of record as of July 18,

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[1] So in original. Probably should be "regulations".

1984 (or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date), or the acquisition cost of such asset to the new owner.

(ii) Such regulations shall provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984.

(iii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this subchapter.

(2)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this subchapter with respect to such services may not exceed the amount that would be taken into account with respect to such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this subchapter furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B of this subchapter, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this subchapter, the amount of the payment with respect to such bed and board under part A of this subchapter shall be the amount otherwise payable under this subchapter for such bed and board furnished in semi-private accommodations minus the difference between the charge customarily made by the hospital or skilled nursing facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

[*See main edition for text of* (*4*) *to* (*6*)]

(7) [*See main edition for text of* (*A*) *to* (*C*)]

(D) For further limitations on reasonable cost and determination of payment amounts for routine service costs of skilled nursing facilities, see section 1395yy of this title.

[*See main edition for text of* (*w*) *to* (*y*)]

(z) Institutional planning

An overall plan and budget of a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, or home health agency shall be considered sufficient if it—

[*See main edition for text of* (*1*)]

(2)(A) provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in paragraph (1) is applicable) which includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000 (or such lesser amount as may be established by the State under section 1320a–1(g)(1) of this title in which the hospital is located) related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(B) provides that such plan is submitted to the agency designated under section 1320a–1(b) of this title, or if no such agency is designated, to the appropriate health planning agency in the State (but this subparagraph shall not apply in the case of a facility exempt from review under section 1320a–1 of this title by reason of section 1320a–1(j) of this title);

[*See main edition for text of* (*3*) *and* (*4*)]

(aa) Rural health clinic services

[*See main edition for text of* (*1*)]

(2) The term "rural health clinic" means a facility which—

[*See main edition for text of* (*A*) *to* (*H*)]

(I) has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

[*See main edition for text of* (*J*)]

For the purposes of this subchapter, such term includes only a facility which (i) is located in an area that is not an urbanized area (as defined by the Bureau of the Census) and that is designated by the Secretary either (I) as an area with a shortage of personal health services under section 1302(7) of the Public Health Service Act [42 U.S.C. 300e–1(7)] or (II) as a health manpower shortage area described in section 332(a)(1)(A) of that Act [42 U.S.C. 254e(a)(1)(A)] because of its shortage of primary medical care manpower, (ii) has filed an agreement with the Secretary by which it agrees not to charge any individual or other person for items or services for which such individual is entitled to have payment made under this subchapter, except for the amount of any deductible or coinsurance amount imposed with respect to such items or services (not in excess of the amount customarily charged for such items and services by such clinic), pursuant to subsections (a) and (b) of section 1395*l* of this title, (iii) employs a physician assistant or nurse practitioner, and (iv) is not a rehabilitation agency or a facility which is primarily for the care and treatment of mental diseases. A facility that is in operation and qualifies as a rural health clinic under this subchapter or subchapter XIX of this chapter and that subsequently fails to satisfy the requirement of clause (i) shall be considered, for purposes of this subchapter and subchapter XIX of this chapter, as still satisfying the requirement of such clause.

[*See main edition for text of* (*3*); (*bb*)]

(cc) Comprehensive outpatient rehabilitation facility services

(1) The term "comprehensive outpatient rehabilitation facility services" means the following items and services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician—

[*See main edition for text of* (*A*) *to* (*E*)]

(F) drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered;

(G) supplies and durable medical equipment; and

[*See main edition for text of* (*H*)]

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital.

(2) The term "comprehensive outpatient rehabilitation facility" means a facility which—

[*See main edition for text of* (*A*) *to* (*E*)]

(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the standards established for such licensing;

[*See main edition for text of* (*G*) *to* (*I*)]

(dd) Hospice care; hospice program; definitions; certification; waiver by Secretary

[*See main edition for text of* (*1*)]

(2) The term "hospice program" means a public agency or private organization (or a subdivision thereof) which—

(A)(i) is primarily engaged in providing the care and services described in paragraph (1) and makes such services available (as needed) on a 24-hour basis and which also provides bereavement counseling for the immediate family of terminally ill individuals,

(ii) provides for such care and services in individuals' homes, on an outpatient basis, and on a short-term inpatient basis, directly or under arrangements made by the agency or organization, except that—

(I) the agency or organization must routinely provide directly substantially all of each of the services described in subparagraphs (A), (C), (F), and (H) of paragraph (1), except as otherwise provided in paragraph (5), and

[*See main edition for text of* (*II*), (*iii*), (*B*) *to* (*G*), (*3*) *and* (*4*)]

(5)(A) The Secretary may waive the requirements of paragraph (2)(A)(ii)(I) for an agency or organization with respect to all or part of the nursing care described in paragraph (1)(A) if such agency or organization—

(i) is located in an area which is not an urbanized area (as defined by the Bureau of the Census);

(ii) was in operation on or before January 1, 1983; and

(iii) has demonstrated a good faith effort (as determined by the Secretary) to hire a sufficient number of nurses to provide such nursing care directly.

(B) Any waiver, which is in such form and containing such information as the Secretary may require and which is requested by an agency or organization under subparagraph (A), shall be deemed to be granted unless such request is denied by the Secretary within 60 days after the date such request is received by the Secretary. The granting of a waiver under subparagraph (A) shall not preclude the granting of any subsequent waiver request should such a waiver again become necessary.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, §§ 602(d), 607(b)(2), (d), 97 Stat. 163, 171, 172; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2314(a), 2318(a), (b), 2319(a), 2321(e), 2322(a), 2323(a), 2324(a), 2335(b), 2340(a), 2341(a), (c), 2342(a), 2343(a), (b), 2354(b)(18)-(29), 98 Stat. 1079, 1081, 1082, 1085, 1086, 1090, 1093, 1094, 1101; Nov. 8, 1984, Pub. L. 98-617, § 3(a)(4), (b)(7), 98 Stat. 3295, 3296.)

References in Text

Parts A and B of this subchapter, referred to in text, are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (w)(2), is classified to section 1320c et seq. of this title.

Amendments

1984—Subsec. (d). Pub. L. 98-369, § 2335(b)(1), struck out subsec. (d) which defined "inpatient tuberculosis hospital services" as inpatient hospital services furnished to an inpatient of a tuberculosis hospital.

Subsec. (e). Pub. L. 98-369, § 2335(b)(2), struck out "or tuberculosis unless it is a tuberculosis hospital (as defined in subsection (g) of this section) or" before "unless it is a psychiatric hospital" in provisions following par. (9).

Subsec. (f). Pub. L. 98-369, § 2340(a), struck out par. (5) which provided that "psychiatric hospital" meant an institution which was accredited by the Joint Commission on Accreditation of Hospitals, and struck out "if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary" in concluding provisions.

Subsec. (g). Pub. L. 98-369, § 2335(b)(1), struck out subsec. (g) which defined "tuberculosis hospital".

Subsec. (j). Pub. L. 98-369, § 2335(b)(3), in provisions following par. (15), struck out "or tuberculosis" after "treatment of mental diseases".

Subsec. (j)(2). Pub. L. 98-369, § 2354(b)(18), substituted "provision for" for "provision of".

Subsec. (j)(13). Pub. L. 98-369, § 2354(b)(19), substituted "an institution" for "a nursing home".

Subsec. (m)(5). Pub. L. 98-369, § 2321(e)(1), which directed the substitution of "and durable medical equipment" for ", and the use of medical applicances" was executed by making the substitution for ", and the use of medical appliances" as the probable intent of Congress.

Subsec. (n). Pub. L. 98-369, § 2321(e)(3), added subsec. (n).

Subsec. (p)(1). Pub. L. 98-369, § 2341(a), substituted "paragraph (1) or (3) of subsection (r) of this section" for "subsection (r)(1) of this section".

Subsec. (p)(2). Pub. L. 98-369, § 2342(a), substituted "by a physician as so defined’ or by a qualified physical therapist and is periodically reviewed by a physician (as so defined)" for ", and is periodically reviewed, by a physician (as so defined)".

Subsec. (r)(3). Pub. L. 98-617, § 3(b)(7), substituted "under subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title" for "under subsections (k) and (m) and sections 1395f(a) and 1395n of this title" before "is consistent with the policy".

Pub. L. 98-369, § 2341(c), substituted "for the purposes of subsections (k), (m), and (p)(1) of this section" for "for the purposes of subsections (k) and (m) of this section", and substituted "sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only if" for "sections 1395f(a) and 1395n of this title but only if".

Subsec. (s)(2)(H). Pub. L. 98-369, § 2322(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (s)(2)(I). Pub. L. 98-369, § 2324(a), added subpar. (I).

Subsec. (s)(6). Pub. L. 98-369, § 2321(e)(2), struck out provision which included iron lungs, oxygen tents, etc. with durable medical equipment. See subsec. (n) of this section.

Subsec. (s)(10). Pub. L. 98-369, § 2323(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (u). Pub. L. 98-369, § 2354(b)(20), struck out "or" before "home health agency".

Subsec. (v)(1)(B). Pub. L. 98-369, § 2354(b)(21)(A), realigned margin of subpar. (B).

Subsec. (v)(1)(C). Pub. L. 98-369, § 2354(b)(21)(B), realigned margins of subpar. (C).

Subsec. (v)(1)(C)(i). Pub. L. 98-369, § 2354(b)(22), added a dash after "but only if".

Subsec. (v)(1)(D). Pub. L. 98-369, § 2354(b)(21)(B), realigned margin of subpar. (D).

Pub. L. 98-369, § 2354(b)(21)(C), added a comma after "section 1395k(a)(2)(B)(i) of this title".

Subsec. (v)(1)(E). Pub. L. 98-369, § 2319(a)(1), struck out cl. (i) which directed that such regulations provide that any determination of reasonable cost with respect to services provided by hospital-based skilled nursing facilities be made on the basis of a single standard based on the reasonableness of costs incurred by free standing skilled nursing facilities, subject to such adjustments as deemed appropriate by the Secretary, and struck out the designation "(ii)".

Pub. L. 98-369, § 2354(b)(23), as amended by Pub. L. 98-617, § 3(a)(4), substituted "use" for "uses".

Subsec. (v)(1)(I)(i), (ii). Pub. L. 98-369, § 2354(b)(24), substituted "by the Secretary, or upon request by the Comptroller General" for "to the Secretary, or upon request to the Comptroller General".

Subsec. (v)(1)(K). Pub. L. 98-369, § 2318(a), (b), designated existing provisions as cl. (i), substituted therein "as defined in clause (ii)" for "provided in an emergency room", and added cl. (ii).

Subsec. (v)(1)(O). Pub. L. 98-369, § 2314(a), added subpar. (O).

Subsec. (v)(3). Pub. L. 98-369, § 2354(b)(25), substituted "semi-private" for "semiprivate" after "furnished in".

Subsec. (v)(7)(D). Pub. L. 98-369, § 2319(a)(2), added subpar. (D).

Subsec. (z)(2). Pub. L. 98-369, § 2354(b)(26), substituted "paragraph (1)" for "subparagraph (1)".

Subsec. (aa)(2)(I). Pub. L. 98-369, § 2354(b)(27), substituted "utilization" for "ultilization".

Subsec. (cc)(1)(F). Pub. L. 98-369, § 2354(b)(28), substituted "self-administered" for "self administered".

Subsec. (cc)(1)(G). Pub. L. 98-369, § 2321(e)(4), substituted "and durable medical equipment" for ", appliances, and equipment, including the purchase or rental of equipment".

Subsec. (cc)(2)(F). Pub. L. 98-369, § 2354(b)(29), substituted "standards established" for "standard establishment".

Subsec. (dd)(2)(A)(ii)(I). Pub. L. 98-369, § 2343(a), inserted "except as otherwise provided in paragraph (5),".

Subsec. (dd)(5). Pub. L. 98-369, § 2343(b), added par. (5).

1983—Subsec. (v)(1)(G)(i). Pub. L. 98-21, § 602(d)(1), substituted "the amount otherwise payable under part A with respect to" for "on the basis of the reasonable cost of" in provisions following subcl. (III).

Subsec. (v)(2)(A). Pub. L. 98-21, § 602(d)(2), substituted "the amount that would be taken into account with respect to" for "an amount equal to the reasonable cost of".

Subsec. (v)(2)(B). Pub. L. 98-21, § 602(d)(3), struck out "the equivalent of the reasonable cost of" after "only".

Subsec. (v)(3). Pub. L. 98-21, § 602(d)(4), substituted "the amount otherwise payable under this subchapter for such bed and board furnished in semiprivate accommodations" for "the reasonable cost of such bed and board furnished in semiprivate accommodations (determined pursuant to paragraph (1))".

Subsec. (z)(2). Pub. L. 98-21, § 607(d), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 98-21, § 607(b)(2), substituted "$600,000 (or such lesser amount as may be established by the State under section 1320a-1(g)(1) of this title in which the hospital is located)" for "$100,000".

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Section 2314(c)(1), (2) of Pub. L. 98-369 provided that:

"(1) Clause (i) of section 1861(v)(1)(O) of the Social Security Act [subsec. (v)(1)(O)(i) of this section] shall not apply to changes of ownership of assets pursuant to an enforceable agreement entered into before the date of the enactment of this Act [July 18, 1984].

"(2) Clause (iii) of section 1861(v)(1)(O) of such Act [subsec. (v)(1)(O)(iii) of this section] shall apply to costs incurred on or after the date of the enactment of this Act."

Section 2318(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2319(a) of Pub. L. 98-369 applicable to cost reporting periods beginning on or after July 1, 1984, see section 2319(c) of Pub. L. 98-369, set out as an Effective Date note under section 1395yy of this title.

Amendment by section 2321(e) of Pub. L. 98-369 applicable to items and services furnished on or after

July 18, 1984, see section 2321(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Section 2322(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2323(a) of Pub. L. 98-369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

Section 2324(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending this section] shall be effective with respect to items and services purchased on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2335(b) of Pub. L. 98-369 effective July 18, 1984, see section 2335(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Section 2340(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395x and 1396d of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2341(a), (c) of Pub. L. 98-369 applicable to services furnished on or after July 18, 1984, see section 2341(d) of Pub. L. 98-369, set out as a note under section 1395k of this title.

Amendment by section 2342(a) of Pub. L. 98-369 applicable to plans of care established on or after July 18, 1984, see section 2342(c) of Pub. L. 98-369, set out as a note under section 1395n of this title.

Section 2343(c) of Pub. L. 98-369 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(18)-(29) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Effective Date of 1983 Amendments

Amendment by section 602 of Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

Effective Date of 1982 Amendment

Section 102(b) of Pub. L. 97-248, as amended by Pub. L. 98-21, title VI, § 605(a), Apr. 20, 1983, 97 Stat. 169, provided that: "The amendment made by subsection (a) [amending subsec. (v)(1)(E) of this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1983."

Effective Date of 1980 Amendments

Section 937(c) of Pub. L. 96-499, as amended by Pub. L. 98-369, div. B, title III, § 2354(c)(1)(B), July 18, 1984, 98 Stat. 1102, provided that: "The amendment made by subsection (a) [amending subsec. (r)(4) of this section] shall apply to services furnished on or after July 1, 1981."

Cost Limits for Routine Services for Urban and Rural Hospital-Based Skilled Nursing Facilities; Cost Reporting Periods Beginning On or After October 1, 1982, and Prior to July 1, 1984

Section 2319(d) of Pub. L. 98-369 provided that: "Notwithstanding limits on the cost of skilled nursing facilities which may have been issued under section 1861(v) of the Social Security Act [42 U.S.C. 1395x(v)] prior to the date of the enactment of this Act [July 18, 1984], in the case of cost reporting periods beginning on or after October 1, 1982, and prior to July 1, 1984, the cost limits for routine services for urban and rural hospital-based skilled nursing facilities shall be 112 percent of the mean of the respective routine costs for urban and rural hospital-based skilled nursing facilities."

Study and Report Relating to Requirements That Core Services Be Furnished Directly by Hospices

Section 2343(d) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall conduct a study of the necessity and appropriateness of the requirements that certain 'core' services be furnished directly by a hospice, as required under section 1861(dd)(2)(A)(ii)(I) of the Social Security Act [42 U.S.C. 1395x(dd)(2)(A)(ii)(I)]. The Secretary shall report the results of such study to the Congress with the report required under section 122(i)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 [probably means section 122(j)(1) of Pub. L. 97-248, set out as a note under section 1395f of this title]."

Report on Effect of 1982 Amendment on Hospital-Based Skilled Nursing Facilities

Section 605(b) of Pub. L. 98-21 provided that: "The Secretary of Health and Human Services shall, prior to December 31, 1983, complete a study and report to the Congress with respect to (1) the effect which the implementation of section 102 of the Tax Equity and Fiscal Responsibility Act of 1982 [amending subsec. (v)(1)(E) of this section] would have on hospital-based skilled nursing facilities, given the differences (if any) in the patient populations served by such facilities and by community-based skilled nursing facilities and (2) the impact on skilled nursing facilities of hospital prospective payment systems, and recommendations concerning payment of skilled nursing facilities."

Section 2319(e) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall submit to the Congress, prior to December 1, 1984, the report required under section 605(b) of the Social Security Amendments of 1983 [section 605(b) of Pub. L. 98-21, set out above]."

Section Referred to in Other Sections

This section is referred to in sections 254b, 254c, 255, 300n, 300t-12, 300w-3, 426-1, 1301, 1320a-3, 1320c-3, 1395d, 1395f, 1395g, 1395h, 1395k, 1395*l*, 1395n, 1395u, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1395nn, 1395oo, 1395pp, 1395rr, 1395tt, 1395uu, 1395ww, 1396a, 1396b, 1396d, 1396n, 3022 of this title; title 26 sections 213, 415.

§ 1395y. Exclusions from coverage

(a) Items or services specifically excluded

Notwithstanding any other provision of this subchapter, no payment may be made under part A or part B of this subchapter for any expenses incurred for items or services—

(1)(A) which, except for items and services described in subparagraph (B), (C), or (D), are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member,

(B) in the case of items and services described in section 1395x(s)(10) of this title, which are not reasonable and necessary for the prevention of illness,

(C) in the case of hospice care, which are not reasonable and necessary for the palliation or management of terminal illness, and

(D) in the case of clinical care items and services provided with the concurrence of the Secretary and with respect to research and experimentation conducted by, or under contract with, the Prospective Payment Assessment Commission or the Secretary, which are not reasonable and necessary to carry out the purposes of section 1395ww(e)(6) of this title;

[*See main edition for text of* (*2*) *to* (*11*)]

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, except that payment may be made under part A of this subchapter in the case of inpatient hospital services in connection with the provision of such dental services if the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(13) where such expenses are for—

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor,

(B) the treatment of subluxations of the foot, or

(C) routine foot care (including the cutting or removal of corns or calluses, the trimming of nails, and other routine hygienic care); or

(14) which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph) and which are furnished to an individual who is an inpatient of a hospital by an entity other than the hospital, unless the services are furnished under arrangements (as defined in section 1395x(w)(1) of this title) with the entity made by the hospital.

(b) Items or services paid, etc., under workmen's compensation laws and end stage renal disease program

(1) Payment under this subchapter may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made promptly (as determined in accordance with regulations), with respect to such item or service, under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance. Any payment under this subchapter with respect to any item or service shall be conditioned on reimbursement to the appropriate Trust Fund established by this subchapter when notice or other information is received that payment for such item or serivce has been or could be made under such a law, policy, plan, or insurance. In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such law, policy, plan, or insurance, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a law, policy, plan, or insurance. The Secretary may waive the provisions of this subsection in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.

(2) [*See main edition for text of* (*A*)]

(B) Any payment under this subchapter with respect to any item or service furnished to an individual described in subparagraph (A) during the period described in subparagraph (C) shall be conditioned on reimbursement to the appropriate Trust Fund established by this subchapter when notice or other information is received that payment for such item or service has been or could be made under a plan described in subparagraph (A). In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan. The Secretary may waive the provisions of this subparagraph in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.

[*See main edition for text of* (*C*) *and* (*D*)]

(3)(A)(i) Payment under this subchapter may not be made, except as provided in clause (ii), with respect to any item or service furnished in any month during the period described in clause (iii) to an individual who is under 70 years of age during any part of such month (or to the spouse of such individual, if the spouse is under 70 years of age during any part of such month) who is employed at the time such item or service is furnished to the extent that payment with respect to expenses for such item or service has been made, or can reasonably be expected to be made, under a group health plan (as defined in clause (iv)) under which such individual is covered by reason of such employment.

(ii) Any payment under this subchapter with respect to any item or service during the period described in clause (iii) shall be conditioned on reimbursement to the appropriate Trust Fund established by this subchapter when notice or other information is received that payment for such item or service has been or could be made under a group health plan. In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan. The Secretary may waive the provisions of this clause in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.

(iii) The provisions of clauses (i) and (ii) shall apply to an individual only for the period beginning with the month in which such individual becomes entitled to benefits under this subchapter under section 426(a) of this title and ending with the month before the month in which such individual attains the age of 70 and shall not include any month for which the individual would, upon application, be entitled to benefits under section 426-1 of this title.

[*See main edition for text of* (*iv*), (*B*); (*c*) *to* (*g*)]

(h) Registry of cardiac pacemaker devices and leads; testing of devices and leads; withholding of payment

(1)(A) The Secretary shall, through the Commissioner of the Food and Drug Administration, provide for a registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under this subchapter.

(B) Such registry shall include the manufacturer, model, and serial number of each such device or lead, the name of the recipient of such device or lead, the date and location of the implantation or removal of the device or lead, the name of the physician implanting or removing such device or lead, the name of the hospital or other provider billing for such procedure, any express or implied warranties associated with such device or lead under contract or State law, and such other information as the Secretary deems to be appropriate.

(C) Each physician and provider of services performing the implantation or replacement of pacemaker devices and leads for which payment is made or requested to be made under this subchapter shall, in accordance with regulations of the Secretary, submit information respecting such implantation or replacement for the registry.

(D) Such registry shall be for the purposes of assisting the Secretary in determining when payments may properly be made under this subchapter, in tracing the performance of cardiac pacemaker devices and leads, in determining when inspection by the manufacturer of such a device or lead may be necessary under paragraph (3), and in carrying out studies with respect to the use of such devices and leads. In carrying out any such study, the Secretary may not reveal any specific information which identifies any pacemaker device or lead recipient by name (or which would otherwise identify a specific recipient).

(E) Any person or organization may provide information to the registry with respect to cardiac pacemaker devices and leads other than those for which payment is made under this subchapter.

(2) The Secretary may, by regulation, require each provider of services—

(A) to return, to the manufacturer of the device or lead for testing under paragraph (3), any cardiac pacemaker device or lead which is removed from a patient and payment for the implantation or replacement of which was made or requested by such provider under this subchapter, and

(B) not to charge any beneficiary for replacement of such a device or lead if the device or lead has not been returned in accordance with subparagraph (A).

(3) The Secretary may, by regulation, require the manufacturer of a cardiac pacemaker device or lead (A) to test or analyze each pacemaker device or lead for which payment is made or requested under this subchapter and which is returned to the manufacturer by a provider of services under paragraph (2), and (B) to provide the results of such test or analysis to that provider, together with information and documentation with respect to any warranties covering such device or lead. In any case where the Secretary has reason to believe, based upon information in the pacemaker registry or otherwise available to him, that replacement of a cardiac pacemaker device or lead for which payment is or may be requested under this subchapter is related to the malfunction of a device or lead, the Secretary may require that personnel of the Food and Drug Administration be present at the testing of such device by the manufacturer, to determine whether such device was functioning properly.

(4) The Secretary may deny payment under this subchapter, in whole or in part and for such period of time as the Secretary determines to be appropriate, with respect to the implantation or replacement of a pacemaker device or lead of a manufacturer performed by a physician and provider of services after the Secretary determines (in accordance with the procedures established under paragraphs (2) and (3) of subsection (d) of this section) that—

(A) the physician or provider of services has failed to submit information to the registry as required under paragraph (1)(C),

(B) the provider of services has failed to return devices and leads as required under paragraph (2)(A) or has improperly charged beneficiaries as prohibited under paragraph (2)(B), or

(C) the manufacturer of the device or lead has failed to perform and to report on the testing of devices and leads returned to it as required under paragraph (3).

(i) Awards and contracts for original research and experimentation of new and existing medical procedures; conditions

In order to supplement the activities of the Prospective Payment Assessment Commission under section 1395ww(e) of this title in assessing the safety, efficacy, and cost-effectiveness of new and existing medical procedures, the Secretary may carry out, or award grants or contracts for, original research and experimentation of the type described in clause (ii) of section 1395ww(e)(6)(E) of this title with respect to such a procedure if the Secretary finds that—

(1) such procedure is not of sufficient commercial value to justify research and experimentation by a commercial organization;

(2) research and experimentation with respect to such procedure is not of a type that may appropriately be carried out by an institute, division, or bureau of the National Institutes of Health; and

(3) such procedure has the potential to be more cost-effective in the treatment of a condition than procedures currently in use with respect to such condition.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, §§ 601(f), 602(e), 97 Stat. 162, 163; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2301(a), 2304(c), 2313(c), 2344(a)-(c), 2354(b)(30), (31), 98 Stat. 1063, 1068, 1078, 1095, 1101, 1102.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

1984—Subsec. (a)(12). Pub. L. 98-369, § 2354(b)(30), struck out the second comma after "dental procedure".

Subsec. (b)(1). Pub. L. 98-369, § 2344(a), substituted "to be made promptly" for "to be made" and "has been or could be made under such a law" for "has been made under such a law", and added "In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such law, policy, plan, or insurance, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a law, policy, plan, or insurance."

Subsec. (b)(2)(B). Pub. L. 98-369, § 2344(b), substituted "has been or could be made under a plan" for "has been made under a plan", and added "In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan."

Subsec. (b)(3)(A)(i). Pub. L. 98-369, § 2301(a), struck out "over 64 but" before "under 70 years" in two places.

Subsec. (b)(3)(A)(ii). Pub. L. 98-369, § 2344(c), substituted "has been or could be made under a group health plan" for "has been made under a group health plan", and added "In order to recover payment made under this title for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this title for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan."

Subsec. (b)(3)(A)(iii). Pub. L. 98-369, § 2354(b)(31), added "before the month" after "ending with the month".

Subsec. (h). Pub. L. 98-369, § 2304(c), added subsec. (h).

Subsec. (i). Pub. L. 98-369, § 2313(c), added subsec. (i).

1983—Subsec. (a)(1)(A). Pub. L. 98-21, § 601(f)(1), inserted reference to subpar. (D).

Subsec. (a)(1)(D). Pub. L. 98-21, § 601(f)(2)-(4), added subpar. (D).

Subsec. (a)(14). Pub. L. 98-21, § 602(e), added par. (14).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2301(c)(1) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to items and services furnished on or after January 1, 1985."

Amendment by section 2304(c) of Pub. L. 98-369 applicable to pacemaker devices and leads implanted or removed on or after the effective date of final regulations promulgated to carry out such amendment, see section 2304(d) of Pub. L. 98-369, set out as a note below.

Section 2313(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395y and 1395ww of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Section 2344(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (b) of this section] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(30), (31) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 601(f) of Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

Amendment by section 602(e)(3) of Pub. L. 98-21, effective Oct. 1, 1983, see section 604(a)(2) of Pub. L.

98-21, set out as a note under section 1395ww of this title.

Pacemaker Reimbursement Review and Reform; Promulgation of Regulations; Effective Date of Pacemaker Registration

Section 2304(d) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall promulgate final regulations to carry out this section and the amendment made by this section [enacting subsec. (h) of this section and enacting a provision set out as a note under section 1395*l* of this title] prior to January 1, 1985, and the amendment made by subsection (c) [enacting subsec. (h) of this section] shall apply to pacemaker devices and leads implanted or removed on or after the effective date of such regulations."

Payment for Debridement of Mycotic Toenails

Section 2325 of Pub. L. 98-369 provided that: "The Secretary shall provide, pursuant to section 1862(a) of the Social Security Act [42 U.S.C. 1395y(a)], that payment will not be made under part B of title XVIII of such Act [42 U.S.C. 1395j et seq.] for a physician's debridement of mycotic toenails to the extent such debridement is performed for a patient more frequently than once every 60 days, unless the medical necessity for more frequent treatment is documented by the billing physician."

Interim Waiver in Certain Cases of Billing Rule for Items and Services Other Than Physicians' Services

Section 602(k) of Pub. L. 98-21 provided that: "The Secretary of Health and Human Services may, for any cost reporting period beginning prior to October 1, 1986, waive the requirements of sections 1862(a)(14) and 1866(a)(1)(H) of the Social Security Act [42 U.S.C. 1395y(a)(14), 1395cc(a)(1)(H)] in the case of a hospital which has followed a practice, since prior to October 1, 1982, of allowing direct billing under part B of title XVIII of such Act [42 U.S.C. 1395j et seq.] for services (other than physicians' services) so extensively, that immediate compliance with those requirements would threaten the stability of patient care. Any such waiver shall provide that such billing may continue to be made under part B of such title but that the payments to such hospital under part A of such title [42 U.S.C. 1395c et seq.] shall be reduced by the amount of the billings for such services under part B of such title. If such a waiver is granted, at the end of the waiver period the Secretary may provide for such methods of payments under part A as is appropriate, given the organizational structure of the institution."

Section Referred to in Other Sections

This section is referred to in sections 1320a-7a, 1320c, 1320c-3, 1320c-7, 1320c-8, 1395*l*, 1395p, 1395r, 1395u, 1395x, 1395cc, 1395gg, 1395oo, 1395pp, 1395ww, 1396b of this title; title 45 section 231f.

§ 1395z. Consultation with State agencies and other organizations to develop conditions of participation for providers of services

In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections (e)(9), (f)(4), (j)(15), (*o*)(6), (cc)(2)(I), and (dd)(2) of section 1395x of this title, or by ambulatory surgical centers under section 1395k(a)(2)(F)(i) of this title, the Secretary shall consult with appropriate State agencies and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of such subsections may be varied for different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a State plan approved under subchapter I, XVI, or XIX of this chapter, the Secretary shall impose like requirements as a condition to the payment for services (or for the services specified by the State or subdivision) in such institutions in such State or subdivision.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2335(c), 2349(b)(1), 2354(b)(32), 98 Stat. 1090, 1097, 1102.)

Amendments

1984—Pub. L. 98-369, § 2335(c), struck out "(g)(4)," after "(e)(9), (f)(4),".

Pub. L. 98-369, § 2354(b)(32), substituted "(j)(15)" for "(j)(11)".

Pub. L. 98-369, § 2349(b)(1), substituted "appropriate State agencies" for "the Health Insurance Benefits Advisory Council established by section 1395dd of this title, appropriate State agencies,".

Effective Date of 1984 Amendment

Amendment by section 2335(c) of Pub. L. 98-369 effective July 18, 1984, see section 2335(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Amendment by section 2349(b)(1) of Pub. L. 98-369 effective July 18, 1984, see section 2349(c) of Pub. L. 98-369, set out as a note under section 907a of this title.

Amendment by section 2354(b)(32) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

§ 1395aa. Agreements with States

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Use of State or local agencies to survey hospitals

The Secretary is authorized to enter into an agreement with any State under which the appropriate State or local agency which performs the certification function described in subsection (a) of this section will survey, on a selective sample basis (or where the Secretary finds that a survey is appropriate because of substantial allegations of the existence of a significant deficiency or deficiencies which would, if found to be present, adversely affect health and safety of patients), hospitals which have an agreement with the Secretary under section 1395cc of this title and which are accredited by the Joint Commission on Accreditation of Hospitals. The Secretary shall pay for such services in the manner prescribed in subsection (b) of this section.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(17), 98 Stat. 1101.)

Amendments

1984—Subsec. (c). Pub. L. 98-369 struck out "the" after "Joint Commission on".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

§ 1395bb. Effect of accreditation

(a) Except as provided in subsection (b) of this section and the second sentence of section 1395z of this title, if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2) such institution (if it is included within a survey described in section 1395aa(c) of this title) authorizes the Commission to release to the Secretary upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission,

then, such institution shall be deemed to meet the requirements of the numbered paragraphs of section 1395x(e) of this title; except—

[*See main edition for text of* (*3*) *and* (*4*)]

If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan (or imposes another requirement which serves substantially the same purpose) or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Commission comply also with section 1395x(e)(6) of this title or the standard described in such paragraph (4), as the case may be. In addition, if the Secretary finds that accreditation of an entity by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1395k(a)(2)(F)(i), 1395x(e), 1395x(f), 1395x(j), 1395x(*o*), 1395x(p)(4)(A) or (B), paragraphs (11) and (12) of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), or 1395x(dd)(2) of this title, as the case may be, are met, he may, to the extent he deems it appropriate, treat such entity as meeting the condition or conditions with respect to which he made such finding. The Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body.

[*See main edition for text of* (*b*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2345(a), 2346(a), 98 Stat. 1096.)

Amendments

1984—Subsec. (a). Pub. L. 98-369, § 2346(a), in provisions following par. (4), substituted "section 1395k(a)(2)(F)(i), 1395x(e), 1395x(f), 1395x(j), 1395x(*o*), 1395x(p)(4)(A) or (B), paragraphs (11) and (12) of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), or 1395x(dd)(2) of this title" for "section 1395x(e), (j), (*o*), or (dd) of this title", and substituted "entity" for "institution or agency" in two places.

Pub. L. 98-369, § 2345(a), struck out "(on a confidential basis)" after "release to the Secretary" in par. (2), and added provision that the Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body, in provisions following par. (4).

Effective Date of 1984 Amendment

Section 2345(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984], and shall apply with respect to surveys released to the Secretary on, before, or after such date."

Section 2346(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

§ 1395cc. Agreements with providers of services

(a) Filing of agreements; eligibility for payment; charges with respect to items and services

(1) Any provider of services (except a fund designated for purposes of section 1395f(g) and section 1395n(e) of this title) shall be qualified to participate under this subchapter and shall be eligible for payments under this subchapter if it files with the Secretary an agreement—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an agency or organization which serves as a fiscal intermediary or carrier (for purposes of part A or part B, or both, of this subchapter) with respect to the provider,

(E) to release data with respect to patients of such provider upon request to an organization having a contract with the Secretary under part B of subchapter XI of this chapter as may be necessary (i) to allow such organization to carry out its functions under such contract, or (ii) to allow such organization to carry out similar review functions under any contract the organization may have with a private or public agency paying for health care in the same area with respect to patients who authorize release of such data for such purposes,

(F) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b), (c), or (d) of section 1395ww of this title, to maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located, under which the organization will perform functions under that part with respect to the review of the validity of diagnostic information provided by such hospital, the completeness, adequacy, and quality of care provided, the appropriateness of admissions and discharges, and the appropriateness of care provided for which additional payments are sought under section 1395ww(d)(5) of this title, with respect to inpatient hospital services for which payment may be made under part A of this subchapter (and for purposes of payment under this subchapter, the cost of such agreement to the hospital shall be considered a cost incurred by such hospital in providing inpatient services under part A of this subchapter, and (i) shall be paid directly by the Secretary to such organization on behalf of such hospital in accordance with a rate per review established by the Secretary, (ii) shall be transferred from the Federal Hospital Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, (iii) shall be not less than an amount which reflects the rates per review established in fiscal year 1982 for both direct and administrative costs (adjusted for inflation), and (iv) shall not be less in the aggregate for a fiscal year than the aggregate amount expended in fiscal year 1982 for direct and administrative costs (adjusted for inflation)) [2] of such reviews,

(G) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b) or (d) of section 1395ww of this title, not to charge any individual or any other person for inpatient hospital services for which such individual would be entitled to have payment made under part A of this subchapter but for a denial or reduction of payments under section 1395ww(f)(2) of this title, and

(H) in the case of hospitals which provide inpatient hospital services for which payment may be made under this subchapter, to have all items and services (other than physicians' services as defined in regulations for purposes of section 1395y(a)(14) of this title) (i) that are furnished to an individual who is an inpatient of the hospital, and (ii) for which the individual is entitled to have payment made under this subchapter, furnished by the hospital or otherwise under arrangements (as defined in section 1395x(w)(1) of this title) made by the hospital.

In the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization's contract with the Secretary under part B of subchapter XI of this chapter is terminated on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

(2)(A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1395e(a)(1), (a)(3), or (a)(4), section 1395*l*(b), or section 1395x(y)(3) of this title with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B of this subchapter or which are durable medical equipment furnished as home health services (but in the case of items and services furnished to individuals with end-stage renal disease, an amount equal to 20 percent of the estimated amounts for such items and services calculated on the basis established by the Secretary). In the case of items and services described in section 1395*l*(c) of this title, clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section. A provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1395x(s)(10)(A) of this title and with respect to clinical diagnostic laboratory tests for which payment is made under part B of this subchapter.

(B) [*See main edition for text of* (*i*)]

(ii) Where a provider of services customarily furnishes an individual items or services which are more expensive than the items or services determined to be necessary in the efficient delivery of needed health services under this subchapter and which have not been requested by such individual, such provider may (except with respect to emergency services and except with respect to inpatient hospital costs with respect to which amounts are payable under section 1395ww(d) of this title) also charge such individual or other person for such more expensive items or services to the extent that the costs of (or, if less, the customary charges for) such more expensive items or services experienced by such provider in the second fiscal period immediately preceding the fiscal period in which such charges are imposed exceed the cost of such items or services determined to be necessary in the efficient delivery of needed health services, but only if—

[*See main edition for text of* (*I*) *and* (*II*), (*C*) *and* (*D*), (*3*)]

(b) Termination of agreements

An agreement with the Secretary under this section may be terminated—

[*See main edition for text of* (*1*) *and* (*2*)]

Any termination shall be applicable—

(3) in the case of inpatient hospital services (including inpatient psychiatric hospital services) or post-hospital extended care services, with respect to services furnished after the effective date of such termination, except that payment may be made for up to thirty days with respect to inpatient institutional services furnished to any eligible individual who was admitted to such institution prior to the effective date of such termination,

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[2] So in original.

(4)(A) with respect to home health services or hospice care furnished to an individual under a plan therefor established on or after the effective date of such termination, or (B) if a plan is established before such effective date, with respect to such services furnished to such individual more than 30 days after such effective date, and

[*See main edition for text of* (5); (c)]

(d) Decision to withhold payment for failure to review long-stay cases

If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1395x(k) of this title of long-stay cases in a hospital or skilled nursing facility, he may, in lieu of terminating his agreement with such hospital or facility, decide that, with respect to any individual admitted to such hospital or facility after a subsequent date specified by him, no payment shall be made under this subchapter for inpatient hospital services (including inpatient psychiatric hospital services) after the 20th day of a continuous period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, as the case may be. Such decision may be made effective only after such notice to the hospital, or (in the case of a skilled nursing facility) to the facility and the hospital or hospitals with which it has a transfer agreement, and to the public, as may be prescribed by regulations, and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

[*See main edition for text of* (*e*) *and* (*f*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(f), (*l*), 97 Stat. 163, 166; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2303(f), 2315(d), 2321(c), 2323(b)(3), 2335(d), 2347(a), 2348(a), 2354(b)(33), (34), 98 Stat. 1066, 1080, 1084, 1086, 1090, 1096, 1097, 1102.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (a), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (a)(1), is classified to section 1320c et seq. of this title.

AMENDMENTS

1984—Subsec. (a)(1)(E). Pub. L. 98-369, § 2354(b)(33), added a comma at the end.

Subsec. (a)(1)(F). Pub. L. 98-369, § 2315(d), substituted "(b), (c), or (d)" for "(c) or (d)".

Pub. L. 98-369, § 2347(a)(1), substituted "maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located, under which the organization" for "maintain an agreement with a utilization and quality control peer review organization (if there is such an organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located) under which the organization".

Pub. L. 98-369, § 2347(a)(2), repealed amendment made by Pub. L. 98-21, § 602(*l*)(1). See 1983 Amendment note below.

Subsec. (a)(2)(A). Pub. L. 98-369, § 2303(f), inserted "and with respect to clinical diagnostic laboratory tests" after "section 1395x(s)(10) of this title".

Pub. L. 98-369, § 2321(c), inserted "or which are durable medical equipment furnished as home health services" after "part B of this subchapter".

Pub. L. 98-369, § 2323(b)(3), substituted "section 1395x(s)(10)(A) of this title" for "section 1395x(s)(10) of this title".

Subsec. (b)(3). Pub. L. 98-369, § 2335(d)(1), substituted "(including inpatient psychiatric hospital services)" for "(including tuberculosis hospital services and inpatient psychiatric hospital services)".

Pub. L. 98-369, § 2354(b)(34), realigned margin of par. (3).

Subsec. (b)(4). Pub. L. 98-369, § 2348(a), substituted "more than 30 days after such effective date" for "after the calendar year in which such termination is effective".

Subsec. (d). Pub. L. 98-369, § 2335(d)(2), substituted "(including inpatient psychiatric hospital services)" for "(including inpatient tuberculosis hospital services and inpatient psychiatric hospital services)".

1983—Subsec. (a)(1). Pub. L. 98-21, § 602(*l*)(2), added provision at end of par. (1) that in the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization's contract with the Secretary under part B of subchapter XI terminates on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

Subsec. (a)(1)(F). Pub. L. 98-21, § 602(*l*)(1), which provided that, effective Oct. 1, 1984 subpar. (F) is amended by substituting "(with an organization" for "(if there is such an organization", was repealed by Pub. L. 98-369, § 2347(a)(2), effective July 18, 1984.

Subsec. (a)(1)(F) to (H). Pub. L. 98-21, § 602(f)(1), added subpars. (F) to (H).

Subsec. (a)(2)(B)(ii). Pub. L. 98-21, § 602(f)(2), added "and except with respect to inpatient hospital costs with respect to which amounts are payable under section 1395ww(d) of this title" after "(except with respect to emergency services)" in provision preceding subcl. (I).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2303(f) of Pub. L. 98-369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title, see section 2303(j)(1) and (3) of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

Amendment by section 2315(d) of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2315(g) of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendment note under section 1395ww of this title.

Amendment by section 2321(c) of Pub. L. 98-369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Amendment by section 2323(b)(3) of Pub. L. 98-369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

Amendment by section 2335(d) of Pub. L. 98-369 effective July 18, 1984, see section 2335(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Amendment by section 2347(a) of Pub. L. 98-369 effective July 18, 1984, see section 2347(d) of Pub. L. 98-369, set out as a note under section 1320c-2 of this title.

Section 2348(b) of Pub. L. 98-369 provided that: "The amendment made by this section [amending this section] shall apply to terminations issued on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(33), (34) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Effective Date of 1983 Amendments

Section 602(*l*) of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title III, § 2347(a)(2), July 18, 1984, 98 Stat. 1096, provided in part that the amendment by section 602(*l*) is effective Oct. 1, 1984.

Amendment by section 602(f)(2) of Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

Subsec. (a)(1)(F) to (H) of this section, as added by section 602(f)(1)(C) of Pub. L. 98-21, effective Oct. 1, 1983, see section 604(a)(2) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

Delay in Implementation of Requirement That Hospitals Maintain Agreements With Utilization and Quality Control Peer Review Organization

Section 2347(b) of Pub. L. 98-369 provided that: "Notwithstanding section 604(a)(2) of the Social Security Amendments of 1983 [section 604(a)(2) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 1395ww of this title], the requirement that a hospital maintain an agreement with a utilization and quality control peer review organization, as contained in section 1866(a)(1)(F) of the Social Security Act [subsec. (a)(1)(F) of this section], shall become effective on November 15, 1984."

Interim Waiver in Certain Cases of Billing Rule for Items and Services Other Than Physicians' Services

For authority to waive the requirements of subsec. (a)(1)(H) of this section for any cost period prior to Oct. 1, 1986, where immediate compliance would threaten the stability of patient care, see section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title.

Section Referred to in Other Sections

This section is referred to in sections 1320a-7, 1320a-7a, 1395e, 1395f, 1395*l*, 1395n, 1395x, 1395y, 1395aa, 1395ff, 1395tt, 1395vv, 1395ww, 1396b, 1396i, 1396m of this title.

§ 1395dd. Repealed. Pub. L. 98-369, div. B, title III, § 2349(a), July 18, 1984, 98 Stat. 1097

Section, acts Aug. 14, 1935, ch. 531, title XVIII, § 1867, as added July 30, 1965, Pub. L. 89-97, title I, § 102(a), 79 Stat. 329, and amended Jan. 2, 1968, Pub. L. 90-248, title I, § 164(a), 81 Stat. 873; Oct. 30, 1972, Pub. L. 92-603, title II, § 288, 86 Stat. 1457, related to creation, composition, meetings, and functions of the Health Insurance Benefits Advisory Council and the appointment of a Chairman and members thereto, and qualifications, terms of office, compensation, and reimbursement of travel expenses of members.

Effective Date of Repeal

Repeal of section effective July 18, 1984, see section 2349(c) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 907a of this title.

§ 1395ff. Determinations of Secretary

[*See main edition for text of* (a)]

(b) Appeal by individuals

(1) Any individual dissatisfied with any determination under subsection (a) of this section as to—

(A) whether he meets the conditions of section 426 or section 426a of this title, or

(B) whether he is eligible to enroll and has enrolled pursuant to the provisions of part B of this subchapter or section 1395i-2 of this title, or

(C) the amount of benefits under part A of this subchapter (including a determination where such amount is determined to be zero)

shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.

[*See main edition for text of* (2); (c)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(35), 98 Stat. 1102.)

References in Text

Parts A and B of this subchapter, referred to in subsecs. (a) and (b)(1), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Amendments

1984—Subsec. (b)(1)(B). Pub. L. 98-369 deleted the comma before "or section 1395i-2" and struck out ", or section 1819" after "section 1395i-2 of this title".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

§ 1395gg. Payment on behalf of individuals

Section Referred to in Other Sections

This section is referred to in sections 1395i, 1395*l*, 1395t, 1395u of this title; title 2 section 906.

§ 1395ii. Application of certain provisions of subchapter II

The provisions of sections 406 and 416(j) of this title, and of subsections (a), (d), (e), (h), (i), (j), (k), and (*l*) of section 405 of this title, shall also apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(36), 98 Stat. 1102.)

AMENDMENTS

1984—Pub. L. 98-369 struck out the comma after "406" and struck out reference to subsec. (f) of section 405 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

§ 1395*ll*. Studies and recommendations

[*See main edition for text of* (*a*)]

(b) The Secretary shall make a continuing study of the operation and administration of the insurance programs under parts A and B of this subchapter (including a validation of the accreditation process of the Joint Commission on Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 1395mm of this title, the experiments and demonstration projects authorized by section 1395b-1 of this title and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972), and shall transmit to the Congress annually a report concerning the operation of such programs.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(17), 98 Stat. 1101.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 struck out "the" after "Joint Commission on".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

§ 1395mm. Payments to health maintenance organizations and competitive medical plans

(a) Rates and adjustments

(1)(A) The Secretary shall annually determine—

(i) a per capita rate of payment for each class of individuals who are enrolled under this section with an eligible organization which has entered into a risk-sharing contract and who are entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, and

(ii) a per capita rate of payment for each class of individuals who are so enrolled with such an organization and who are enrolled under part B of this subchapter only.

For purposes of this section, the term "risk-sharing contract" means a contract entered into under subsection (g) of this section and the term "reasonable cost reimbursement contract" means a contract entered into under subsection (h) of this section.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The annual per capita rate of payment for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in paragraph (4)) for that class.

(D) In the case of an eligible organization with a risk-sharing contract, the Secretary shall make monthly payments in advance and in accordance with the rate determined under subparagraph (C) and except as provided in subsection (g)(2) of this section, to the organization for each individual enrolled with the organization under this section.

(E) The amount of payment under this paragraph may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(2) With respect to any eligible organization which has entered into a reasonable cost reimbursement contract, payments shall be made to such plan in accordance with subsection (h)(2) of this section rather than paragraph (1).

(3) Payments under a contract to an eligible organization under paragraph (1) or (2) shall be instead of the amounts which (in the absence of the contract) would be otherwise payable, pursuant to sections 1395f(b) and 1395l(a) of this title, for services furnished by or through the organization to individuals enrolled with the organization under this section.

(4) For purposes of this section, the term "adjusted average per capita cost" means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for services covered under parts A and B of this subchapter, or part B only, and types of expenses otherwise reimbursable under parts A and B of this subchapter, or part B only (including administrative costs incurred by organizations described in sections 1395h and 1395u of this title), if the services were to be furnished by other than an eligible organization or, in the case of services covered only under section 1395x(s)(2)(H) of this title, if the services were to be furnished by a physician or as an incident to a physician's service.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A of this sub-

chapter and enrolled under part B of this subchapter shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The portion of that payment to the organization for a month to be paid by the latter trust fund shall be equal to 200 percent of the sum of—

(A) the product of (i) the number of such individuals for the month who have attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1395r(a)(1) of this title, and

(B) the product of (i) the number of such individuals for the month who have not attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1395r(a)(4) of this title.

The remainder of that payment shall be paid by the former trust fund.

(6) If an individual is enrolled under this section with an eligible organization having a risk-sharing contract, only the eligible organization shall be entitled to receive payments from the Secretary under this subchapter for services furnished to the individual.

(b) Definitions; requirements

For purposes of this section, the term "eligible organization" means a public or private entity (which may be a health maintenance organization or a competitive medical plan), organized under the laws of any State, which—

(1) is a qualified health maintenance organization (as defined in section 300e–9(d) of this title), or

(2) meets the following requirements:

(A) The entity provides to enrolled members at least the following health care services:

(i) Physicians' services performed by physicians (as defined in section 1395x(r)(1) of this title).

(ii) Inpatient hospital services.

(iii) Laboratory, X-ray, emergency, and preventive services.

(iv) Out-of-area coverage.

(B) The entity is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.

(C) The entity provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(D) The entity assumes full financial risk on a prospective basis for the provision of the health care services listed in subparagraph (A), except that such entity may—

(i) obtain insurance or make other arrangements for the cost of providing to any enrolled member health care services listed in subparagraph (A) the aggregate value of which exceeds $5,000 in any year,

(ii) obtain insurance or make other arrangements for the cost of health care service listed in subparagraph (A) provided to its enrolled members other than through the entity because medical necessity required their provision before they could be secured through the entity,

(iii) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

(iv) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

(E) The entity has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

Paragraph (2)(A)(ii) shall not apply to an entity which had contracted with a single State agency administering a State plan approved under subchapter XIX of this chapter for the provision of services (other than inpatient hospital services) to individuals eligible for such services under such State plan on a prepaid risk basis prior to 1970.

(c) Enrollment in plan; duties of organization to enrollees

(1) The Secretary may not enter into a contract under this section with an eligible organization unless it meets the requirements of this subsection and subsection (e) of this section with respect to members enrolled under this section.

(2) The organization must provide to members enrolled under this section, through providers and other persons that meet the applicable requirements of this subchapter and part A of subchapter XI of this chapter—

(A) only those services covered under parts A and B of this subchapter, for those members entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or

(B) only those services covered under part B of this subchapter, for those members enrolled only under such part,

which are available to individuals residing in the geographic area served by the organization, except that (i) the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered, and (ii) in the case of an organization with a risk-sharing contract, the organization may provide such members with such additional health care services as the Secretary may approve. The Secretary shall approve any such additional health care services which the organization proposes to offer to such members, unless the Secretary determines that including such additional services will substantially discourage enrollment by covered individuals with the organization.

(3)(A)(i) Each eligible organization must have an open enrollment period, for the enrollment of individuals under this section, of at least 30 days duration every year and including the 30-day period specified under clause (ii), and must provide that at any time during which enrollments are accepted, the organization will accept up to the limits of its capacity (as determined by the Secretary) and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (d) of this section in the order in which they apply for enrollment, unless to do so would result in failure to meet the requirements of subsection (f) of this section or would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the population in the geographic area served by the organization.

(ii) For each area served by more than one eligible organization under this section, the Secretary (after consultation with such organizations) shall establish a single 30-day period each year during which all eligible organizations serving the area must provide for open enrollment under this section. The Secretary shall determine annual per capita rates under subsection (a)(1)(A) of this section in a manner that assures that individuals enrolling during such a 30-day period will not have premium charges increased or any additional benefits decreased for 12 months beginning on the date the individual's enrollment becomes effective. An eligible organization may provide for such other open enrollment period or periods as it deems appropriate consistent with this section.

(B) An individual may enroll under this section with an eligible organization in such manner as may be prescribed in regulations and may terminate his enrollment with the eligible organization as of the beginning of the first calendar month following a full calendar month after the request is made for such termination (or, in the case of financial insolvency of the organization, as may be prescribed by regulations) or, in the case of such an organization with a reasonable cost reimbursement contract, as may be prescribed by regulations.

(C) The Secretary may prescribe the procedures and conditions under which an eligible organization that has entered into a contract with the Secretary under this subsection may inform individuals eligible to enroll under this section with the organization about the organization, or may enroll such individuals with the organization.

(D) The organization must provide assurances to the Secretary that it will not expel or refuse to re-enroll any such individual because of the individual's health status or requirements for health care services, and that it will notify each such individual of such fact at the time of the individual's enrollment.

(4) The organization must—

(A) make the services described in paragraph (2) (and such other health care services as such individuals have contracted for) (i) available and accessible to each such individual, within the area served by the organization, with reasonable promptness and in a manner which assures continuity, and (ii) when medically necessary, available and accessible twenty-four hours a day and seven days a week, and

(B) provide for reimbursement with respect to services which are described in subparagraph (A) and which are provided to such an individual other than through the organization, if (i) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition and (ii) it was not reasonable given the circumstances to obtain the services through the organization.

(5)(A) The organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and members enrolled with the organization under this section.

(B) A member enrolled with an eligible organization under this section who is dissatisfied by reason of his failure to receive any health service to which he believes he is entitled and at no greater charge than he believes he is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 405(b) of this title, and in any such hearing the Secretary shall make the eligible organization a party. If the amount in controversy is $1,000 or more, the individual or eligible organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 405(g) of this title, and both the individual and the eligible organization shall be entitled to be parties to that judicial review.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals, which program (A) stresses health outcomes and (B) provides review by physicians and other health care professionals of the process followed in the provision of such health care services.

(d) Right to enroll with contracting organization in geographic area

Subject to the provisions of subsection (c)(3) of this section, every individual entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter or enrolled under part B of this subchapter only (other than an individual medically determined to have end-stage renal disease) shall be eligible to enroll under this section with any eligible organization with which the Secretary has entered into a contract under this section and which serves the geographic area in which the individual resides.

(e) Limitation on charges; election of coverage; "adjusted community rate" defined; workmen's compensation and insurance benefits

(1) In no case may—

(A) the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under parts A and B of this subchapter) to individuals who are enrolled under this section with the organization and who are entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or

(B) the portion of its premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under part B of this subchapter) to individuals who are enrolled under this section with the organization and enrolled under part B of this subchapter only

exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or enrolled under part B only, respectively, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to services covered under parts A and B of this subchapter, election of coverage for such additional services (unless such services have been approved by the Secretary under subsection (c)(2) of this section) shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services.

(3) For purposes of this section, the term "adjusted community rate" for a service or services means, at the election of an eligible organization, either—

(A) the rate of payment for that service or services which the Secretary annually determines would apply to a member enrolled under this section with an eligible organization if the rate of payment were determined under a "community rating system" (as defined in section 300e-1(8) of this title, other than subparagraph (C)), or

(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to a member enrolled under this section with the eligible organization, as the Secretary annually estimates is attributable to that service or services,

but adjusted for differences between the utilization characteristics of the members enrolled with the eligible organization under this section and the utilization characteristics of the other members of the organization (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of members in other eligible organizations, or individuals in the area, in the State, or in the United States, eligible to enroll under this section with an eligible organization and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

(4) Notwithstanding any other provision of law, the eligible organization may (in the case of the provision of services to a member enrolled under this section for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or plan of the United States or a State, under an automobile or liability insurance policy or plan, including a self-insured plan, or under no fault insurance) charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law or policy—

(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

(B) such member to the extent that the member has been paid under such law, plan, or policy for such services.

(f) Membership requirements

(1) Each eligible organization with which the Secretary enters into a contract under this section shall have, for the duration of such contract, an enrolled membership at least one-half of which consists of individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.

(2) The Secretary may modify or waive the requirement imposed by paragraph (1) only if the Secretary determines that—

(A) special circumstances warrant such modification or waiver, and

(B) the eligible organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.

(g) Risk-sharing contract

(1) The Secretary may enter a risk-sharing contract with any eligible organization, as defined in subsection (b) of this section, which has at least 5,000 members, except that the Secretary may enter into such a contract with an eligible organization that has fewer members if the organization primarily serves members residing outside of urbanized areas.

(2) Each risk-sharing contract shall provide that—

(A) if the adjusted community rate, as defined in subsection (e)(3) of this section, for services under parts A and B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or

(B) if the adjusted community rate for services under part B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under that part) for members enrolled under this section with the organization and entitled to benefits under part B of this subchapter only

is less than the average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of an annual contract period for members enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively, the eligible organization shall provide to members enrolled under a risk-sharing contract under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively, the additional benefits described in paragraph (3) which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced); except that this paragraph shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced) and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5). If the Secretary finds that there is insufficient enrollment experience to determine an average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this section.

(3) The additional benefits referred to in paragraph (2) are—

(A) the reduction of the premium rate or other charges made with respect to services furnished by the organization to members enrolled under this section, or

(B) the provision of additional health benefits,

or both.

(4) A risk-sharing contract under this subsection may, at the option of an eligible organization, provide that the Secretary—

(A) will reimburse hospitals and skilled nursing facilities either for payment amounts determined in accordance with section 1395ww of this title, or, if applicable, for the reasonable cost (as determined under section 1395x(v) of this title) or other appropriate basis for payment established under this subchapter, of inpatient services furnished to individuals enrolled with such organization pursuant to subsection (d) of this section, and

(B) will deduct the amount of such reimbursement for payment which would otherwise be made to such organization.

(5) An organization having a risk-sharing contract under this section may (with the approval of the Secretary and during a period of not longer than four years) provide that a part of the value of additional benefits otherwise required to be provided by reason of paragraph (2) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with paragraph (3). Any of such value of additional benefits which is not provided to members of the organization in accordance with paragraph (3) prior to the end of such period, shall revert for the use of such trust funds.

(h) Reasonable cost reimbursement contract; requirements

(1) If—

(A) the Secretary is not satisfied that an eligible organization has the capacity to bear the risk of potential losses under a risk-sharing contract under this section, or

(B) the eligible organization so elects or has an insufficient number of members to be eligible to enter into a risk-sharing contract under subsection (g)(1) of this section,

the Secretary may, if he is otherwise satisfied that the eligible organization is able to perform its contractual obligations effectively and efficiently, enter into a contract with such organization pursuant to which such organization is reimbursed on the basis of its reasonable cost (as defined in section 1395x(v) of this title) in the manner prescribed in paragraph (3).

(2) A reasonable cost reimbursement contract under this subsection may, at the option of such organization, provide that the Secretary—

(A) will reimburse hospitals and skilled nursing facilities either for the reasonable cost (as determined under section 1395x(v) of this title) or for payment amounts determined in accordance with section 1395ww of this title, as applicable, of services furnished to individuals enrolled with such organization pursuant to subsection (d) of this section, and

(B) will deduct the amount of such reimbursement from payment which would otherwise be made to such organization.

If such an eligible organization pays a hospital or skilled nursing facility directly, the amount paid shall not exceed the reasonable cost of the services (as determined under section 1395x(v) of this title) or the amount determined under section 1395ww of this title, as applicable, unless such organization demonstrates to the satisfaction of the Secretary that such excess payments are justified on the basis of advantages gained by the organization.

(3) Payments made to an organization with a reasonable cost reimbursement contract shall be subject to appropriate retroactive corrective adjustment at the end of each contract year so as to assure that such organization is paid for the reasonable cost actually incurred (excluding any part of incurred cost found to be unnecessary in the efficient delivery of health services) or the amounts otherwise determined under section 1395ww of this title for the types of expenses otherwise reimbursable under this subchapter for providing services covered under this subchapter to individuals described in subsection (a)(1) of this section.

(4) Any reasonable cost reimbursement contract with an eligible organization under this subsection shall provide that the Secretary shall require, at such time following the expiration of each accounting period of the eligible organization (and in such form and in such detail) as he may prescribe—

(A) that the organization report to him in an independently certified financial statement its per capita incurred cost based on the types of components of expenses otherwise reimbursable under this subchapter for providing services described in subsection (a)(1) of this section, including therein, in accordance with accounting procedures prescribed by the Secretary, its methods of allocating costs between individuals enrolled under this section and other individuals enrolled with such organization;

(B) that failure to report such information as may be required may be deemed to constitute evidence of likely overpayment on the basis of which appropriate collection action may be taken;

(C) that in any case in which an eligible organization is related to another organization by common ownership or control, a consolidated financial statement shall be filed and that the allowable costs for such organization may not include costs for the types of expense otherwise reimbursable under this subchapter, in excess of those which would be determined to be reasonable in accordance with regulations (providing for limiting reimbursement to costs rather than charges to the eligible organization by related organizations and owners) issued by the Secretary; and

(D) that in any case in which compensation is paid by an eligible organization substantially in excess of what is normally paid for similar services by similar practitioners (regardless of method of compensation), such compensation may as appropriate be considered to constitute a distribution of profits.

(i) Duration, termination, effective date, and terms of contract; powers and duties of Secretary

(1) Each contract under this section shall be for a term of at least one year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the eligible organization involved as he may provide in regulations), if he finds that the organization—

(A) has failed substantially to carry out the contract,

(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this section, or

(C) no longer substantially meets the applicable conditions of subsections (b), (c), and (e) of this section.

(2) The effective date of any contract executed pursuant to this section shall be specified in the contract.

(3) Each contract under this section—

(A) shall provide that the Secretary, or any person or organization designated by him—

(i) shall have the right to inspect or otherwise evaluate (I) the quality, appropriateness, and timeliness of services performed under the contract and (II) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

(ii) shall have the right to audit and inspect any books and records of the eligible organization that pertain (I) to the ability of the organization to bear the risk of potential financial losses, or (II) to services performed or determinations of amounts payable under the contract;

(B) shall require the organization with a risk-sharing contract to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this subchapter, to each individual enrolled under this section with the organization; and

(C) shall require the organization to comply with subsections (a) and (c) of section 300e-17 of this title (relating to disclosure of certain financial information) and with the requirement of section 300e(c)(8) of this title (relating to liability arrangements to protect members); and

(D) shall contain such other terms and conditions not inconsistent with this section (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

(4) The Secretary may not enter into a risk-sharing contract with an eligible organization if a previous risk-sharing contract with that organization under this section was terminated at the request of the organization within the preceding five-year period, except in circumstances which warrant special consideration, as determined by the Secretary.

(5) The authority vested in the Secretary by this section may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or

modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this subchapter.

(As amended Sept. 3, 1982, Pub. L. 97-248, title I, § 114(a), 96 Stat. 341; Jan. 12, 1983, Pub. L. 97-448, title III, § 309(b)(12), 96 Stat. 2409; Apr. 20, 1983, Pub. L. 98-21, title VI, §§ 602(g), 606(a)(3)(H), 97 Stat. 164, 171; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2350(a)(1), (b)(1), (2), (c), 2354(b)(37), (38), 98 Stat. 1097, 1098, 1102.)

References in Text

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part A of subchapter XI of this chapter, referred to in subsec. (c)(2), is classified to section 1301 et seq. of this title.

Amendments

1984—Subsec. (b)(2)(D). Pub. L. 98-369, § 2354(b)(37), substituted "subparagraph (A)" for "paragraph (1)".

Subsec. (c)(3)(A). Pub. L. 98-369, § 2350(a)(1), designated existing provisions as cl. (i), added therein "and including the 30-day period specified under clause (ii)" after "30 days duration every year", and added cl. (ii).

Subsec. (c)(4)(A)(i). Pub. L. 98-369, § 2354(b)(38), substituted "with reasonable promptness" for "promptly as appropriate".

Subsec. (g)(2). Pub. L. 98-369, § 2350(b)(1), added "and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5)" at end of first sentence.

Subsec. (g)(4)(A). Pub. L. 98-369, § 2350(c), added "and skilled nursing facilities" after "hospitals", added "or the appropriate basis for payment established under this subchapter" after "section 1395x(v) of this title)", and struck out "hospital" before "services furnished to individuals".

Subsec. (g)(5). Pub. L. 98-369, § 2350(b)(2), added par. (5).

1983—Subsec. (a)(5)(A)(ii), (B)(ii). Pub. L. 98-21, § 606(a)(3)(H), substituted "1395r(a)(1)" for "1395r(c)(1)".

Subsec. (g)(1). Pub. L. 97-448 substituted "subsection (b)" for "subsection (b)(1)".

Subsec. (g)(4). Pub. L. 98-21, § 602(g), added par. (4).

1982—Pub. L. 97-248 completely revised section, expanding its coverage to permit payments to both health maintenance organizations and competitive medical plans.

Effective Date of 1984 Amendment

Section 2350(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsecs. (c) and (g) of this section and enacting provisions set out as notes under this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(37), (38) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Effective Date of 1983 Amendments; Transitional Rule

Amendment by section 602 of Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

Amendment by section 606 of Pub. L. 98-21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98-21, set out as a note under section 1395r of this title.

Amendment by section 309(b)(12) of Pub. L. 97-448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, see section 309(c)(2) of Pub. L. 97-448, set out as a note under section 426-1 of this title.

Effective Date of 1982 Amendment

Section 114(c) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. B, title III, § 2354(c)(3)(A), (B), July 18, 1984, 98 Stat. 1102; Pub. L. 98-617, § 3(a)(5), Nov. 8, 1984, 98 Stat. 3295, provided that:

[*See main edition for text of* (*1*)]

"(2) [*See main edition for text of* (*A*) *and* (*B*)]

"(C) For purposes of this paragraph, the term 'current, nonrisk medicare enrollee' means, with respect to an organization, an individual who on the initial effective date—

"(i) is enrolled with that organization under an existing cost contract, and

"(ii) is entitled to benefits under part A and enrolled under part B, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter].

[*See main edition for text of* (*D*)]

"(3) For purposes of this subsection:

[*See main edition for text of* (*A*) *to* (*D*)]

"(E) The term 'reasonable cost reimbursement contract' means a contract entered into under section 1876(h) of such Act [subsec. (h) of this section], as amended by this Act, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title].

"(4) As used in this section, the term 'initial effective date' means—

"(A) the first day of the thirteenth month which begins after the date of the enactment of this Act [Sept. 3, 1982], or

"(B) the first day of the first month [Feb. 1, 1985] after the month in which the Secretary of Health and Human Services notifies the Committee on Finance of the Senate and the Committees on Ways and Means and on Energy and Commerce of the House of Representatives that he is reasonably certain that the methodology to make appropriate adjustments (referred to in section 1876(a)(4) of the Social Security Act [subsec. (a)(4) of this section], as amended by this Act [Pub. L. 97-248]) has been developed and can be implemented to assure actuarial equivalence in the estimation of adjusted average per capita costs under that section,

whichever is later."

Phase-in of Enrollment Period by Secretary

Section 2350(a)(2) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services may phase in, over a period of not longer than three years, the application of the amendments made by paragraph (1) [amending subsec. (c)(3)(A) of this section] to all applicable areas in the United States if the Secretary determines that it is not administratively feasible to establish a single 30-day open enrollment period for all such applicable areas before the end of the period."

STABILIZATION FUND; ESTABLISHMENT LIMITATION

Section 2350(b)(3) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services may not approve the establishment of a stabilization fund by an eligible organization under section 1876(g)(5) of the Social Security Act [42 U.S.C. 1395mm(g)(5)] for any contract period beginning later than four years after the date of the enactment of this Act [July 18, 1984]."

STABILIZATION FUND; USES; REPORT TO CONGRESS

Section 2350(b)(4) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall report to the Congress with respect to the use of stabilization funds by eligible organizations under section 1876(g)(5) of the Social Security Act [42 U.S.C. 1395mm(g)(5)], and shall assess the need for such funds. The report shall be submitted not later than 54 months after the month in which this Act is enacted [July 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a-1, 1320c-2, 1395f, 1395*l*, 1395x, 1395*ll*, 1395ww of this title; title 2 section 906.

§ 1395nn. Offenses and penalties

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Violation of assignment terms

Whoever accepts assignments described in section 1395u(b)(3)(B)(ii) of this title or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title and knowingly, willfully, and repeatedly violates the term of such assignments or agreement, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $2,000 or imprisoned for not more than six months, or both.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2306(f)(2), 98 Stat. 1073.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 inserted "or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title" after "section 1395u(b)(3)(B)(ii) of this title", and substituted "or agreement" for "specified in subclause (I) of such section".

§ 1395*oo*. Provider Reimbursement Review Board

(a) Establishment

Any provider of services which has filed a required cost report within the time specified in regulations may obtain a hearing with respect to such cost report by a Provider Reimbursement Review Board (hereinafter referred to as the "Board") which shall be established by the Secretary in accordance with subsection (h) of this section and (except as provided in subsection (g)(2) of this section) any hospital which receives payments in amounts computed under subsection (b) or (d) of section 1395ww of this title and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board, if—

(*1*) *such provider*—

(A)(i) is dissatisfied with a final determination of the organization serving as its fiscal intermediary pursuant to section 1395h of this title as to the amount of total program reimbursement due the provider for the items and services furnished to individuals for which payment may be made under this subchapter for the period covered by such report, or

(ii) is dissatisfied with a final determination of the Secretary as to the amount of the payment under subsection (b) or (d) of section 1395ww of this title,

[*See main edition for text of* (*B*) *and* (*C*), (*2*)]

(3) such provider files a request for a hearing within 180 days after notice of the intermediary's final determination under paragraph (1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination, or with respect to appeals pursuant to paragraph (1) (B) or (C), within 180 days after notice of such determination would have been received if such determination had been made on a timely basis.

[*See main edition for text of* (*b*)]

(c) Right to counsel; rules of evidence

At such hearing, the provider of services shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Evidence may be received at any such hearing even though inadmissible under rules of evidence applicable to court procedure.

[*See main edition for text of* (*d*)]

(e) Rules and regulations

The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this subchapter or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this section. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d) and (e) of section 405 of this title with respect to subpenas shall apply to the Board to the same extent as they apply to the Secretary with respect to subchapter II of this chapter.

(f) Finality of decision; judicial review; determinations of Board authority; jurisdiction; venue; interest on amount in controversy

(1) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the provider of services is notified of the Board's decision, reverses, affirms, or modifies the Board's decision. Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmance, or modification by the Secretary is received. Providers shall also have the right to obtain judicial review of any action of the fiscal

intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which notification of such determination is received. If a provider of services may obtain a hearing under subsection (a) of this section and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority to decide the question of law or regulations relevant to the matters in controversy (accompanied by such documents and materials as the Board shall require for purposes of rendering such determination). The Board shall render such determination in writing within thirty days after the Board receives the request and such accompanying documents and materials, and the determination shall be considered a final decision and not subject to review by the Secretary. If the Board fails to render such determination within such period, the provider may bring a civil action (within sixty days of the end of such period) with respect to the matter in controversy contained in such request for a hearing. Such action shall be brought in the district court of the United States for the judicial district in which the provider is located (or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located) or in the District Court for the District of Columbia and shall be tried pursuant to the applicable provisions under chapter 7 of title 5 notwithstanding any other provisions in section 405 of this title. Any appeal to the Board or action for judicial review by providers which are under common ownership or control or which have obtained a hearing under subsection (b) of this section must be brought by such providers as a group with respect to any matter involving an issue common to such providers.

[*See main edition for text of (2) and (3)*]

(g) Certain findings not reviewable

(1) The finding of a fiscal intermediary that no payment may be made under this subchapter for any expenses incurred for items or services furnished to an individual because such items or services are listed in section 1395y of this title shall not be reviewed by the Board, or by any court pursuant to an action brought under subsection (f) of this section.

(2) The determinations and other decisions described in section 1395ww(d)(7) of this title shall not be reviewed by the Board or by any court pursuant to an action brought under subsection (f) of this section or otherwise.

(h) Composition and compensation

The Board shall be composed of five members appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive services. Two of such members shall be representative of providers of services. All of the members of the Board shall be persons knowledgeable in the field of payment of providers of services, and at least one of them shall be a certified public accountant. Members of the Board shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the rate specified (at the time the service involved is rendered by such members) for grade GS-18 in section 5332 of title 5. The term of office shall be three years, except that the Secretary shall appoint the initial members of the Board for shorter terms to the extent necessary to permit staggered terms of office.

[*See main edition for text of (i)*]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(h), 97 Stat. 165; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2351(a)(1), (b)(1), 2354(b)(39), (40), 98 Stat. 1098, 1099, 1102.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 2354(b)(39), substituted "inadmissible" for "inadmissable".

Subsec. (e). Pub. L. 98-369, § 2354(b)(40), substituted "and (e)" for ", (e), and (f)".

Subsec. (f)(1). Pub. L. 98-369, § 2351(a)(1), substituted "notification of such determination is received" for "such determination is rendered" in third sentence.

Pub. L. 98-369, § 2351(b)(1), added "or which have obtained a hearing under subsection (b) of this section" after "common ownership or control" in last sentence.

1983—Subsec. (a). Pub. L. 98-21, § 602(h)(1)(A), added provision in matter preceding par. (1) that, except as provided in subsec. (g)(2) of this section, any hospital which receives payments in amounts computed under section 1395ww(b) or (d) of this title and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board.

Subsec. (a)(1)(A). Pub. L. 98-21, § 602(h)(1)(B), (C), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(3). Pub. L. 98-21, § 602(h)(1)(D), substituted "(1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination," for "(1)(A)".

Subsec. (f)(1). Pub. L. 98-21, § 602(h)(2), added "(or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located)" after "the judicial district in which the provider is located", and "Any appeal to the Board or action for judicial review by providers which are under common ownership or control must be brought by such providers as a group with respect to any matter involving an issue common to such providers."

Subsec. (g). Pub. L. 98-21, § 602(h)(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 98-21, § 602(h)(4), substituted "payment of providers of services" for "cost reimbursement".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2351(a)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective with respect to any civil action commenced on or after the date of the enactment of this Act [July 18, 1984]."

Section 2351(b)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(39), (40) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title. See, also, section 2351(c) of Pub. L. 98-369, set out as a note below.

Review of Provider Reimbursement Review Board Decisions

Section 2351(c) of Pub. L. 98-369 provided that: "Notwithstanding section 604 of the Social Security Amendments of 1983 (Public Law 98-21) [set out as an Effective Date of 1983 Amendments note under section 1395ww of this title]—

"(1) the amendments made by section 602(h)(2)(A) of that Act [amending this section] shall be effective with respect to any appeal or action brought on or after April 20, 1983; and

"(2) the amendments made by section 602(h)(2)(B) of that Act [amending this section] shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act [July 18, 1984]."

Section Referred to in Other Sections

This section is referred to in sections 1395h, 1395rr, 1395ww of this title.

§ 1395rr. End stage renal disease program

(a) Type, duration, and scope of benefits

The benefits provided by parts A and B of this subchapter shall include benefits for individuals who have been determined to have end stage renal disease as provided in section 426-1 of this title, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this subchapter, the type, duration, and scope of the benefit provided by parts A and B of this subchapter with respect to individuals who have been determined to have end stage renal disease and who are entitled to such benefits without regard to section 426-1 of this title shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

(b) Payments with respect to services; dialysis; regulations; physicians' services; target reimbursement rates; home dialysis supplies and equipment; self-care home dialysis support services; self-care dialysis units; hepatitis B vaccine

(1) Payments under this subchapter with respect to services, in addition to services for which payment would otherwise be made under this subchapter, furnished to individuals who have been determined to have end stage renal disease shall include (A) payments on behalf of such individuals to providers of services and renal dialysis facilities which meet such requirements as the Secretary shall by regulation prescribe for institutional dialysis services and supplies (including self-dialysis services in a self-care dialysis unit maintained by the provider or facility), transplantation services, self-care home dialysis support services which are furnished by the provider or facility, and routine professional services performed by a physician during a maintenance dialysis episode if payments for his other professional services furnished to an individual who has end stage renal disease are made on the basis specified in paragraph (3)(A) of this subsection, and (B) payments to or on behalf of such individuals for home dialysis supplies and equipment. The requirements prescribed by the Secretary under subparagraph (A) shall include requirements for a minimum utilization rate for covered procedures and for self-dialysis training programs.

(2)(A) With respect to payments for dialysis services furnished by providers of services and renal dialysis facilities to individuals determined to have end stage renal disease for which payments may be made under part B of this subchapter, such payments (unless otherwise provided in this section) shall be equal to 80 percent of the amounts determined in accordance with subparagraph (B); and with respect to payments for services for which payments may be made under part A of this subchapter, the amounts of such payments (which amounts shall not exceed, in respect to costs in procuring organs attributable to payments made to an organ procurement agency or histocompatibility laboratory, the costs incurred by that agency or laboratory) shall be determined in accordance with section 1395x(v) of this title or section 1395ww of this title (if applicable). Payments shall be made to a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services, except for payment by the individual of 20 percent of the estimated amounts for such services calculated on the basis established by the Secretary under subparagraph (B) and the deductible amount imposed by section 1395*l*(b) of this title.

(B) The Secretary shall prescribe in regulations any methods and procedures to (i) determine the costs incurred by providers of services and renal dialysis facilities in furnishing covered services to individuals determined to have end stage renal disease, and (ii) determine, on a cost-related basis or other economical and equitable basis (including any basis authorized under section 1395x(v) of this title) and consistent with any regulations promulgated under paragraph (7), the amounts of payments to be made for part B services furnished by such providers and facilities to such individuals.

[*See main edition for text of* (*C*) *and* (*D*)]

(3) With respect to payments for physicians' services furnished to individuals determined to have end stage renal disease, the Secretary shall pay 80 percent of the amounts calculated for such services—

[*See main edition for text of* (*A*) *and* (*B*), (*4*) *to* (*7*)]

(8) For purposes of this subchapter, the term "home dialysis supplies and equipment" means medically necessary supplies and equipment

(including supportive equipment) required by an individual suffering from end stage renal disease in connection with renal dialysis carried out in his home (as defined in regulations), including obtaining, installing, and maintaining such equipment.

[*See main edition for text of* (9) *and* (10)]

(11) Hepatitis B vaccine and its administration, when provided to a patient determined to have end stage renal disease, shall not be included as dialysis services for purposes of payment under any prospective payment amount or comprehensive fee established under this section. Payment for such vaccine and its administration shall be made separately in accordance with section 1395*l* of this title.

(c) Renal disease network areas; coordinating councils, executive committees, and medical review boards; national end stage renal disease medical information system; functions of network organizations

[*See main edition for text of* (1) *and* (2)]

(3) Where the Secretary determines, on the basis of the data contained in the network's annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals, he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network's plans and goals. If the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

[*See main edition for text of* (4) *to* (6);
(*d*) *to* (*g*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(i), 97 Stat. 165; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2323(c), 2352(a), 2354(b)(41), 98 Stat. 1086, 1099, 1102; Nov. 8, 1984, Pub. L. 98-617, § 3(b)(8), 98 Stat. 3296.)

AMENDMENTS

1984—Subsecs. (a), (b)(1), (2)(A), (B), (3), (8). Pub. L. 98-369, § 2354(b)(41), substituted "end stage" for "end-stage" wherever appearing.

Subsec. (b)(11). Pub. L. 98-617 realigned margin of par. (11).

Pub. L. 98-369, § 2323(c), added par. (11).

Subsec. (c)(3). Pub. L. 98-369, § 2352(a), added provision that if the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

1983—Subsec. (b)(2)(A). Pub. L. 98-21 added "or section 1395ww of this title (if applicable)" after "section 1395x(v) of this title".

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Amendment by section 2323(c) of Pub. L. 98-369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

Section 2352(b) of Pub. L. 98-369 provided that: "The amendment made by this section [amending this section] shall apply to determinations made by the Secretary on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(41) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

§ 1395uu. Payments to promote closing or conversion of underutilized hospital facilities

PAYMENTS TO PROMOTE CLOSURE AND CONVERSION OF UNDERUTILIZED HOSPITAL FACILITIES

Pub. L. 98-369, div. B, title III, § 2353, July 18, 1984, 98 Stat. 1099, provided that:

"(a) The Secretary of Health and Human Services shall carry out a study and report to the Congress on the modifications required in section 1884 of the Social Security Act [this section] in order to conform the closure and conversion program authorized in that section to the prospective payment system under section 1886(d) of such Act [section 1395ww(d) of this title], so as to provide assistance to hospitals which may have particular problems in converting facilities (or parts thereof) from acute care to less intensive care or in closing facilities (or parts thereof). The report shall include recommendations as to how, and whether, implementation of section 1884 [this section] as modified may result in reductions in total hospital inpatient costs and total expenditures under title XVIII of the Social Security Act [this subchapter]. The Secretary shall submit the report prior to March 31, 1985.

"(b) During the period prior to March 31, 1985, and notwithstanding section 2101(c) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) [set out as a note under this section], the Secretary shall not implement section 1884 of the Social Security Act [this section]."

§ 1395ww. Payments to hospitals for inpatient hospital services

(a) Determination of costs for inpatient hospital services; limitations; exemptions; "operating costs of inpatient hospital services" defined

(1) [*See main edition for text of* (*A*) *to* (*C*)]

(D) Subparagraph (A) shall not apply to cost reporting periods beginning on or after October 1, 1983.

(2) The Secretary shall provide for such exemptions from, and exceptions and adjustments to, the limitation established under paragraph (1)(A) as he deems appropriate, including those which he deems necessary to take into account—

[*See main edition for text of* (*A*)]

(B) the special needs of psychiatric hospitals and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this subchapter, and

[*See main edition for text of* (*C*), (*3*)]

(4) For purposes of this section, the term "operating costs of inpatient hospital services" includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis (as determined by the Secretary). Such term does not include costs of approved educational activities, costs of anesthesia services provided by a certified registered nurse anesthetist, or, with respect to costs incurred in cost reporting periods beginning prior to October 1, 1986, capital-related costs, as defined by the Secretary.

(b) Computation of payment; definitions; exemptions; adjustments

(1) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, if the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a hospital (other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section) for a cost reporting period subject to this paragraph—

(A) are less than or equal to the target amount (as defined in paragraph (3)) for that hospital for that period, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to the amount of such operating costs, plus—

(i) 50 percent of the amount by which the target amount exceeds the amount of the operating costs, or

(ii) 5 percent of the target amount,

whichever is less; or

(B) are greater than the target amount, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to (i) the target amount, plus (ii) in the case of cost reporting periods beginning on or after October 1, 1982, and before October 1, 1984, 25 percent of the amount by which the amount of the operating costs exceeds the target amount;

except that in no case may the amount payable under this subchapter (other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section) with respect to operating costs of inpatient hospital services exceed the maximum amount payable with respect to such costs pursuant to subsection (a) of this section.

(2) Repealed. Pub. L. 98-21, title VI, § 601(b)(4), Apr. 20, 1983, 97 Stat. 150.

(3)(A) For purposes of this subsection, the term "target amount" means, with respect to a hospital for a particular 12-month cost reporting period—

[*See main edition for text of* (*i*)]

(ii) in the case of a later reporting period, the target amount for the preceding 12-month cost reporting period,

increased by the applicable percentage increase under subparagraph (B) for that particular cost reporting period.

(B) For purposes of subparagraph (A) and subsection (d) of this section and except as provided in subsection (e) of this section, the "applicable percentage increase" for any 12-month cost reporting period or fiscal year shall be equal to one-quarter of 1 percentage point plus the percentage, estimated by the Secretary before the beginning of the period or year, by which the cost of the mix of goods and services (including personnel costs but excluding nonoperating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for such cost reporting period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year. In determining a percentage change under subsection (e)(4) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after October 1, 1985, and before October 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.

[*See main edition for text of* (*4*) *and* (*5*)]

(6) In the case of any hospital which becomes subject to the taxes under section 3111 of the Internal Revenue Code of 1954, with respect to any or all of its employees, for part or all of a cost reporting period, and was not subject to such taxes with respect to any or all of its employees for all or part of the 12-month base cost reporting period referred to in subsection (b)(3)(A)(i) of this section, the Secretary shall provide for an adjustment by increasing the base period amount described in such subsec-

n for such hospital by an amount equal to e amount of such taxes which would have en paid or accrued by such hospital for such se period if such hospital had been subject to ch taxes for all of such base period with re- ect to all its employees, minus the amount of y such taxes actually paid or accrued for ch base period.

Payment in accordance with State hospital reimbursement control system; amount of payment; discontinuance of payments

1) The Secretary may provide, in his discre- n, that payment with respect to services pro- led by a hospital in a State may be made in cordance with a hospital reimbursement con- ol system in a State, rather than in accord- ce with the other provisions of this title, if e chief executive officer of the State requests ch treatment and if—

[See main edition for text of (A)]

(B) the Secretary has been provided satisfactory assurances as to the equitable treatment under the system of all entities (includ- ng Federal and State programs) that pay hospitals for inpatient hospital services, of hospital employees, and of hospital patients;

(C) the Secretary has been provided satisfactory assurances that under the system, over 36-month periods (the first such period beginning with the first month in which this subsection applies to that system in the State), the amount of payments made under this subchapter under such system will not exceed the amount of payments which would otherwise have been made under this subchapter not using such system;

(D) the Secretary determines that the system will not preclude an eligible organization (as defined in section 1395mm(b) of this title) from negotiating directly with hospitals with respect to the organization's rate of payment for inpatient hospital services; and

(E) the Secretary determines that the system requires hospitals to meet the requirement of section 1395cc(a)(1)(G) of this title and the system provides for the exclusion of certain costs in accordance with section 1395y(a)(14) of this title (except for such waivers thereof as the Secretary provides by regulation).

he Secretary cannot deny the application of a tate under this subsection on the ground that he State's hospital reimbursement control ystem is based on a payment methodology ther than on the basis of a diagnosis-related roup or on the ground that the amount of ayments made under this subchapter under uch system must be less than the amount of ayments which would otherwise have been nade under this subchapter not using such ystem. If the Secretary determines that the onditions described in subparagraph (C) are ased on maintaining payment amounts at no nore than a specified percentage increase bove the payment amounts in a base period, he State has the option of applying such test for inpatient hospital services under part A of his subchapter) on an aggregate payment basis r on the basis of the amount of payment per inpatient discharge or admission. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining aggregate payment amounts below a national, average percentage increase in total payments under part A of this subchapter for inpatient hospital services, the Secretary cannot deny the application of a State under this subsection on the ground that the State's rate of increase in such payments for such services must be less than such national average rate of increase.

[See main edition for text of (2)]

(3) The Secretary shall discontinue payments under a system described in paragraph (1) if the Secretary—

(A) determines that the system no longer meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5), or

(B) has reason to believe that the assurances described in subparagraph (B) or (C) of paragraph (1) (or, if applicable, in paragraph (5)) are not being (or will not be) met.

(4) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system, and

(B) with respect to that system a waiver of certain requirements of this subchapter has been approved on or before (and which is in effect as of) April 20, 1983, pursuant to section 1395b-1(a) of this title or section 222(a) of the Social Security Amendments of 1972.

With respect to a State system described in this paragraph, the Secretary shall judge the effectiveness of such system on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under this subchapter, as compared to the national rate of increase or inflation for such payments, with the State retaining the option to have the test applied on the basis of the aggregate payment or payments per inpatient admission or discharge during the three cost reporting periods beginning on or after October 1, 1983, after which such test, at the option of the Secretary, shall no longer apply, and such State systems shall be treated in the same manner as under other waivers.

(5) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system;

(B) the Secretary determines that the system—

(i) is operated directly by the State or by an entity designated pursuant to State law,

(ii) provides for payment of hospitals covered under the system under a methodology (which sets forth exceptions and adjustments, as well as any method for changes in the methodology) by which rates or amounts to be paid for hospital services during a specified period are established under the system prior to the defined rate period, and

(iii) hospitals covered under the system will make such reports (in lieu of cost and other reports, identified by the Secretary, otherwise required under this subchapter) as the Secretary may require in order to properly monitor assurances provided under this subsection;

(C) the State has provided the Secretary with satisfactory assurances that operation of the system will not result in any change in hospital admission practices which result in—

(i) a significant reduction in the proportion of patients (receiving hospital services covered under the system) who have no third-party coverage and who are unable to pay for hospital services,

(ii) a significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is (or is likely to be) less than the anticipated charges for or costs of such services,

(iii) the refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital, or

(iv) the refusal to provide emergency services to any person who is in need of emergency services if the hospital provides such services;

(D) any change by the State in the system which has the effect of materially reducing payments to hospitals can only take effect upon 60 days notice to the Secretary and to the hospitals the payment to which is likely to be materially affected by the change; and

(E) the State has provided the Secretary with satisfactory assurances that in the development of the system the State has consulted with local governmental officials concerning the impact of the system on public hospitals.

The Secretary shall respond to requests of States under this paragraph within 60 days of the date the request is submitted to the Secretary.

(6) If the Secretary determines that the assurances described in paragraph (1)(C) have not been met with respect to any 36-month period, the Secretary may reduce payments under this subchapter to hospitals under the system in an amount equal to the amount by which the payment under this subchapter under such system for such period exceeded the amount of payments which would otherwise have been made under this subchapter not using such system.

(d) Inpatient hospital service payments on basis of prospective rates

(1)(A) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a subsection (d) hospital (as defined in subparagraph (B)) for inpatient hospital discharges in a cost reporting period or in a fiscal year—

(i) beginning on or after October 1, 1983, and before October 1, 1984, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the regional adjusted DRG prospective payment rate determined under paragraph (2) for such discharges;

(ii) beginning on or after October 1, 1984, and before October 1, 1986, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the applicable combined adjusted DRG prospective payment rate determined under subparagraph (D) for such discharges; or

(iii) beginning on or after October 1, 1986, is equal to the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges.

(B) As used in this section, the term "subsection (d) hospital" means a hospital located in one of the fifty States or the District of Columbia other than—

(i) a psychiatric hospital (as defined in section 1395x(f) of this title),

(ii) a rehabilitation hospital (as defined by the Secretary),

(iii) a hospital whose inpatients are predominantly individuals under 18 years of age, or

(iv) a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days;

and, in accordance with regulations of the Secretary, does not include a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital (as defined by the Secretary).

(C) For purposes of this subsection, for cost reporting periods beginning, or discharges occurring—

(i) on or after October 1, 1983, and before October 1, 1984, the "target percentage" is 75 percent and the "DRG percentage" is 25 percent;

(ii) on or after October 1, 1984, and before October 1, 1985, the "target percentage" is 50 percent and the "DRG percentage" is 50 percent; and

(iii) on or after October 1, 1985, and before October 1, 1986, the "target percentage" is 25 percent and the "DRG percentage" is 75 percent.

(D) For purposes of subparagraph (A)(ii)(II), the "applicable combined adjusted DRG prospective payment rate" for cost reporting periods beginning, or discharges occurring—

(i) on or after October 1, 1984, and before October 1, 1985, is a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate, and 75 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges; and

(ii) on or after October 1, 1985, and before October 1, 1986, is a combined rate consisting of 50 percent of the national adjusted DRG prospective payment rate, and 50 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges.

(2) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region, for which payment may be made under part A of this subchapter. Each such rate shall be determined for hospitals located in urban or rural areas within the United States or within each such region, respectively, as follows:

(A) The Secretary shall determine the allowable operating costs per discharge of inpatient hospital services for the hospital for the most recent cost reporting period for which data are available.

(B) The Secretary shall update each amount determined under subparagraph (A) for fiscal year 1984 by—

(i) updating for fiscal year 1983 by the estimated average rate of change of hospital costs industry-wide between the cost reporting period used under such subparagraph and fiscal year 1983 and the most recent case-mix data available, and

(ii) projecting for fiscal year 1984 by the applicable percentage increase (as defined in subsection (b)(3)(B) of this section) for fiscal year 1984.

(C) The Secretary shall standardize the amount updated under subparagraph (B) for each hospital by—

(i) excluding an estimate of indirect medical education costs,

(ii) adjusting for variations among hospitals by area in the average hospital wage level, and

(iii) adjusting for variations in case mix among hospitals.

(D) The Secretary shall compute an average of the standardized amounts determined under subparagraph (C) for the United States and for each region—

(i) for all subsection (d) hospitals located in an urban area within the United States or that region, respectively, and

(ii) for all subsection (d) hospitals located in a rural area within the United States or that region, respectively.

For purposes of this subsection, the term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes; the term "urban area" means an area within a Metropolitan Statistical Area (as defined by the Office of Management and Budget) or within such similar area as the Secretary has recognized under subsection (a) of this section by regulation; and the term "rural area" means any area outside such an area or similar area. A hospital located in a Metropolitan Statistical Area shall be deemed to be located in the region in which the largest number of the hospitals in the same Metropolitan Statistical Area are located, or, at the option of the Secretary, the region in which the majority of the inpatient discharges (with respect to which payments are made under this subchapter) from hospitals in the same Metropolitan Statistical Area are made.

(E) The Secretary shall reduce each of the average standardized amounts determined under subparagraph (D) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment rates which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(F) The Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) of this section for that fiscal year.

(G) For each discharge classified within a diagnosis-related group, the Secretary shall establish a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in an urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in an urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in a rural area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in a rural area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(H) The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the national and regional DRG prospective payment rates computed under subparagraph (G) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

(3) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in a fiscal year after fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region for which payment may be made under part A of this subchapter. Each such rate shall be determined for hospitals located in urban or rural areas within the United States and within each such region, respectively, as follows:

(A) The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for fiscal year 1985 by the applicable percentage increase under subsection (b)(3)(B) of this section, and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4) of this section, and adjusted to reflect the most recent casemix data available.

(B) The Secretary shall reduce each of the average standardized amounts determined under subparagraph (A) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(C) The Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) of this section for that fiscal year.

(D) For each discharge classified within a diagnosis-related group, the Secretary shall establish for the fiscal year a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in an urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted under subparagraph (C)) for the fiscal year for hospitals located in an urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in a rural area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted under subparagraph (C)) for the fiscal year for hospitals located in a rural area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(E) The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the DRG prospective payment rates computed under subparagraph (D) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

(4)(A) The Secretary shall establish a classification of inpatient hospital discharges by diagnosis-related groups and a methodology for classifying specific hospital discharges within these groups.

(B) For each such diagnosis-related group the Secretary shall assign an appropriate weighting factor which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups.

(C) The Secretary shall adjust the classifications and weighting factors established under subparagraphs (A) and (B), for discharges in fiscal year 1986 and at least every four fiscal years thereafter, to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources.

(D) The Commission (established under subsection (e)(2) of this section) shall consult with and make recommendations to the Secretary with respect to the need for adjustments under subparagraph (C), based upon its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities. The Commission shall report to the Congress with respect to its evaluation of any adjustments made by the Secretary under subparagraph (C).

(5)(A)(i) The Secretary shall provide for an additional payment for a subsection (d) hospital for any discharge in a diagnosis-related group, the length of stay of which exceeds the mean length of stay for discharges within that group by a fixed number of days, or exceeds such mean length of stay by some fixed number of standard deviations, whichever is the fewer number of days.

(ii) For cases which are not included in clause (i), a subsection (d) hospital may request additional payments in any case where charges, adjusted to cost, exceed a fixed multiple of the applicable DRG prospective payment rate, or exceed such other fixed dollar amount, whichever is greater.

(iii) The amount of such additional payment under clauses (i) and (ii) shall be determined by the Secretary and shall approximate the marginal cost of care beyond the cutoff point applicable under clause (i) or (ii).

(iv) The total amount of the additional payments made under this subparagraph for discharges in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made based on DRG prospective payment rates for discharges in that year.

(B) The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2) of this section, except that in the computation under this subparagraph the Secretary shall use an educational adjustment factor equal to twice the factor provided under such regulations. In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.

(C)(i) The Secretary shall provide for such exceptions and adjustments to the payment amounts established under this subsection as the Secretary deems appropriate to take into account the special needs of regional and national referral centers (including those hospitals of 500 or more beds located in rural areas), and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this subchapter. A hospital which is classified as a rural hospital may appeal to the Secretary to be classified as a rural referral center under this clause on the basis of criteria (established by the Secretary) which shall allow the hospital to demonstrate that it should be so reclassified by reason of certain of its operating characteristics being similar to those of a typical urban hospital located in the same census region. Such characteristics may include wages, scope of services, service area, and the mix of medical specialties. The Secretary shall publish the criteria not later than August 17, 1984, for implementation by October 1, 1984. An appeal allowed under this clause must be submitted to the Secretary (in such form and manner as the Secretary may prescribe) during the quarter before the first quarter of the hospital's cost reporting period (or, in the case of a cost reporting period beginning during October 1984, during the first quarter of that period), and the Secretary must make a final determination with respect to such appeal within 60 days after the date the appeal was submitted. Any payment adjustments necessitated by a reclassification based upon the appeal shall be effective at the beginning of such cost reporting period.

(ii) With respect to a subsection (d) hospital which is a "sole community hospital", payment under paragraph (1)(A) for any cost reporting period or fiscal year beginning on or after October 1, 1984, shall be determined under the formula provided in clause (i) of that paragraph with the target and DRG percentages determined under paragraph (1)(C)(i) (except that any reference to paragraph (2) shall be deemed, for this purpose, a reference to paragraph (3)). In the case of a sole community hospital that experiences, in a cost reporting period (beginning on or after October 1, 1983, and before October 1, 1986) compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services. For purposes of this subparagraph, the term "sole community hospital" means a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to individuals in a geographical area who are entitled to benefits under part A of this subchapter.

(iii) The Secretary shall provide by regulation for such other exceptions and adjustments to such payment amounts under this subsection as the Secretary deems appropriate (including exceptions and adjustments that may be appropriate with respect to hospitals involved extensively in treatment for and research on cancer).

(iv) The Secretary may provide for such adjustments to the payment amounts under this subsection as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

(D)(i) The Secretary shall estimate the amount of reimbursement made for services described in section 1395y(a)(14) of this title with respect to which payment was made under part B of this subchapter in the base reporting periods referred to in paragraph (2)(A) and with respect to which payment is no longer being made.

(ii) The Secretary shall provide for an adjustment to the payment for subsection (d) hospitals in each fiscal year so as appropriately to reflect the net amount described in clause (i).

(E) The Secretary shall provide for an additional payment amount for any subsection (d) hospital equal to the reasonable costs incurred by such hospital for anesthesia services provided by a certified registered nurse anesthetist. Payment under this subparagraph shall be the only payment made to such hospital with respect to such services.

(6) The Secretary shall provide for publication in the Federal Register, on or before the September 1 before each fiscal year (beginning with fiscal year 1984), of a description of the methodology and data used in computing the adjusted DRG prospective payment rates under this subsection, including any adjustments re-

quired under subsection (e)(1)(B) of this section.

(7) There shall be no administrative or judicial review under section 1395*oo* of this title or otherwise of—

(A) the determination of the requirement, or the proportional amount, of any adjustment effected pursuant to subsection (e)(1) of this section, and

(B) the establishment of diagnosis-related groups, of the methodology for the classification of discharges within such groups, and of the appropriate weighting factors thereof under paragraph (4).

(8) In the case of any hospital which is located in an area which is, at any time after April 20, 1983, reclassified from an urban to a rural area, payments to such hospital for the first two cost reporting periods for which such reclassification is effective shall be made as follows:

(A) For the first such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to two-thirds of the amount (if any) by which—

(i) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

(ii) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(B) For the second such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to one-third of the amount (if any) by which—

(i) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

(ii) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(e) Proportional adjustments in applicable percentage increases; Prospective Payment Assessment Commission

(1)(A) For cost reporting periods of hospitals beginning in fiscal year 1984 or fiscal year 1985, the Secretary shall provide for such proportional adjustment in the applicable percentage increase (otherwise applicable to the periods under subsection (b)(3)(B) of this section) as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(I) of this section for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the target percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title);

except that the adjustment made under this subparagraph shall apply only to subsection (d) hospitals and shall not apply for purposes of making computations under subsection (d)(2)(B)(ii) of this section or subsection (d)(3)(A) of this section.

(B) For discharges occurring in fiscal year 1984 or fiscal year 1985, the Secretary shall provide under subsections (d)(2)(F) and (d)(3)(C) of this section for such equal proportional adjustment in each of the average standardized amounts otherwise computed for that fiscal year as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(II) and (d)(5) of this section for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the DRG percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title).

(2) The Director of the Congressional Office of Technology Assessment (hereinafter in this subsection referred to as the "Director" and the "Office", respectively) shall provide for appointment of a Prospective Payment Assessment Commission (hereinafter in this subsection referred to as the "Commission"), to be composed of independent experts appointed by the Director (without regard to the provisions of title 5 governing appointments in the competitive service). In addition to carrying out its functions under subsection (d)(4)(D) of this section, the Commission shall review the applicable percentage increase factor described in subsection (b)(3)(B) of this section and make recommendations to the Secretary on the appropriate percentage change which should be effected for hospital inpatient discharges under subsections (b) and (d) of this section for fiscal years beginning with fiscal year 1986. In making its recommendations, the Commission shall take into account changes in the hospital market-basket described in subsection (b)(3)(B) of this section, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

(3) The Commission, not later than the April 1 before the beginning of each fiscal year (beginning with fiscal year 1986), shall report its recommendations to the Secretary on an appropriate change factor which should be used (instead of the applicable percentage increase described in subsection (b)(3)(B) of this section)

for inpatient hospital services for discharges in that fiscal year.

(4) Taking into consideration the recommendations of the Commission, the Secretary shall determine for each fiscal year (beginning with fiscal year 1986) the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B) of this section) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

(5) The Secretary shall cause to have published in the Federal Register, not later than—

(A) the June 1 before each fiscal year (beginning with fiscal year 1986), the Secretary's proposed determination under paragraph (4) for that fiscal year for public comment, and

(B) the September 1 before such fiscal year after such consideration of public comment on the proposal as is feasible in the time available, the Secretary's final determination under such paragraph for that year.

The Secretary shall include in the publication referred to in subparagraph (A) for a fiscal year the report of the Commission's recommendations submitted under paragraph (3) for that fiscal year.

(6)(A) The Commission shall consist of 15 individuals. Members of the Commission shall first be appointed no later than April 1, 1984, for a term of three years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than seven members expire in any one year.

(B) The membership of the Commission shall provide expertise and experience in the provision and financing of health care, including physicians and registered professional nurses, employers, third party payors, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research, and individuals having expertise in the research and development of technological and scientific advances in health care. The Director shall seek nominations from a wide range of groups, including—

(i) national organizations representing physicians, including medical specialty organizations and registered professional nurses and other skilled health professionals;

(ii) national organizations representing hospitals, including teaching hospitals;

(iii) national organizations representing manufacturers of health care products; and

(iv) national organizations representing the business community, health benefit programs, labor, and the elderly.

(C) Subject to such review as the Office deems necessary to assure the efficient administration of the Commission, the Commission may—

(i) employ and fix the compensation of an Executive Director (subject to the approval of the Director of the Office) and such other personnel (not to exceed 25) as may be necessary to carry out its duties (without regard to the provisions of title 5 governing appointments in the competitive service);

(ii) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(iii) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 5 of title 41);

(iv) make advance, progress, and other payments which relate to the work of the Commission;

(v) provide transportation and subsistence for persons serving without compensation; and

(vi) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

Section 10(a)(1) of the Federal Advisory Committee Act shall not apply to any portion of a Commission meeting if the Commission, by majority vote, determines that such portion of such meeting should be closed.

(D) While serving on the business of the Commission (including traveltime), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5; and while so serving away from home and his regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, and for such purpose subsection (i) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority.

(E) In order to identify medically appropriate patterns of health resources use in accordance with paragraph (2), the Commission shall collect and assess information on medical and surgical procedures and services, including information on regional variations of medical practice and lengths of hospitalization and on other patient-care data, giving special attention to treatment patterns for conditions which appear to involve excessively costly or inappropriate services not adding to the quality of care provided. In order to assess the safety, efficacy, and cost-effectiveness of new and existing medical and surgical procedures, the Commission shall, in coordination to the extent possible with the Secretary, collect and assess factual information, giving special attention to the needs of updating existing diagnosis-related groups, establishing new diagnosis-related groups, and making recommendations on relative weighting factors for such groups to reflect appropriate differences in resource consumption in delivering safe, efficacious, and cost-effective care. In collecting and assessing information, the Commission shall—

(i) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this paragraph;

(ii) carry out, or award grants or contracts for, original research and experimentation, including clinical research, where existing information is inadequate for the development of useful and valid guidelines by the Commission; and

(iii) adopt procedures allowing any interested party to submit information with respect to medical and surgical procedures and services (including new practices, such as the use of new technologies and treatment modalities), which information the Commission shall consider in making reports and recommendations to the Secretary and Congress.

(F) The Commission shall have access to such relevant information and data as may be available from appropriate Federal agencies and shall assure that its activities, especially the conduct of original research and medical studies, are coordinated with the activities of Federal agencies.

(G)(i) The Office shall report annually to the Congress on the functioning and progress of the Commission and on the status of the assessment of medical procedures and services by the Commission.

(ii) The Office shall have unrestricted access to all deliberations, records, and data of the Commission, immediately upon its request.

(iii) In order to carry out its duties under this paragraph, the Office is authorized to expend reasonable and neccessary [4] funds as mutually agreed upon by the Office and the Commission. The Office shall be reimbursed for such funds by the Commission from the appropriations made with respect to the Commission.

(H) The Commission shall be subject to periodic audit by the General Accounting Office.

(I)(i) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this paragraph.

(ii) Eighty-five percent of such appropriation shall be payable from the Federal Hospital Insurance Trust Fund, and 15 percent of such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

(J) The Commission shall submit requests for appropriations in the same manner as the Office submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Office.

(f) Reporting of costs of hospitals receiving payments on basis of prospective rates

(1) The Secretary shall maintain, for a period ending not earlier than September 30, 1988, a system for the reporting of costs of hospitals receiving payments computed under subsection (d) of this section.

(2) If the Secretary determines, based upon information supplied by a utilization and quality control peer review organization under part B of subchapter XI of this chapter, that a hospital, in order to circumvent the payment method established under subsection (b) or (d) of this section, has taken an action that results in the admission of individuals entitled to benefits under part A unnecessarily, unnecessary multiple admissions of the same such individuals, or other inappropriate medical or other practices with respect to such individuals, the Secretary may—

(A) deny payment (in whole or in part) under part A of this subchapter with respect to inpatient hospital services provided with respect to such an unnecessary admission (or subsequent admission of the same individual), or

(B) require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(3) The provisions of paragraphs (2), (3), and (4) of section 1395y(d) of this title shall apply to determinations under paragraph (2) of this subsection in the same manner as they apply to determinations made under section 1395y(d)(1) of this title.

(g) State approval of capital expenditures; return on equity capital for hospitals

(1) If the Congress does not enact legislation, after April 20, 1983, and before October 1, 1986, respecting the payment under this subchapter for capital-related costs for inpatient hospital services, no payment may be made under this subchapter for capital-related costs of capital expenditures (as defined in section 1320a-1(g) of this title and except as provided in section 1320a-1(j) of this title) for inpatient hospital services in a State, which expenditures are obligated after September 30, 1986, unless the State has an agreement with the Secretary under section 1320a-1(b) of this title and under the agreement the State has recommended approval of the capital expenditures.

(2) The Secretary shall provide that the amount which is allowable, with respect to reasonable costs of inpatient hospital services for which payment may be made under this subchapter, for a return on equity capital for hospitals shall, for cost reporting periods beginning on or after April 20, 1983, be equal to amounts otherwise allowable under regulations in effect on March 1, 1983, except that the rate of return to be recognized shall be equal to the average of the rates of interest, for each of the months any part of which is included in the reporting period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 601(a)(1), (2), (b), (c), (d)(2), (e), 97 Stat. 149, 150, 152; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2307(b)(1), 2310(a), 2311(a)-(c), 2312(a), (b), 2313(a), (b), (d), 2315(a)-(c), 2354(b)(42)-(44), 98 Stat. 1073, 1075-1080, 1102; Nov. 8, 1984, Pub. L. 98-617, § 3(b)(9), 98 Stat. 3296.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

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[4] So in original.

The Internal Revenue Code of 1954, referred to in subsec. (b)(6), is classified generally to Title 26, Internal Revenue Code.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (c)(4)(B), is section 222(a) of Pub. L. 92-603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note under section 1395b-1 of this title.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (e)(2), (6)(C)(i), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 10(a)(1) of the Federal Advisory Committee Act, referred to in subsec. (e)(6)(C), is section 10(a)(1) of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

Part B of subchapter XI of this chapter, referred to in subsec. (f)(2), is classified to section 1320c et seq. of this title.

AMENDMENTS

1984—Subsec. (a)(2)(B). Pub. L. 98-369, § 2354(b)(42), substituted "disproportionate" for "disportionate".

Subsec. (a)(4). Pub. L. 98-369, § 2312(b), temporarily inserted ", costs of anesthesia services provided by a certified registered nurse anesthetist" after "approved educational activities". See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(3)(A)(ii). Pub. L. 98-369, § 2354(b)(43), added "of" after "in the case".

Subsec. (b)(3)(B). Pub. L. 8-369, § 2310(a), substituted "one-quarter of 1 percentage point" for "1 percentage point" and added provision that in determining the percentage change under subsec. (e) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after Oct. 1, 1985, and before Oct. 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.

Subsec. (c)(4)(A). Pub. L. 98-369, § 2315(a), substituted "(D), and (E)" for "and (D)".

Subsec. (d)(2)(D). Pub. L. 98-369, § 2315(b), struck out "Standard" before "Metropolitan" in provision following cl. (ii).

Pub. L. 98-369, § 2311(b), added provision for determining the region a hospital located in a Metropolitan Statistical Area would be deemed to be located.

Subsec. (d)(3)(D)(i)(I). Pub. L. 8-369, § 2354(b)(44), substituted "(C))" for "(C),".

Subsec. (d)(5)(B). Pub. L. 98-369, § 2307(b)(1), added provision that in determining such adjustment the Secretary not distinguish between those interns and residents who are employees of a hospital and those who furnish services to a hospital but are not employees of such hospital.

Subsec. (d)(5)(C)(i). Pub. L. 98-617 substituted "August 17, 1984" for "30 days after July 18, 1984" before "for implementation by".

Pub. L. 98-369, § 2311(a), added provisions permitting a hospital classified as a rural hospital to appeal to the Secretary for reclassification as a rural referral center on the basis of criteria established and published by the Secretary and requiring the Secretary to make a final determination with respect to such appeal within 60 days after the date the appeal was submitted.

Subsec. (d)(5)(E). Pub. L. 98-369, § 2312(a), temporarily added subpar. (E). See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (d)(8). Pub. L. 8-369, § 2311(c), added par. (8).

Subsec. (e)(2). Pub. L. 98-369, § 2313(a), inserted "(without regard to the provisions of title 5 governing appointments in the competitive service)" after "appointed by the Director".

Subsec. (e)(5). Pub. L. 98-369, § 2315(c)(1), struck out "for public comment" after "have published" in provisions preceding subpar. (A).

Subsec. (e)(5)(A). Pub. L. 98-369, § 2315(c)(2), inserted "for public comment" after "that fiscal year".

Subsec. (e)(6)(C). Pub. L. 98-369, § 2313(b)(3), added provision that section 10(a)(1) of the Federal Advisory Committee Act not apply to any portion of a Commission meeting if the Commission, by majority vote, determines such portion of such meeting should be closed.

Subsec. (e)(6)(C)(i). Pub. L. 98-369, § 2313(b)(1), amended cl. (i) generally, substituting provision authorizing the Commission to employ and fix the compensation of an Executive Director, subject to the approval of the Director of the Office, and such other personnel, not to exceed 25, as necessary, without regard to the provisions of title 5 governing appointment in the competitive service, for provision authorizing the Commission to employ and fix the compensation of such personnel, not to exceed 25, as may be necessary to carry out its duties.

Subsec. (e)(6)(C)(iii). Pub. L. 98-369, § 2313(b)(2), inserted "(without regard to section 5 of title 41)" after "Commission".

Subsec. (e)(6)(D). Pub. L. 98-369, § 2313(b)(4), added provision relating to payment of physician comparability allowance in the same manner as provided under section 5948 of title 5 and providing that for such purpose subsec. (i) of such section apply to the Commission in the same manner as it applies to the Tennessee Valley Authority.

Subsec. (e)(6)(J). Pub. L. 98-369, § 2313(d), added subpar. (J).

1983—Subsec. (a)(1)(D). Pub. L. 98-21, § 601(a)(1), added subpar. (D).

Subsec. (a)(4). Pub. L. 98-21, § 601(a)(2), added provision that term "operating costs of inpatient hospital services" does not include costs of approved educational activities, or, with respect to costs incurred in cost reporting periods beginning prior to Oct. 1, 1986, capital-related costs, as defined by the Secretary.

Subsec. (b)(1). Pub. L. 98-21, § 601(b)(1), (2), in provisions preceding subpar. (A), substituted "Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title" for "Notwithstanding sections 1395f(b) of this title, but subject to the provisions of sections 1395e of this title" and inserted "(other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section)".

Pub. L. 98-21, § 601(b)(3), inserted "(other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section)" in provisions following subpar. (B).

Subsec. (b)(2). Pub. L. 98-21, § 601(b)(4), struck out par. (2) which provided that par. (1) would not apply to cost reporting periods of hospitals beginning on or after Oct. 1, 1985.

Subsec. (b)(3)(B). Pub. L. 98-21, § 601(b)(5)-(8), inserted "and subsection (d) of this section and except as provided in subsection (e) of this section" after "subparagraph (A)", inserted "or fiscal year" after "cost reporting period" each place it appears, inserted "before the beginning of the period or year" after "estimated by the Secretary", and substituted "will exceed" for "exceeds".

Subsec. (b)(6). Pub. L. 98-21, § 601(b)(9), added par. (6) and repealed a prior par. (6) which directed the Secretary to provide for an adjustment under this paragraph in the amount of payment otherwise provided a hospital under this subsection in the case of a hospital which, as of Aug. 15, 1982, was subject to FICA taxes and which was not subject to such taxes for part or all of a cost reporting period beginning on or after Oct. 1, 1982, that in making such adjustment for a cost reporting period the Secretary was to estimate the amount of the operating costs of inpatient hospital services that would have resulted if the hospital was subject to the FICA taxes during that period, that in making such estimate the Secretary was to reduce the amount of such FICA taxes that would have been paid (but not below zero) by the amount of costs which the hospital demonstrated to the satisfaction of the Secretary were incurred in the period for pensions, health, and other fringe benefits for employees (and former employees and family members) comparable to, and in lieu of, the benefits provided under subchapter II of this chapter and this subchapter, that if a hospital's operating costs of inpatient hospital services estimated under subparagraph (B) was greater than the hospital's operating costs of inpatient hospital services determined without regard to this paragraph for a cost reporting period, then the Secretary was to reduce the amount otherwise paid the hospital (respecting operating costs of inpatient hospital services) under this title (taking into account any limitation under subsction (a) of this section) for the period by the amount by which (i) the amount that would have been paid the hospital if (I) the amount of the operating costs of inpatient hospital services estimated under subparagraph (B) were treated as the amount of the operating costs of inpatient hospital services and (II) subsection (a) of this section did not apply to the determination, exceeded (ii) the amount that would otherwise have been paid the hospital if subsection (a) of this section (and this paragraph) did not apply, except that, in making such determination for cost reporting periods beginning on or after Oct. 1, 1984, clause (ii) of paragraph (1)(B) was to continue to apply.

Subsec. (c)(1). Pub. L. 98-21, § 601(c)(1), added subpars. (D) and (E) and provisions following subpar. (E).

Subsec. (c)(3)(A). Pub. L. 98-21, § 601(c)(2)(A), substituted "meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5)," for "meets the requirement of paragraph (1)(A)".

Subsec. (c)(3)(B). Pub. L. 98-21, § 601(c)(2)(B), inserted "(or, if applicable, in paragraph (5))".

Subsec. (c)(4) to (6). Pub. L. 98-21, § 601(c)(3), added pars. (4) to (6).

Subsec. (d). Pub. L. 98-21, § 601(d)(2), (e), added subsec. (d) and redesignated former subsec. (d), relating to the elimination of lesser-of-cost-or-charges provisions, as subsec. (j) of section 1814 of act Aug. 14, 1935, which is classified to subsec. (j) of section 1395f of this title.

Subsecs. (e) to (g). Pub. L. 98-21, § 601(e), added subsecs. (e) to (g).

Effective and Termination Dates of 1984 Amendments

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Section 2307(b)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [amending subsec. (d)(5)(B) of this section] shall apply to cost reporting periods beginning on or after October 1, 1984."

Section 2310(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (b)(3)(B) of this section] shall apply to cost reporting periods beginning in, and discharges occurring in, fiscal year 1985 and thereafter."

Section 2311(d) of Pub. L. 98-369 provided that:

"(1) Except as provided in paragraph (2), the amendments made by subsections (b) [amending subsec. (d)(2)(D) of this section] and (c) [enacting subsec. (d)(8) of this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1983, and the amendment made by subsection (a) [amending subsec. (d)(5)(C)(i) of this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1984.

"(2) The amendment made by subsection (b) [amending subsec. (d)(2)(D) of this section] shall not apply so as to reduce any payment under section 1886(d) of the Social Security Act [subsec. (d) of this section] to a hospital the region of which is deemed to be changed pursuant to such amendment for discharges occurring in any cost reporting period beginning before October 1, 1984."

Section 2312(c) of Pub. L. 98-369 provided that: "The amendments made by subsections (a) [enacting subsec. (d)(5)(E) of this section] and (b) [amending subsec. (a)(4) of this section] shall apply to cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987."

Amendment by section 2313(a), (b), and (d) of Pub. L. 98-369 effective July 18, 1984, see section 2313(e) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 1395y of this title.

Section 2315(g) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395i-2, 1395cc, and 1395ww of this title and enacting and amending provisions set out as notes under this section] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98-21)."

Amendment by section 2354(b)(42)-(44) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 1320a-1 of this title.

Effective Date of 1983 Amendments

Section 601(b)(9) of Pub. L. 98-21 provided in part that the repeal of subsec. (b)(6) of this section is effective with respect to cost reporting periods beginning on or after October 1, 1982, and that the enactment of a new subsec. (b)(6) of this section is effective with respect to cost reporting periods beginning on or after October 1, 1983.

Section 604 of title VI of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title III, § 2315(f)(1), July 18, 1984, 98 Stat. 1080, provided that:

"(a)(1) Except as provided in section 602(*l*) [amending section 1395cc of this title] and in paragraph (2), the amendments made by the preceding provisions of this title [amending sections 1320c-2, 1395f, 1395n, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395ww, and 1395xx of this title] apply to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983. A change in a hospital's cost reporting period that has been made after November 1982 shall be recognized for purposes of this section only if the Secretary finds good cause for that change.

"(2) Section 1866(a)(1)(F) of the Social Security Act (as added by section 602(f)(1)(C) of this title) [42 U.S.C. 1395cc(a)(1)(F)], section 1862(a)(14) (as added by section 602(e)(3) of this title) [42 U.S.C. 1395y(a)(14)] and sections 1886(a)(1)(G) and (H) of such Act (as added by section 602(f)(1)(C) of this title) [probably should be section 1866(a)(1)(G) and (H) which is classified to 42 U.S.C. 1395cc(a)(1)(G) and (H)] take effect on October 1, 1983.

"(b) The Secretary shall make an appropriate reduction in the payment amount under section 1886(d) of the Social Security Act (as amended by this title) [42 U.S.C. 1395ww(d)] for any discharge, if the admission has occurred before a hospital's first cost reporting period that begins after September 1983, to take into account amounts payable under title XVIII of that Act [this subchapter] (as in effect before the date of the enactment of this Act [Apr. 20, 1983]) for items and services furnished before that period.

"(c)(1) The Secretary shall cause to be published in the Federal Register a notice of the interim final DRG prospective payment rates established under subsection (d) of section 1886 of the Social Security Act (as amended by this title) [42 U.S.C. 1395ww(d)] no later than September 1, 1983, and allow for a period of public comment thereon. Payment on the basis of prospective rates shall become effective on October 1, 1983, without the necessity for consideration of comments received, but the Secretary shall, by notice published in the Federal Register, affirm or modify the amounts by December 31, 1983, after considering those comments.

"(2) A modification under paragraph (1) that reduces a prospective payment rate shall apply only to discharges occurring after 30 days after the date the notice of the modification is published in the Federal Register.

"(3) Rules to implement the amendments made by this title [amending sections 1320a-1, 1320c-2, 1395f, 1395i-2, 1395n, 1395r, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395oo, 1395rr, 1395ww, and 1395xx of this title, enacting provisions set out as notes under sections 1395r and 1395x of this title, and amending provisions set out as a note under section 1395x of this title] shall be established in accordance with the procedure described in this subsection."

Medicare Hospital and Physician Payment Provisions; Extension Period

Pub. L. 99-107, § 5, Sept. 30, 1985, 99 Stat. 479, as amended by Pub. L. 99-155, § 2(d), Nov. 14, 1985, 99 Stat. 814; Pub. L. 99-181, § 4, Dec. 13, 1985, 99 Stat. 1172; Pub. L. 99-189, § 4, Dec. 18, 1985, 99 Stat. 1184; Pub. L. 99-201, § 2, Dec. 23, 1985, 99 Stat. 1665, provided that:

"(a) Maintaining Existing Hospital Payment Rates.—Notwithstanding any other provision of law, the amount of payment under section 1886 of the Social Security Act [42 U.S.C. 1395ww] for inpatient hospital services for discharges occurring (and cost reporting periods beginning) during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services for a discharge occurring on (or the cost reporting period beginning immediately on or before) September 30, 1985.

"(b) Maintaining Existing Payment Rates for Physicians' Services.—Notwithstanding any other provision of law, the amount of payment under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] for physicians' services which are furnished during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services furnished on September 30, 1985, and the 15-month period, referred to in section 1842(j)(1) of such Act [42 U.S.C. 1395u(j)(1)], shall be deemed to include the extension period.

"(c) Extension Period Defined.—For purposes of this section, the term 'extension period' means the period beginning on October 1, 1985, and ending on March 14, 1986."

Final Regulations To Carry Out Subsection (c) of This Section

Section 2315(f)(2) of Pub. L. 98-369 provided that: "Notwithstanding section 604(c) of the Social Security Amendments of 1983 [section 604(c) of Pub. L. 98-21, set out as a note above], the Secretary of Health and Human Services shall cause to be published in the Federal Register proposed regulations to carry out subsection (c) of section 1886 of the Social Security Act [subsec. (c) of this section] not later than July 1, 1984, and allow for a period of 45 days for public comment thereon. After consideration of the comments received, the Secretary shall cause to be published in the Federal Register final regulations to carry out such subsection not later than October 1, 1984."

Definition of Hospital Serving Significantly Disproportionate Number of Low-Income Patients or Patients Entitled to Hospital Insurance Benefits for Aged and Disabled; Identification

Section 2315(h) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall, prior to December 31, 1984—

"(1) develop and publish a definition of 'hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A' of title XVIII of the Social Security Act [part A of this subchapter] for purposes of section 1886(d)(5)(C)(i) of that Act [subsec. (d)(5)(C)(i) of this section], and

"(2) identify those hospitals which meet such definition, and make such identity available to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

Prospective Payment Wage Index; Studies and Reports to Congress

Section 2316 of Pub. L. 98-369 provided that:

"(a) The Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall conduct a study to develop an appropriate index for purposes of adjusting payment amounts under section 1886(d) of the Social Security Act [subsec. (d) of this section] to reflect area differences in average hospital wage levels, as required under paragraphs (2)(H) and (3)(E) of such section [subsec. (d)(2)(H), (3)(E) of this section], taking into account wage differences of full time and part time workers. The Secretary of Health and Human Services shall report the results of such study to the Congress not later than 30 days after the date of the enactment of this Act [July 18, 1984], including any changes which the Secretary determines to be necessary to provide for an appropriate index.

"(b) The Secretary shall adjust the payment amounts for hospitals for cost reporting periods beginning on or after October 1, 1983, to reflect any changes made in the wage index pursuant to subsection (a). Any adjustment in such payments to take account of overpayments or underpayments for the first cost reporting period of a hospital to which section 1886(d) of the Social Security Act [subsec. (d) of this section] applies, shall be made by decreasing or increasing payments in the succeeding cost reporting period.

"(c) The Secretary shall conduct a study and report to the Congress on proposed criteria under which, in the case of a hospital that demonstrates to the Secretary in a current fiscal year that the adjustment being made under paragraph (2)(H) or (3)(E) of section 1886(d) of the Social Security Act [subsec. (d)(2)(H) or (3)(E) of this section] for that hospital's discharges in that fiscal year does not accurately reflect the wage levels in the labor market serving the hospital, the Secretary, to the extent he deems appropriate, would modify such adjustment for that hospital for discharges in the subsequent fiscal year to take into account a difference in payment amounts in that current fiscal year to the hospital that resulted from such inaccuracy."

Different Treatment of Capital-Projects-Related Costs Before and After Implementation of System for Including Such Costs Under Prospectively Determined Payment Rate

Section 601(a)(3) of Pub. L. 98-21 provided that: "It is the intent of Congress that, in considering the implementation of a system for including capital-related costs under a prospectively determined payment rate for inpatient hospital services, costs related to capital projects for which expenditures are obligated on or after the effective date of the implementation of such a system, may or may not be distinguished and treated differently from costs of projects for which expenditures were obligated before such date."

New England Hospitals; Classification as Urban or Rural

Section 601(g) of Pub. L. 98-21 provided that: "In determining whether a hospital is in an urban or rural area for purposes of section 1886(d) of the Social Security Act [subsec. (d) of this section], the Secretary of Health and Human Services shall classify any hospital located in New England as being located in an urban area if such hospital was classified as being located in an urban area under the Standard Metropolitan Statistical Area system of classification in effect in 1979."

Reports, Experiments, and Demonstration Projects Related to Inclusion in Prospective Payment Amounts of Inpatient Hospital Service Capital-Related Costs

Section 603(a) of title VI of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title III, § 2317, July 18, 1984, 98 Stat. 1081, provided that:

"(1) The Secretary of Health and Human Services (hereinafter in this title referred to as the 'Secretary') shall study, develop, and report to the Congress within 18 months after the date of the enactment of this Act [Apr. 20, 1983] on the method and proposals for legislation by which capital-related costs, such as return on net equity, associated with inpatient hospital services can be included within the prospective payment amounts computed under section 1886(d) of the Social Security Act [42 U.S.C. 1395ww(d)].

"(2)(A) The Secretary shall study and report annually to the Congress at the end of each year (beginning with 1984 and ending with 1987) on the impact, of the payment methodology under section 1886(d) of the Social Security Act [42 U.S.C. 1395ww(d)] during the previous year, on classes of hospitals, beneficiaries, and other payors for inpatient hospital services, and other providers, and, in particular, on the impact of computing DRG prospective payment rates by census division, rather than exclusively on a national basis. Each such report shall include such recommendations for such changes in legislation as the Secretary deems appropriate.

"(B) During fiscal year 1984, the Secretary shall begin the collection of data necessary to compute the amount of physician charges attributable, by diagnosis-related groups, to physicians' services furnished to inpatients of hospitals whose discharges are classified within those groups. The Secretary shall submit to Congress, not later than July 1, 1985, a report to Congress which includes recommendations on the advisability and feasibility of providing for determining the amount of the payments for physicians' services furnished to hospital inpatients based on the DRG type classification of the discharges of those inpatients, and legislative recommendations thereon.

"(C) In the annual report to Congress under subparagraph (A) for 1985, the Secretary shall include the results of studies on—

"(i) the feasibility and impact of eliminating or phasing out separate urban and rural DRG prospective payment rates under paragraph (3) of section 1886(d) of the Social Security Act [42 U.S.C. 1395ww(d)(3)];

"(ii) whether and the method under which hospitals, not paid based on amounts determined under such section, can be paid for inpatient hospital services on a prospective basis as under such section;

"(iii) the appropriateness of the factors used under paragraph (5)(A) of such section to compensate hospitals for the additional expenses of outlier cases, and the application of severity of illness, intensity of care, or other modifications to the diagnosis-related groups, and the advisability and feasibility of providing for such modifications;

"(iv) the feasibility and desirability of applying the payment methodology under such section to payment by all payors for inpatient hospital services; and

"(v) the impact of such section on hospital admissions and the feasibility of making a volume adjustment in the DRG prospective payment rates or requiring preadmission certification in order to minimize the incentive to increase admissions.

Such report shall specifically include, with respect to the item described in clause (iv), consideration of the extent of cost-shifting to non-Federal payors and the impact of such cost-shifting on health insurance costs and premiums borne by employers and employees.

"(D) In the annual report to Congress under subparagraph (A) for 1986, the Secretary shall include the results of a study examining the overall impact of State systems of hospital payment (either approved under section 1886(c) of the Social Security Act [42 U.S.C. 1395ww(c)] or under a waiver approved under section 402(a) of the Social Security Amendments of 1967 [42 U.S.C. 1395b-1(a)] or section 222(a) of the Social Security Amendments of 1972) [Pub. L. 92-603, set out as a note under 1395b-1 of this title], particularly assessing such systems' impact not only on the medicare program but also on the medicaid program, on payments and premiums under private health insurance plans, and on tax expenditures.

"(3)(A) The Secretary shall complete a study and make legislative recommendations to the Congress with respect to an equitable method of reimbursing sole community hospitals which takes into account their unique vulnerability to substantial variations in occupancy.

"(B) In addition, the Secretary shall examine ways to coordinate an information transfer between parts A and B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.], particularly with respect to those cases where a denial of coverage is made under part A of such title and no adjustment is made in the reimbursement to the admitting physician or physicians.

"(C) The Secretary shall also report on the appropriate treatment of uncompensated care costs, and adjustments that might be appropriate for large teaching hospitals located in rural areas.

"(D) The Secretary shall also report on the advisability of having hospitals make available information on the cost of care to patients financed by both public programs and private payors.

"(E) The studies and reports described in this paragraph shall be completed and submitted not later than April 1, 1985.

"(4) The Secretary shall complete a study and make recommendations to the Congress, before April 1, 1984, with respect to a method for including hospitals located outside of the fifty States and the District of Columbia under a prospective payment system."

Section Referred to in Other Sections

This section is referred to in sections 1395d, 1395f, 1395*l*, 1395n, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395xx of this title; title 2 section 901.

§ 1395xx. Payment of provider-based physicians and payment under certain percentage arrangements

(a) Criteria; amount of payments

(1) The Secretary shall by regulation determine criteria for distinguishing those services (including inpatient and outpatient services) rendered in hospitals or skilled nursing facilities—

[See main edition for text of (A)]

(B) which constitute professional services which are rendered for the general benefit to patients in a hospital or skilled nursing facility and which may be reimbursed only on a reasonable cost basis or on the bases described in section 1395ww of this title.

[See main edition for text of (2); (b)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(j), 97 Stat. 165.)

Amendments

1983—Subsec. (a)(1)(B). Pub. L. 98-21 added "or on the bases described in section 1395ww of this title".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

§ 1395yy. Payment to skilled nursing facilities for routine service costs

(a) Per diem limitations

The Secretary, in determining the amount of the payments which may be made under this subchapter with respect to routine service costs of extended care services shall not recognize as reasonable (in the efficient delivery of health services) per diem costs of such services to the extent that such per diem costs exceed the following per diem limits, except as otherwise provided in this section:

(1) With respect to freestanding skilled nursing facilities located in urban areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in urban areas.

(2) With respect to freestanding skilled nursing facilities located in rural areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in rural areas.

(3) With respect to hospital-based skilled nursing facilities located in urban areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in urban areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in urban areas exceeds the limit for freestanding skilled nursing facilities located in urban areas.

(4) With respect to hospital-based skilled nursing facilities located in rural areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in rural areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in rural areas exceeds the limit for freestanding skilled nursing facilities located in rural areas.

In applying this subsection the Secretary shall make appropriate adjustments to the labor related portion of the costs based upon an appropriate wage index.

(b) Exception to limitations for hospital-based skilled nursing facility

With respect to a hospital-based skilled nursing facility, the Secretary shall recognize as reasonable the portion of the cost differences between hospital-based and freestanding skilled nursing facilities attributable to excess overhead allocations (as determined by the Secretary) resulting from the reimbursement principles under this subchapter, nothwithstanding the limits set forth in paragraph (3) or (4) of subsection (a) of this section.

(c) Adjustments in limitations

The Secretary may make adjustments in the limits set forth in subsection (a) of this section with respect to any skilled nursing facility to the extent the Secretary deems appropriate, based upon case mix or circumstances beyond the control of the facility.

(Aug. 14, 1935, ch. 531, title XVIII, § 1888, as added July 18, 1984, Pub. L. 98-369, div. B, title III, § 2319(b), 98 Stat. 1082.)

EFFECTIVE DATE

Section 2319(c) of Pub. L. 98-369 provided that: "The amendments made by subsections (a) [amending section 1395x of this title] and (b) [enacting this section] shall apply to cost reporting periods beginning on or after July 1, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1395x of this title.

§ 1395zz. Purchase of durable medical equipment

(a) Lease-purchase basis or rental; determination by Secretary

In the case of durable medical equipment to be furnished an individual, the Secretary shall determine, on the basis of such medical and other evidence as he finds appropriate (including certification by the attending physician with respect to expected duration of need), whether the expected duration of the medical need for the equipment warrants a presumption that purchase of the equipment would be less costly or more practical than rental. If the Secretary determines that such a presumption does exist, he shall require that the equipment be purchased, on a lease-purchase basis or otherwise, and shall make payment in accordance with the lease-purchase agreement (or in a lump sum amount if the equipment is purchased other than on a lease-purchase basis); except that the Secretary may authorize the rental of the equipment notwithstanding such determination if he determines that the purchase of the equipment would be inconsistent with the purposes of this subchapter or would create an undue financial hardship on the individual who will use it.

(b) Waiver of coinsurance amount in purchase of used equipment

With respect to purchases of used durable medical equipment, the Secretary may waive any coinsurance amount applicable whenever the purchase price of the used equipment is at least 25 percent less than the reasonable charge for comparable new equipment.

(c) Reimbursement procedures

For purposes of subsection (a) of this section, the Secretary may, pursuant to agreements made with suppliers of durable medical equipment, establish reimbursement procedures which he finds to be equitable, economical, and feasible.

(d) Encouragement of lease-purchase basis

The Secretary shall encourage suppliers of durable medical equipment to make their equipment available to individuals entitled to benefits under this subchapter on a lease-purchase basis whenever possible.

(Aug. 14, 1935, ch. 531, title XVIII, § 1889, formerly § 1833(f), as added Jan. 2, 1968, Pub. L. 90-248, title I, § 132(b), 81 Stat. 850, and amended Oct. 30, 1972, Pub. L. 92-603, title II, § 245(d), 86 Stat. 1424; Oct. 25, 1977, Pub. L. 95-142, § 16(a), 91 Stat. 1200; renumbered and amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2321(d), 98 Stat. 1084.)

CODIFICATION

Section was formerly set out as subsec. (f) of section 1395*l* of this title prior to its renumbering and transfer by Pub. L. 98-369.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2321(d)(4)(B), redesignated par. (1) of section 1395*l*(f) of this title as subsec. (a).

Pub. L. 98-369, § 2321(d)(1), struck out "as described in section 1395x(s)(6) of this title" after "furnished an individual".

Subsec. (b). Pub. L. 98-369, § 2321(d)(4)(B), redesignated par. (2) of section 1395*l*(f) of this title as subsec. (b).

Pub. L. 98-369, § 2321(d)(2), substituted "any" for "the 20 percent" and struck out "under subsection (a) of this section" after "amount applicable".

Subsec. (c). Pub. L. 98-369, § 2321(d)(4)(B), redesignated par. (3) of section 1395*l*(f) of this title as subsec. (c).

Pub. L. 98-369, § 2321(d)(3), substituted "subsection (a) of this section" for "paragraph (1)".

Subsec. (d). Pub. L. 98-369, § 2321(d)(4)(B), redesignated par. (4) of section 1395*l*(f) of this title as subsec. (d).

1977—Par. (1). Pub. L. 95-142 substituted provisions relating to determinations by the Secretary with respect to presumptions regarding the purchase price or practicality of buying or renting durable medical equipment, for provisions relating to the purchase price of durable medical equipment authorized to be paid by the Secretary.

Par. (2). Pub. L. 95-142 substituted provisions relating to waiver of the coinsurance amount in the purchase of used durable medical equipment, for provisions relating to reimbursement procedures established by the Secretary in cases of rental of durable medical equipment.

Pars. (3), (4). Pub. L. 95-142 added pars. (3) and (4).

1972—Pub. L. 92-603 designated existing provisions as par. (1)(A) and added pars. (1)(B) and (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-142 applicable with respect to durable medical equipment purchased or rented on or after Oct. 1, 1977, see section 16(b) of Pub. L. 95-142, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE

Section applicable only with respect to items purchased after Dec. 31, 1967, see section 132(c) of Pub. L. 90-248, set out as an Effective Date of 1968 Amendment note under section 1395*l* of this title.

SUBCHAPTER XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 242b, 254b, 254c, 254e, 254h, 254n, 300e, 300e-6, 300m-6, 300x-4, 300z-5, 602, 603, 606, 614, 632a, 652, 671, 672, 673, 705, 709, 1301, 1306, 1308, 1309, 1310, 1315, 1316, 1318, 1320a-1, 1320a-2, 1320a-3, 1320a-5, 1320a-7, 1320a-7a, 1320a-8, 1320b-2, 1320b-3, 1320b-4, 1320b-5, 1320b-7, 1320c-2, 1320c-10, 1382, 1382g, 1382h, 1382i, 1383c, 1395b-1, 1395v, 1395x, 1395y, 1395z, 1395cc, 1395mm, 1395tt, 1395vv, 1395ww, 1997, 3013, 3026, 3035b, 6024, 8624 of this title; title 7 sections 2017, 3178; title 8 section 1522; title 10 section 1079; title 12 sections 1715w, 1715z-7; title 24 section 170a; title 25 section 1622; title 26 section 6103; title 38 sections 622, 4108.

§ 1396. Appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for medical assistance.

(Aug. 14, 1935, ch. 531, title XIX, § 1901, as added July 30, 1965, Pub. L. 89-97, title I, § 121(a), 79 Stat. 343, and amended Dec. 31, 1973, Pub. L. 93-233, § 13(a)(1), 87 Stat. 960; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(3)(C), 98 Stat. 1171.)

AMENDMENTS

1984—Pub. L. 98-369 struck out "Health, Education, and Welfare" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1396a. State plans for medical assistance

(a) Contents

A State plan for medical assistance must—

[*See main edition for text of (1) to (8)*]

(9) provide—

(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1395aa(a) of this title), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services,

(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health, for such institutions, and

(C) that any laboratory services paid for under such plan must be provided by a laboratory which meets the applicable requirements of section 1395x(e)(9) of this title or paragraphs (11) and (12) of section 1395x(s) of this title, or, in the case of a laboratory which is in a rural health clinic, of section 1395x(aa)(2)(G) of this title;

(10) provide—

(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title, to—

(i) all individuals—

(I) who are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including individuals eligible under this subchapter by reason of section 602(a)(37) or 606(h) of this title, or considered by the State to be receiving such aid as authorized under section 614(g) of this title),

(II) with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or

(III) who are qualified pregnant women or children as defined in section 1396d(n) of this title; [1]

[*See main edition for text of (ii), (B) to (D), closing provisions, (11) and (12)*]

(13) provide—

(A) for payment (except where the State agency is subject to an order under section 1396m of this title) of the hospital, skilled nursing facility, and intermediate care facility services provided under the plan through the use of rates (determined in accordance with methods and standards developed by the State and which, in the case of hospitals, take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs and provide, in the case of hospital patients receiving services at an inappropriate level of care (under conditions similar to those described in section 1395x(v)(1)(G) of this title), for lower reimbursement rates reflecting the level of care actually received (in a manner consistent with section 1395x(v)(1)(G) of this title)) which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards and to assure that individuals eligible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time) to inpatient hospital services of adequate quality; and such State makes further assurances, satisfactory to the Secretary, for the filing of uniform cost reports by each hospital, skilled nursing facility, and intermediate care facility and periodic audits by the State of such reports;

(B) that the State shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals, skilled nursing facilities, and intermediate care facilities can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1395x(v)(1)(O) of this title; and

(C) for payment for services described in section 1396d(a)(2)(B) of this title provided by a rural health clinic under the plan of 100 percent of costs which are reasonable and related to the cost of furnishing such services or based on such other tests of reasonableness, as the Secretary may prescribe in regulations under section 1395*l*(a)(3) of this title, or, in the case of services to which those regulations do not apply, on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph;

[*See main edition for text of (14) to (19)*]

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

[*See main edition for text of (A)*]

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution; and

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 303(a)(4)(A)(i) and (ii) or section 1383(a)(4)(A)(i) and (ii) of this title which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out;

[*See main edition for text of (21) to (25)*]

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[1] So in original. Probably should be followed by "and".

(26) if the State plan includes medical assistance for inpatient mental hospital services, provide—

(A) with respect to each patient receiving such services, for a regular program of medical review (including medical evaluation) of his need for such services, and for a written plan of care;

(B) for periodic inspections to be made in all mental institutions within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel) of the care being provided to each person receiving medical assistance, including (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the institution, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

(C) for full reports to the State agency by each medical review team of the findings of each inspection under subparagraph (B), together with any recommendations;

[*See main edition for text of* (*27*)]

(28) provide that any skilled nursing facility receiving payments under such plan must satisfy all of the requirements contained in section 1395x(j) of this title, except that the exclusion contained therein with respect to institutions which are primarily for the care and treatment of mental diseases shall not apply for purposes of this subchapter;

[*See main edition for text of* (*29*)]

(30)(A) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care;

(B) provide, under the program described in subparagraph (A), that—

(i) each admission to a hospital, skilled nursing facility, intermediate care facility, or hospital for mental diseases is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved, and

(ii) the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 percent of all admissions and must be of sufficient size to serve the purpose of (I) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and (II) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted to a hospital, skilled nursing facility, intermediate care facility, or hospital for mental diseases;

(31) with respect to skilled nursing facility services (and with respect to intermediate care facility services, where the State plan includes medical assistance for such services) provide—

(A) with respect to each patient receiving such services, for a written plan of care, prior to admission to or authorization of benefits in such facility, in accordance with regulations of the Secretary, and for a regular program of independent professional review (including medical evaluation) which shall periodically review his need for such services;

(B) with respect to each skilled nursing or intermediate care facility within the State, for periodic onsite inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), including with respect to each such person (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the facility, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

(C) for full reports to the State agency by each independent professional review team of the findings of each inspection under subparagraph (B), together with any recommendations;

[*See main edition for text of* (*32*)]

(33) provide—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of medical assistance under the plan in order to provide guidance with respect thereto in the administration of the plan to the State agency established or designated pursuant to paragraph (5) and, where applicable, to the State agency described in the second sentence of this subsection, and

[*See main edition for text of* (*B*), (*34*) *to* (*41*)]

(42) provide (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under subchapter XVIII of this chapter, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such subchapter, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1320a-8(a) of this title;

(43) provide for—

(A) informing all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance including services described in section 1396d(a)(4)(B) of this title, of the availability of early and periodic screening, diagnostic, and treatment services as described in section 1396d(a)(4)(B) of this title,

(B) providing or arranging for the provision of such screening services in all cases where they are requested, and

(C) arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services;

(44) in each case for which payment for inpatient hospital services, skilled nursing facility services, intermediate care facility services, or inpatient mental hospital services is made under the State plan—

(A) a physician certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and the physician, or a physician assistant or nurse practitioner under the supervision of a physician, recertifies, where such services are furnished over a period of time, in such cases, at least as often as required under section 1396b(g)(6) of this title (or, in the case of services that are intermediate care facility services provided in an institution for the mentally retarded, every year), and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services, and

(B) such services were furnished under a plan established and periodically reviewed and evaluated by a physician;

(45) provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients, in accordance with section 1396k of this title; and

(46) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under subchapter I of this chapter (or subchapter XVI of this chapter, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter (except for purposes of paragraph (10)). The provisions of paragraphs (9)(A), (31), and (33) and of section 1396b(i)(4) of this title shall not apply to a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

[*See main edition for text of closing pars.;* (*b*) *to* (*d*)]

(e) Continued eligibility of families determined ineligible because of income and resources or hours of work limitations of plan

[*See main edition for text of* (*1*) *to* (*3*)]

(4) A child born to a woman eligible for and receiving medical assistance under a State plan on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year so long as the child is a member of the woman's household and the woman remains eligible for such assistance.

(f) Effective date of State plan as determinative of duty of State to provide medical assistance to aged, blind, or disabled individuals

Notwithstanding any other provision of this subchapter, except as provided in subsection (e) of this section, no State not eligible to participate in the State plan program established under subchapter XVI of this chapter shall be required to provide medical assistance to any aged, blind, or disabled individual (within the meaning of subchapter XVI of this chapter) for any month unless such State would be (or would have been) required to provide medical assistance to such individual for such month had its plan for medical assistance approved under this subchapter and in effect on January 1, 1972, been in effect in such month, except that for this purpose any such individual shall be deemed eligible for medical assistance under such State plan if (in addition to meeting such other requirements as are or may be imposed under the State plan) the income of any such individual as determined in accordance with section 1396b(f) of this title (after deducting any supplemental security income payment and State supplementary payment made with respect to such individual, and incurred expenses for medical care as recognized under State law) is not in excess of the standard for medical assistance established under the State plan as in effect on January 1, 1972. In States which provide medical assistance to individuals pursuant to paragraph (10)(C) of subsection (a) of this section, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection if that individual is, or is eligible to be (1) an individual with respect to whom there is payable a State supplementary payment on the basis of which similarly situated individuals are eligible to receive medical assistance equal in amount, duration, and scope to that provided to individuals eligible under paragraph (10)(A), or (2) an eligible individual or eligible spouse, as defined in subchapter XVI of this chapter, with respect to whom supplemental security income benefits are payable; otherwise that individual shall be considered to be an individual eligible for medical assistance under paragraph (10)(C) of that subsection. In States which do not provide medical assistance to individuals pursuant to paragraph (10)(C) of that subsection, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection.

[*See main edition for text of* (*g*) *to* (*j*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2303(g)(1), 2314(b), 2335(e), 2361(a), 2362(a), 2363(a)(1), 2367(a), 2368(a), (b), 2373(b)(1)-(10), title VI, § 2651(c), 98 Stat. 1066, 1079, 1091, 1104, 1105, 1108, 1109, 1111, 1149; Aug. 16, 1984, Pub. L. 98-378, § 20(c), 98 Stat. 1322; Nov. 8, 1984, Pub. L. 98-617, § 3(a)(7), (b)(10), 98 Stat. 3295, 3296.)

References in Text

Pub. L. 92-336, referred to in provisions following subsec. (a)(46), is Pub. L. 92-336, July 1, 1972, 86 Stat. 406, which amended sections 401, 403, 409, 411, 415, 427, 428, and 430 of this title and sections 165, 1401, 1402, 3101, 3111, 3121, 3122, 3125, 6413, and 6654 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under sections 403, 409, 415, and 428 of this title and sections 165 and 1401 of Title 26.

Amendments

1984—Subsec. (a)(9)(C). Pub. L. 98-369, § 2373(b)(1), realigned margin of subpar. (C).

Subsec. (a)(10)(A). Pub. L. 98-369, § 2373(b)(2), realigned margins of subpar. (A).

Subsec. (a)(10)(A)(i). Pub. L. 98-369, § 2361(a), amended cl. (i) generally. Prior to the amendment cl. (i) read as follows: "(i) all individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including pregnant women deemed by the State to be receiving such aid as authorized in section 606(g) of this title and individuals considered by the State to be receiving such aid as authorized under section 614(g) of this title), or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter; and".

Subsec. (a)(10(A)(i)(I). Pub. L. 98-378, § 20(c), substituted "section 602(a)(37) or 606(h) of this title" for "section 602(a)(37) of this title".

Subsec. (a)(13)(A). Pub. L. 98-369, § 2373(b)(3), made clarifying amendment by striking out "(A)" and all that follows through "hospital" the first place it appears and inserting in lieu thereof "(A) for payment (except where the State agency is subject to an order under section 1396m of this title) of the hospital", resulting in no change in text.

Subsec. (a)(13)(B), (C). Pub. L. 98-369, § 2314(b), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(20)(B). Pub. L. 98-369, § 2373(b)(4), substituted "periodic" for "periodical".

Subsec. (a)(20)(C). Pub. L. 98-369, § 2373(b)(5), struck out reference to section 803(a)(1)(A)(i) and (ii) of this title.

Subsec. (a)(26). Pub. L. 98-369, § 2368(b), in amending par. (26) generally, revised existing provisions to continue their application to review of inpatient mental hospital service programs, and to sever provisions relating to review of skilled nursing programs. See par. (31) of this section.

Subsec. (a)(26)(B)(ii). Pub. L. 98-617, § 3(a)(7), repealed the amendment made by Pub. L. 98-369, § 2373(b)(6). See below.

Pub. L. 98-369, § 2373(b)(6), provided that cl. (ii) is amended by substituting "facilities" for "homes".

Subsec. (a)(26)(C). Pub. L. 98-617, § 3(b)(10), realigned margin of subpar. (C).

Subsec. (a)(28). Pub. L. 98-369, § 2335(e), struck out "and tuberculosis" after "mental diseases".

Subsec. (a)(30). Pub. L. 98-369, § 2363(a)(1)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(31). Pub. L. 98-369, § 2368(a), in amending par. (31) generally, revised existing provisions to cover review of skilled nursing facilities.

Subsec. (a)(33)(A). Pub. L. 98-369, § 2373(b)(7), substituted "second sentence" for "penultimate sentence".

Subsec. (a)(42). Pub. L. 98-369, § 2373(b)(8), substituted "subchapter" for "part" after "audits conducted for purposes of such".

Subsec. (a)(43). Pub. L. 98-369, § 2303(g)(1), redesignated par. (44) as (43), and struck out former par. (43) which provided that if the State plan makes provision for payment to a physician for laboratory services the performance of which such physician, or other physician with whom he shares his practice, did not personally perform or supervise, the plan include provision to insure that payment for such services not exceed the payment authorized by section 1395u(h) of this title.

Subsec. (a)(44). Pub. L. 98-369, § 2363(a)(1)(B), added par. (44).

Pub. L. 98-369, § 2303(g)(1)(C), redesignated former par. (44) as (43).

Subsec. (a)(45). Pub. L. 98-369, § 2367(a), added par. (45).

Subsec. (a)(46). Pub. L. 98-369, § 2651(c), added par. (46).

Subsec. (a), foll. par. (46). Pub. L. 98-369, § 2373(b)(9), substituted "The provisions of paragraph (9)(A), (31), and (33) and of section 1396b(i)(4) of this title shall not apply to" for "For purposes of paragraph (9)(A), (26), (31), and (33), and of section 1396b(i)(4) of this title, the term 'skilled nursing facility' and 'nursing home' do not include".

Subsec. (e)(4). Pub. L. 98-369, § 2362(a), added par. (4).

Subsec. (f). Pub. L. 98-369, § 2373(b)(10), substituted "paragraph (10)(A)" and "paragraph (10)(C)" for "clause (10)(A)" and "clause (10)(C)", respectively, wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Amendment by section 2303(g)(1) of Pub. L. 98-369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title, see section 2303(j)(1) and (3) of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

Section 2314(c)(3) of Pub. L. 98-369 provided that:

"(A) Except as provided in subparagraph (B), the amendments made by subsection (b) [amending subsec. (a)(13) of this section] shall apply to medical assistance furnished on or after October 1, 1984.

"(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section [amending sections 1395x and 1396a of this title and enacting provisions set out as a note under section 1395x of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2335(e) of Pub. L. 98-369 effective July 18, 1984, see section 2335(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Section 2361(d) of Pub. L. 98-369 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending sections 606, 1396a, and 1396d of this title] shall apply to calendar quarters beginning on or after October 1, 1984, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

"(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984]."

Section 2362(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [adding subsec. (e)(4) of this section] shall apply to children born on or after October 1, 1984."

Amendment by section 2363(a)(1) of Pub. L. 98-369 applicable to calendar quarters beginning on or after July 18, 1984, except that, in the case of individuals admitted to skilled nursing facilities before that date, the amendment shall not require recertifications sooner or more frequently than were required under the law in effect before that date, see section 2363(c) of Pub. L. 98-369, set out as a note under section 1396b of this title.

Section 2367(c) of Pub. L. 98-369 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending sections 1396a and 1396k of this title] shall become effective on October 1, 1984.

"(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984]."

Section 2368(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (a)(26) and (31) of this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2651(c) of Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

PAYMENT FOR PSYCHIATRIC HOSPITAL SERVICES

Section 2366 of Pub. L. 98-369 provided that: "The provisions of section 1902(a)(13) of the Social Security Act [42 U.S.C. 1396a(a)(13)], in so far as they require a reduction of the amount of payment otherwise to be made to a public psychiatric hospital due to the level of care received in such hospital, shall not apply to payments to hospitals before July 1, 1985, and such a reduction made for payments during the 12-month period ending June 30, 1986, and during the 12-month period ending June 30, 1987, shall be one-third and two-thirds, respectively, of the amount of the reduction which would have been made without regard to this section."

MORATORIUM ON REGULATORY ACTIONS BY SECRETARY

Section 2373(c) of Pub. L. 98-369 provided that:

"(1) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State during the moratorium period described in paragraph (2) by reason of such State's plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] being determined to be in violation of section 1902(a)(10)(C)(i)(III) of such Act [42 U.S.C. 1396a(a)(10)(C)(i)(III)] on account of such plan's having a standard or methodology which the Secretary interprets as being less restrictive than the standard or methodology required under such section.

"(2) The moratorium period is the period beginning on the date of the enactment of this Act [July 18, 1984] and ending 18 months after the date on which the Secretary submits the report required under paragraph (3).

"(3) The Secretary shall report to the Congress within 12 months after the date of the enactment of this Act [July 18, 1984] with respect to the appropriateness, and impact on States and recipients of medical assistance, of applying standards and methodologies utilized in cash assistance programs to those recipients of medical assistance who do not receive cash assistance, and any recommendations for changes in such requirements.

"(4) No provision of law shall repeal or suspend the moratorium imposed by this subsection unless such provision specifically amends or repeals this subsection."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e-17, 705, 1315, 1320a-7a, 1382i, 1395v, 1395cc, 1395tt, 1396b, 1396c, 1396d, 1396g, 1396i, 1396*l*, 1396n, 1396*o*, 4728, 6022, 6042 of this title.

§ 1396b. Payment to States

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Decrease in Federal medical assistance percentage of amounts paid for services furnished under State plan after June 30, 1973

(1) Subject to paragraph (3), with respect to amounts paid for the following services furnished under the State plan after June 30, 1973 (other than services furnished pursuant to a contract with a health maintenance organization as defined in section 1395mm of this title or which is a qualified health maintenance organization (as defined in section 300e-9(d) of this title)), the Federal medical assistance percentage shall be decreased as follows: After an individual has received inpatient hospital services or intermediate care facility services for 60 days, skilled nursing facility services for 30 days, or inpatient mental hospital services for 90 days (whether or not such days are consecutive), during any fiscal year, the Federal medical assistance percentage with respect to amounts paid for any such care furnished thereafter to such individual shall be decreased by a per centum thereof (determined under paragraph (5)) unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Secretary that, with respect to each calendar quarter for which the State submits a request for payment at the full Federal medical assistance percentage for amounts paid for inpatient hospital services, skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals, skilled nursing facilities, and intermediate care facilities pursuant to paragraphs (26) and (31) of section 1396a(a) of this title whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams. In determining the number of days on which an individual has received services described in this subsection, there shall not be counted any days with respect to which such individual is entitled to have payments made (in whole or in part) on his behalf under section 1395d of this title.

[*See main edition for text of* (*2*) *and* (*3*)]

(4) [*See main edition for text of* (*A*)]

(B) The Secretary shall find a showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory under such paragraph with respect to the requirement that the State conduct annual onsite inspections in mental hospitals, skilled nursing facilities, and intermediate care facilities under paragraphs (26) and (31) of section 1396a(a) of this title, if the showing demonstrates that the State has conducted such an onsite inspection during the 12-month period ending on the last date of the calendar quarter—

(i) in each of not less than 98 per centum of the number of such hospitals and facilities requiring such inspection, and

(ii) in every such hospital or facility which has 200 or more beds,

and that, with respect to such hospitals and facilities not inspected within such period, the State has exercised good faith and due diligence in attempting to conduct such inspection, or if the State demonstrates to the satisfaction of the Secretary that it would have made such a showing but for failings of a technical nature only.

[*See main edition for text of* (*5*)]

(6)(A) Recertifications required under section 1396a(a)(44) of this title shall be conducted at least every 60 days in the case of inpatient hospital services.

(B) Such recertifications in the case of skilled nursing facility services shall be conducted at least—

(i) 30 days after the date of the initial certification,

(ii) 60 days after the date of the initial certification,

(iii) 90 days after the date of the initial certification, and

(iv) every 60 days thereafter.

(C) Such recertifications in the case of intermediate care facility services shall be conducted at least—

(i) 60 days after the date of the initial certification,

(ii) 180 days after the date of the initial certification,

(iii) 12 months after the date of the initial certification,

(iv) 18 months after the date of the initial certification,

(v) 24 months after the date of the initial certification, and

(vi) every 12 months thereafter.

(D) For purposes of determining compliance with the schedule established by this paragraph, a recertification shall be considered to have been done on a timely basis if it was performed not later than 10 days after the date the recertification was otherwise required and the State establishes good cause why the physician or other person making such recertification did not meet such schedule.

(7) It is the duty and responsibility of the Secretary to assure that standards which govern the provision of care in skilled nursing facilities and intermediate care facilities under plans approved under this subchapter, and the enforcement of such standards, are adequate to protect the health and safety of residents and to promote the effective and efficient use of public moneys.

[*See main edition for text of* (*h*)]

(i) Payment for services performed after December 31, 1972; restrictions

Payment under the preceding provisions of this section shall not be made—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) with respect to any amount expended for inpatient hospital tests (other than in emergency situations) not specifically ordered by the attending physician or other responsible practitioner; or

(7) with respect to any amount expended for clinical diagnostic laboratory tests performed by a physician, independent laboratory, or hospital, to the extent such amount exceeds the amount that would be recognized under section 1395*l*(h) of this title for such tests performed for an individual enrolled under part B of subchapter XVIII of this chapter.

[*See main edition for text of* (*j*) *to* (*l*)]

(m) "Health maintenance organization" defined; duties and functions of Secretary; payments to States; provisional determination of status by State

[*See main edition for text of* (*1*)]

(2)(A) Except as provided in subparagraphs (B) and (C), no payment shall be made under this subchapter to a State with respect to expenditures incurred by it for payment (determined under a prepaid capitation basis or under any other risk basis) for services provided by any entity which is responsible for the provision of inpatient hospital services and any other service described in paragraph (2), (3), (4), (5), or (7) of section 1396d(a) of this title or for the provision of any three or more of the services described in such paragraphs unless—

[*See main edition for text of* (*i*) *to* (*v*)]

(vi) such contract (I) except as provided under subparagraph (F), permits individuals who have elected under the plan to enroll with the entity for provision of such benefits to terminate such enrollment without cause as of the beginning of the first calendar month following a full calendar month after the request is made for such termination, and (II) provides for notification of each such individual, at the time of the individual's enrollment, of such right to terminate such enrollment; and

[*See main edition for text of* (*vii*)]

(B) Subparagraph (A) does not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services provided by an entity which—

(i)(I) received a grant of at least $100,000 in the fiscal year ending June 30, 1976, under section 254b(d)(1)(A) or 254c(d)(1) of this title, and for the period beginning July 1, 1976, and ending on the expiration of the period for which payments are to be made under this subchapter has been the recipient of a grant under either such section; and

(II) provides to its enrollees, on a prepaid capitation risk basis or on any other risk basis, all of the services and benefits described in paragraphs (1), (2), (3), (4)(C), and (5) of section 1396d(a) of this title and, to the extent required by section 1396a(a)(13)(A)(ii) of this title to be provided under a State plan for medical assistance, the services and benefits described in paragraph (7) of section 1396d(a) of this title; or

[*See main edition for text of* (*ii*) *and* (*iii*)]

(C) Subparagraph (A)(ii) shall not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services by an entity during the three-year period beginning on October 8, 1976, or beginning on the date the entity qualifies as a health maintenance organization (as determined by the Secretary), whichever occurs later, but only if the entity demonstrates to the satisfaction of the Secretary by the submission of plans for each year of such three-year period that it is making continuous efforts and progress toward achieving compliance with subparagraph (A)(ii).

[*See main edition for text of* (*D*)]

(E) In the case of a health maintenance organization that—

(i) is a nonprofit organization with at least 25,000 members,

(ii) is and has been a qualified health maintenance organization (as defined in section 300e–9(d) of this title) for a period of at least four years,

(iii) provides basic health services through members of the staff of the organization,

(iv) is located in an area designated as medically underserved under section 300e–1(7) of this title, and

(v) previously received a waiver of the requirement described in subparagraph (A)(ii) under section 1315 of this title,

the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that special circumstances warrant such modification or waiver and that the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this subchapter or under subchapter XVIII of this chapter.

(F)(i) In the case of a contract with a health maintenance organization described in clause (ii), a State plan may restrict the period in which requests for termination of enrollment without cause under subparagraph (A)(vi)(I) are permitted to the first month of each period of enrollment, each such period of enrollment not to exceed six months in duration, but only if the State provides notification, at least twice per year, to individuals enrolled with such organization of the right to terminate such enrollment and the restriction on the exercise of this right. Such restriction shall not apply to requests for termination of enrollment for cause.

(ii) A health maintenance organization referred to in clause (i) is an organization which—

(I) is a qualified health maintenance organization (as defined in section 300e-9(d) of this title) or a health maintenance organization which is receiving (and has received during the previous two years) a grant of at least $100,000 under section 254b(d)(1)(A) or 254c(d)(1) of this title or is receiving (and has received during the previous two years) at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965, and

(II) meets the requirement of subparagraph (A)(ii).

[*See main edition for text of* (*3*); (*n*) *to* (*r*)]

(s) Repealed. Pub. L. 97-35, title XXI, § 2161(c)(1), Aug. 13, 1981, 95 Stat. 805, as amended by Pub. L. 97-248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376

(t) Repealed. Pub. L. 97-35, title XXI, § 2161(c)(2), Aug. 13, 1981, 95 Stat. 805, as amended by Pub. L. 97-248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376

[*See main edition for text of* (*u*)]

(Aug. 14, 1935, ch. 531, title XIX, § 1903, as added July 30, 1965, Pub. L. 89-97, title I, § 121(a), 79 Stat. 349, and amended Jan. 2, 1968, Pub. L. 90-248, title II, §§ 220(a), 222(c), (d), 225(a), 229(c), 241(f)(5), 81 Stat. 898, 901, 902, 904, 917; June 28, 1968, Pub. L. 90-364, title III, § 303(a)(1), 82 Stat. 274; Aug. 9, 1969, Pub. L. 91-56, § 2(a), 83 Stat. 99; Oct. 30, 1972, Pub. L. 92-603, title II, §§ 207(a), 221(c)(6), 224(c), 225, 226(e), 229(c), 230, 233(c), 235(a), 237(a)(1), 249B, 278(b)(1), (5), (16), 290, 295, 299E(a), 86 Stat. 1379, 1380, 1389, 1395, 1396, 1404, 1410, 1411, 1414, 1415, 1453, 1454, 1457, 1459, 1462; July 9, 1973, Pub. L. 93-66, title II, § 234(a), 87 Stat. 160; Dec. 31, 1973, Pub. L. 93-233, §§ 13(a)(11), (12), 18(r)-(v), (x)(5), (6), (y)(1), 87 Stat. 963, 971-973; Dec. 31, 1975, Pub. L. 94-182, title I, §§ 110(a), 111(b), 89 Stat. 1054; Oct. 8, 1976, Pub. L. 94-460, title II, § 202(a), 90 Stat. 1957; Oct. 18, 1976, Pub. L. 94-552, § 1, 90 Stat. 2540; Aug. 1, 1977, Pub. L. 95-83, title I, § 105(a)(1), (2), 91 Stat. 384; Oct. 25, 1977, Pub. L. 95-142, §§ 3(c)(2), 8(c), 10(a), 11(a), 17(a)-(c), 20(a), 91 Stat. 1179, 1195, 1196, 1201, 1205; Nov. 1, 1978, Pub. L. 95-559, § 14(c), 92 Stat. 2141; Nov. 10, 1978, Pub. L. 95-626, title I, § 102(b)(3), 92 Stat. 3551; Oct. 4, 1979, Pub. L. 96-79, title I, § 128, 93 Stat. 629; Oct. 7, 1980, Pub. L. 96-398, title IX, § 901, 94 Stat. 1609; Dec. 5, 1980, Pub. L. 96-499, title IX, §§ 905(b), (c), 961(a), 963, 964, 94 Stat. 2618, 2650, 2651; Aug. 13, 1981, Pub. L. 97-35, title XXI, §§ 2101(a)(2), 2103(b)(1), 2106(b)(3), 2113(n), 2161, 2163, 2164(a), 2174(b), 2178(a), 2183(a), 95 Stat. 786, 788, 792, 795, 803-806, 809, 813, 816; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 133(a), 137(a)(1), (2), (b)(11)-(16), (27), (g), 146(b), 96 Stat. 373, 376, 378, 379, 381, 394; Jan. 12, 1983, Pub. L. 97-448, title III, § 309(b)(16), 96 Stat. 2409; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2303(g)(2), 2363(a)(2), (4), (b), 2364, 2373(b)(11)-(14), 98 Stat. 1066, 1106, 1107, 1111, 1112; Nov. 8, 1984, Pub. L. 98-617, § 3(a)(6), 98 Stat. 3295.)

References in Text

Part A of subchapter IV of this chapter, referred to in subsecs. (a) and (f), is classified to section 601 et seq. of this title.

Part B of subchapter XVIII of this chapter, referred to in subsecs. (a), (b), (i), and (m), is classified to section 1395j et seq. of this title.

The Appalachian Regional Development Act of 1965, referred to in subsec. (m)(2)(B)(ii), (F)(ii), is Pub. L. 89-4, Mar. 9, 1965, 79 Stat. 5, as amended, which is set out in the Appendix to Title 40, Public Buildings, Property, and Works. For complete classification of this act to the Code, see Tables.

Amendments

1984—Subsec. (g)(1). Pub. L. 98-369, § 2363(a)(2)(A), (B), in provision preceding subpar. (A), substituted "inpatient hospital services or intermediate care facility services for 60 days, skilled nursing facility services for 30 days, or inpatient mental hospital services for" for "care as an inpatient in a hospital (including an institution for tuberculosis), skilled nursing facility or intermediate care facility on 60 days, or in a hospital for mental diseases on", and struck out "which for purposes of this section means the four calendar quarters ending with June 30," before "the Federal medical assistance percentage", and struck out "in the same fiscal year" before "shall be decreased by a per centum thereof".

Pub. L. 98-369, § 2363(a)(2)(C), substituted ", skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals, skilled nursing facilities, and intermediate care facilities pursuant to paragraphs (26) and (31) of section 1396a(a) of this title whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams" for "(including tuberculosis hospitals), skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), there is in operation in the State an effective program of control over utilization of such services; such a showing must include evidence that—" and former subpars. (A) through (D) requirement for evidence concerning an effective program of utilization of certain medical services.

Subsec. (g)(4)(B). Pub. L. 98-369, § 2373(b)(11), substituted "paragraphs (26)" for "paragraph (26)" and "diligence" for "deligence".

Subsec. (g)(6). Pub. L. 98-369, § 2363(a)(4), in amending par. (6) generally, substituted provisions relating to recertifications for provisions relating to reports to Congress concerning Secretary's determination and review of showing respecting any decrease of Federal medical assistance percentage of amounts paid for services.

Subsec. (g)(7). Pub. L. 98-369, § 2363(b), as amended by Pub. L. 98-617, § 3(a)(6) added par. (7).

Subsec. (i)(7). Pub. L. 98-369, § 2303(g)(2), added par. (7).

Subsec. (m)(2)(A)(vi). Pub. L. 98-369, § 2364(1), added "except as provided under subparagraph (F)," after "(I)".

Subsec. (m)(2)(B)(i)(I). Pub. L. 98-369, § 2373(b)(12)(A), (C), struck out "(II)" before "for the period" and substituted "period" for "peroid".

Subsec. (m)(2)(B)(i)(II). Pub. L. 98-369, § 2373(b)(12)(B), substituted "of section 1396d(a) of this title" for "of such section".

Subsec. (m)(2)(C). Pub. L. 98-369, § 2373(b)(13), realigned margin of subpar. (C).

Subsec. (m)(2)(E), (F). Pub. L. 98-369, § 2364(2), added subpars. (E) and (F).

Subsec. (s)(3)(B). Pub. L. 98-369, § 2373(b)(14), substituted "non-Federal" for "nonfederal".

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Amendment by section 2303(g)(2) of Pub. L. 98-369 applicable to payments for calendar quarters beginning on or after Oct. 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title, see section 2303(j)(2) and (3) of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

Section 2363(c) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending sections 1396a and 1396b of this title] apply to calendar quarters beginning on or after the date of the enactment of this Act [July 18, 1984], except that, in the case of individuals admitted to skilled nursing facilities before such date, the amendments made by such subsection shall not require recertifications sooner or more frequently than were required under the law in effect before such date."

Effective Date of 1982 Amendment

Amendment by section 137(a)(1), (2) of Pub. L. 97-248 effective as if originally included in the provision of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, to which such amendment relates, see section 137(d)(1) of Pub. L. 97-248, set out as a note under section 1396a of this title.

Effective Date of 1981 Amendment

Section 2161(c)(1) of Pub. L. 97-35, as amended by Pub. L. 97-248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided in part that repeal of subsec. (s) is effective for calendar quarters beginning on or after Oct. 1, 1984.

Section 2161(c)(2) of Pub. L. 97-35, as amended by Pub. L. 97-248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided in part that repeal of subsection (t) is effective after payments for the first quarter of fiscal year 1985.

§ 1396d. Definitions

For purposes of this subchapter—

(a) Medical assistance

The term "medical assistance" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, who are—

[*See main edition for text of* (*i*) *to* (*viii*)]

but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services (other than services in an institution for mental diseases);

[*See main edition for text of* (*2*) *and* (*3*)]

(4)(A) skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older; (B) effective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary; and (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies;

[*See main edition for text of* (*5*) *to* (*8*)]

(9) clinic services furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician;

[*See main edition for text of* (*10*) *to* (*13*)]

(14) inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals 65 years of age or over in an institution for mental diseases;

(15) intermediate care facility services (other than such services in an institution for mental diseases) for individuals who are determined, in accordance with section 1396a(a)(31)(A) of this title, to be in need of such care;

[*See main edition for text of* (*16*)]

(17) services furnished by a nurse-midwife (as defined in subsection (m) of this section) which the nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider; and

[*See main edition for text of* (*18*)]

except as otherwise provided in paragraph (16), such term does not include—

[*See main edition for text of* (*A*)]

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for mental diseases.

For purposes of clause (vi) of the preceding sentence, a person shall be considered essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XVI of this chapter), and such person is determined, under such a State plan, to be essential to the well-being of such individual.

(b) Federal medical assistance percentage; State percentage; Indian health care percentage

The term "Federal medical assistance percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, and (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum. The Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of section 1301(a)(8)(B) of this title. Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 1603 of title 25).

[See main edition for text of (c)]

(d) Intermediate care facility services

The term "intermediate care facility services" may include services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions if—

(1) the primary purpose of such institution (or distinct part thereof) is to provide health or rehabilitative services for mentally retarded individuals and the institution meets such standards as may be prescribed by the Secretary;

[See main edition for text of (2) and (3); (e) to (g)]

(h) Inpatient psychiatric hospital services for individuals under age 21

(1) For purposes of paragraph (16) of subsection (a) of this section, the term "inpatient psychiatric hospital services for individuals under age 21" includes only—

(A) inpatient services which are provided in an institution (or distinct part thereof) which is a psychiatric hospital as defined in section 1395x(f) of this title;

[See main edition for text of (B) and (C), (2); (i) to (l)]

(m) Nurse-midwife

The term "nurse-midwife" means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary, and performs services in the area of management of the care of mothers and babies (throughout the maternity cycle) which the nurse is legally authorized to perform in the State in which the nurse performs such services.

(n) "Qualified pregnant woman or child" defined

The term "qualified pregnant woman or child" means—

(1) a pregnant woman who—

(A) would be eligible for aid to families with dependent children under part A of subchapter IV of this chapter (or would be eligible for such aid if coverage under the State plan under part A of subchapter IV of this chapter included aid to families with dependent children of unemployed parents pursuant to section 607 of this title) if her child had been born and was living with her in the month such aid would be paid, and such pregnancy has been medically verified; or

(B) is a member of a family which would be eligible for aid under the State plan under part A of subchapter IV of this chapter pursuant to section 607 of this title if the plan required the payment of aid pursuant to such section; and

(2) a child who is under 5 years of age, who was born after September 30, 1983, and who meets the income and resources requirements of the State plan under part A of subchapter IV of this chapter.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2335(f), 2340(b), 2361(b), 2371(a), 2373(b)(15)-(20), 98 Stat. 1091, 1093, 1104, 1110, 1112.)

References in Text

Part A of subchapter IV of this chapter, referred to in subsecs. (a) and (n), is classified to section 601 et seq. of this title.

Amendments

1984—Subsec. (a). Pub. L. 98-369, § 2335(f), substituted "mental diseases" for "tuberculosis or mental diseases" in subd. (B) following par. (18).

Pub. L. 98-369, § 2373(b)(17), substituted "clause (vi)" for "clauses (vi)" and "well-being" for "well being" in last sentence.

Subsec. (a)(1). Pub. L. 98-369, § 2335(f), substituted "mental diseases" for "tuberculosis or mental diseases".

Subsec. (a)(4). Pub. L. 98-369, § 2335(f), substituted "mental diseases" for "tuberculosis or mental diseases".

Pub. L. 98-369, § 2373(b)(15), added a semicolon before "(B)".

Subsec. (a)(9). Pub. L. 98-369, § 2371(a), amended par. (9) generally, adding "furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician".

Subsec. (a)(14), (15). Pub. L. 98-369, § 2335(f), substituted "mental diseases" for "tuberculosis or mental diseases".

Subsec. (a)(17). Pub. L. 98-369, § 2373(b)(16), substituted "the nurse-midwife" for "he" in two places.

Subsec. (b). Pub. L. 98-369, § 2373(b)(18), substituted "section 1301(a)(8)(B) of this title" for "subparagraph (B) of section 1301(a)(8) of this title".

Subsec. (d)(1). Pub. L. 98-369, § 2373(b)(19), substituted "the institution meets" for "which meet".

Subsec. (h)(1)(A). Pub. L. 98-369, § 2340(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "inpatient services which are provided in an institution which is accredited as a psychiatric hospital by the Joint Commission on Accreditation of Hospitals;".

Subsec. (m). Pub. L. 98-369, § 2373(b)(20), substituted "the nurse" for "he" in two places.

Subsec. (n). Pub. L. 98-369, § 2361(b), added subsec. (n).

Effective Date of 1984 Amendment

Amendment by section 2335(f) of Pub. L. 98-369 effective July 18, 1984, see section 2335(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Amendment by section 2340(b) of Pub. L. 98-369 effective July 18, 1984, see section 2340(c) of Pub. L. 98-369, set out as a note under section 1395x of this title.

Amendment by section 2361(b) of Pub. L. 98-369 applicable to calendar quarters beginning on or after Oct. 1, 1984, without regard to whether or not final regulations to carry out the amendment have been promulgated by such date, except as otherwise provided, see section 2361(d) of Pub. L. 98-369, set out as a note under section 1396a of this title.

Section 2371(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (a)(9) of this section] shall apply to services furnished on or after the date of the enactment of this Act [July 18, 1984]."

§ 1396k. Assignment, enforcement, and collection of rights of payments for medical care; establishment of procedures pursuant to State plan; amounts retained by State

(a) For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the State plan approved under this subchapter, a State plan for medical assistance shall—

[*See main edition for text of* (*1*) *and* (*2*); (*b*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2367(b), 98 Stat. 1109.)

Amendments

1984—Subsec. (a). Pub. L. 98-369 substituted "State plan for medical assistance shall" for "State plan for medical assistance may".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise provided, see section 2367(c) of Pub. L. 98-369 set out as a note under section 1396a of this title.

Section Referred to in Other Sections

This section is referred to in sections 1396a, 1396b of this title.

§ 1396*l*. Hospital providers of skilled nursing and intermediate care services

[*See main edition for text of* (*a*)]

(b)(1) Except as provided in paragraph (3), payment to any such hospital, for any skilled nursing or intermediate care facility services furnished pursuant to subsection (a) of this section, shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the State plan to skilled nursing and intermediate care facilities, respectively, located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

[*See main edition for text of* (*2*)]

(3) Payment to all such hospitals, for any skilled nursing or intermediate care facility services furnished pursuant to subsection (a) of this section, may be made at a payment rate established by the State in accordance with the requirements of section 1396a(a)(13)(A) of this title.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2369(a), 98 Stat. 1110.)

Amendments

1984—Subsec. (b)(1). Pub. L. 98-369, § 2369(a)(1), substituted "Except as provided in paragraph (3), payment" for "Payment".

Subsec. (b)(3). Pub. L. 98-369, § 2369(a)(2), added par. (3).

Effective Date of 1984 Amendment

Section 2369(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (b) of this section] shall apply to payments for services furnished after the date of the enactment of this Act [July 18, 1984]."

§ 1396n. Compliance with State plan and payment provisions

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Waiver respecting medical assistance requirement in State plan; scope, etc.

(1) The Secretary may by waiver provide that a State plan approved under this subchapter may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan.

[*See main edition for text of* (*2*) *to* (*4*); (*d*) *to* (*f*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2373(b)(21), 98 Stat. 1112.)

Amendments

1984—Subsec. (c)(1). Pub. L. 98-369 substituted "under this subchapter" for "under this part".

§ 1396q. Application of provisions of subchapter II relating to subpoenas

The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter.

(Aug. 14, 1935, ch. 531, title XIX, § 1918, as added July 18, 1984, Pub. L. 98-369, div. B, title III, § 2370(a), 98 Stat. 1110.)

Effective Date

Section 2370(b) of Pub. L. 98-369 provided that: "The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

SUBCHAPTER XX—BLOCK GRANTS TO STATES FOR SOCIAL SERVICES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 300z-5, 602, 603, 622, 671, 672, 673, 1301, 1308, 1320a-7, 1320b-2, 1382i, 1766, 3013, 3020d, 3026, 3035b, 8623, 8624 of this title; title 25 section 1931; title 40 App. section 202.

§ 1397a. Payments to States

[*See main edition for text of* (*a*)]

(b) Funding requirements

The Secretary shall make payments in accordance with section 6503 of title 31 to each State from its allotment for use under this subchapter.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(h)(1), 98 Stat. 1169.)

Amendments

1984—Subsec. (b). Pub. L. 98-369 substituted "section 6503 of title 31" for "section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1397b. Allotments

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Appropriations

The amount specified for purposes of subsections (a) and (b) of this section shall be—

(1) $2,400,000,000 for the fiscal year 1982;

(2) $2,450,000,000 for the fiscal year 1983; and

(3) $2,700,000,000 for the fiscal year 1984 and each succeeding fiscal year.

[*See main edition for text of* (*d*)]

(As amended Oct. 24, 1983, Pub. L. 98-135, title II, § 204, 97 Stat. 861.)

Amendments

1983—Subsec. (c)(3). Pub. L. 98-135 substituted "$2,700,000,000 for the fiscal year 1984 and each succeeding fiscal year." for "$2,500,000,000 for the fiscal year 1984;".

Subsec. (c)(4), (5). Pub. L. 98-135 struck out pars. (4) and (5) which had provided, respectively, for an amount of $2,600,000,000 for fiscal year 1985 and $2,700,000,000 for fiscal year 1986 and succeeding fiscal years.

Appropriations

Pub. L. 98-473, title IV, § 401, Oct. 12, 1984, 98 Stat. 2195, provided that:

"(a)(1) Notwithstanding any provision of title XX of the Social Security Act [42 U.S.C. 1397 et seq.], the amount applicable under section 2003(c)(3) of such Act [42 U.S.C. 1397b(c)(3)] shall be $2,725,000,000 for fiscal year 1985. Of such amount, $25,000,000 shall be allotted and used in accordance with this section.

"(2) In addition to any other amounts appropriated under this resolution [Pub. L. 98-473] or any Act, there are hereby appropriated $25,000,000 for fiscal year 1985, for carrying out title XX of the Social Security Act, to be used in accordance with the provisions of this section.

"(3) Amounts appropriated under this section shall remain available until September 30, 1985, without regard to section 102 of this resolution.

"(4) Except as otherwise provided in this section, each State's allotment of the additional amounts authorized and appropriated under this section shall be the same proportion of $25,000,000 as such State's proportional allotment of other title XX funds for fiscal year 1985, as determined under section 2003 of the Social Security Act [42 U.S.C. 1397b].

"(b) The additional $25,000,000 made available to the States for fiscal year 1985 pursuant to subsection (a) shall—

"(1) be used only for the purpose of providing training and retraining (including training in the prevention of child abuse in child care settings) to providers of licensed or registered child care services, operators and staffs (including those receiving inservice training) of facilities where licensed or registered child care services are provided, State licensing and enforcement officials, and parents;

"(2) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated under this section, be available from other sources (including any amounts available under title XX of the Social Security Act [42 U.S.C. 1397 et seq.] without regard to this section) for the purpose specified in paragraph (1), and shall in no case supplant such funds from other sources or reduce the level thereof; and

"(3) be separately accounted for in the reports and audits provided for in section 2006 of the Social Security Act [42 U.S.C. 1397e].

"(c)(1) In order to provide guidance and assistance to the States in utilizing funds allocated pursuant to title XX of the Social Security Act [42 U.S.C. 1397 et seq.], not later than 3 months after the date of enactment of this section [Oct. 12, 1984], the Secretary shall draft and distribute to the States for their consideration, a Model Child Care Standards Act containing—

"(A) minimum licensing or registration standards for day care centers, group homes, and family day care homes regarding matters including—

"(i) the training, development, supervision, and evaluation of staff;

"(ii) staff qualification requirements, by job classification;

"(iii) staff-child ratios;

"(iv) probation periods for new staff;

"(v) employment history checks for staff; and

"(vi) parent visitation; and

"(2)(A) Any State receiving an allotment under such title from the funds made available as a result of subsection (a) shall have in effect, not later than September 30, 1985—

"(i) procedures, established by State law or regulation, to provide for employment history and background checks; and

"(ii) provisions of State law, enacted in accordance with the provisions of Public Law 92-544 (86 Stat. 115) [86 Stat. 1115, 28 U.S.C. 534 note] requiring nationwide criminal record checks for all operators, staff or employees, or prospective operators, staff or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), juvenile detention, correction or treatment facilities, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or programs.

"(B) In the case of any State not meeting the requirements of subparagraph (A) by September 30, 1985, such State's allotment for fiscal year 1986 or 1987 shall be reduced in the aggregate by an amount equal to one-half of the amount by which such State's allotment under such title was increased for fiscal year 1985 as a result of subsection (a).

"(d) The determination and promulgation required by section 2003(b) of the Social Security Act [42 U.S.C. 1397b(b)] with respect to the fiscal year 1985 (to take into account the preceding provisions of this section) shall be made as soon as possible after the date of the enactment of this Act [Oct. 12, 1984]."

§ 1397e. Administrative and fiscal accountability

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Additional accounting requirements

For other provisions requiring States to account for Federal grants, see section 6503 of title 31.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(h)(2), 98 Stat. 1169.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 substituted "section 6503 of title 31" for "section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1397f. Child day care services

REFERENCES IN TEXT

Sections 40 and 50B of the Internal Revenue Code of 1954, referred to in subsec. (c)(2), were classified to sections 40 and 50B, respectively, of Title 26, Internal Revenue Code, and were repealed by Pub. L. 98-369, div. A, title IV, § 474(m), July 18, 1984, 98 Stat. 833.

CHAPTER 8—LOW-INCOME HOUSING

Sec.
1437o. Rental rehabilitation and development grants.
  (a) Program authority.
  (b) Distribution of rental rehabilitation grant funds.
  (c) Grants for moderate rehabilitation.
  (d) Grants for new construction and substantial rehabilitation.
  (e) State program.
  (f) Applicability of requirements or agreements.
  (g) Relocation.
  (h) Administrative expenses.
  (i) Preservation, environmental policy, and labor standards.
  (j) Financing.
  (k) Definitions.
  (*l*) Review and audit.
  (m) Performance report.
  (n) Report to Congress.
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1437p. Demolition and disposition of public housing.
  (a) Obsolescence; best-interests transfers; use of proceeds.
  (b) Consultation with tenants and tenant councils; certification of activity.
  (c) Financial assistance; annual contributions.
  (d) Homeownership qualification.
1437q. Financing limitations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1404a, 1434, 1436a, 1436b, 1437j-1, 1439, 1471, 1485, 1490a, 1502, 1503, 1504, 1586, 1590, 1594c, 1766, 3013, 5153, 5515, 8003 of this title; title 12 sections 24, 1701q, 1701r-1, 1715z-1a, 1701z-3, 1701z-11, 1715*l*; title 20 sections 244, 633, 635, 645; title 25 section 640d-14.

§ 1436a. Restriction on use of assisted housing by non-resident aliens

DELAYED IMPLEMENTATION OF 1981 AMENDMENT

Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239, provided in part that: "The Secretary may not implement the amendment to section 214 of the Housing and Community Development Act of 1980 [this section], made by section 329(a) of the Housing and Community Development Amendments of 1981 [Pub. L. 97-35], before the expiration of the one-year period following the date of the enactment of this Act [Nov. 30, 1983]."

§ 1437a. Rental payments

(a) Families included; amount

Dwelling units assisted under this chapter shall be rented only to families who are lower income families at the time of their initial occupancy of such units. Reviews of family income shall be made at least annually. A family shall pay as rent for a dwelling unit assisted under this chapter (other than a family assisted under section 1437f(o) of this title) the highest of the following amounts, rounded to the nearest dollar:

[*See main edition for text of* (*1*) *to* (*3*)]

(b) Definition of terms under this chapter

When used in this chapter:

[*See main edition for text of* (*1*)]

(2) The term "lower income families" means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. The term "very low-income families" means lower income families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may estab-

lish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes. Such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in section 1490 of this title, taking into account the subsidy characteristics and types of programs to which such ceilings apply.

(3) The term "families" includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age or is under a disability as defined in section 423 of this title or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, or is handicapped, (B) a displaced person, (C) the remaining member of a tenant family, and (D) other single persons in circumstances described in regulations of the Secretary. In no event shall more than 15 per centum of the units under the jurisdiction of any public housing agency be occupied by single persons under clause (D). In determining priority for admission to housing under this chapter, the Secretary shall give preference to those single persons who are elderly, handicapped, or displaced before those eligible under clause (D). The term "elderly families" means families whose heads (or their spouses), or whose sole members, are persons described in clause (A). A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which is expected to be of long-continued and indefinite duration, substantially impedes such person's ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions. The term "displaced person" means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. Notwithstanding the preceding provisions of this subsection, the term "elderly families" includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living with one or more persons determined under regulations of the Secretary to be essential to their care or well being. The Secretary may increase the limitation described in the second sentence of this paragraph to not more than 30 per centum if, following consultation with the public housing agency involved, the Secretary determines that the dwelling units involved are neither being occupied, nor are likely to be occupied within the next 12 months, by families or persons described in clauses (A), (B), and (C), due to the condition or location of such dwelling units, and that such dwelling units may be occupied if made available to single persons described in clause (D).

(4) The term "income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, in consultation with the Secretary of Agriculture.

(5) The term "adjusted income" means the income which remains after excluding—

(A) $480 for each member of the family residing in the household (other than the head of the household or his spouse) who is under 18 years of age or who is 18 years of age or older and is disabled or handicapped or a full-time student;

(B) $400 for any elderly family;

(C) the amount by which the aggregate of the following expenses of the family exceeds 3 percent of annual family income: (i) medical expenses for any elderly family; and (ii) reasonable attendant care and auxiliary apparatus expenses for each handicapped member of any family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed; and

(D) child care expenses to the extent necessary to enable another member of the family to be employed or to further his or her education.

[*See main edition for text of (6) to (8); (c)*]

(As amended Nov. 30, 1983, Pub. L. 98-181, title II, §§ 202, 206(a)-(c), 97 Stat. 1178, 1179; Oct. 17, 1984, Pub. L. 98-479, title I, § 102(b)(1)-(3), 98 Stat. 2221.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-479, § 102(b)(1), added provision that such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in section 1490 of this title, taking into account the subsidy characteristics and types of programs to which such ceilings apply.

Subsec. (b)(4). Pub. L. 98-479, § 102(b)(2), added ", in consultation with the Secretary of Agriculture" at the end.

Subsec. (b)(5)(C). Pub. L. 98-479, § 102(b)(3), designated existing provision as cl. (i), added cl. (ii), and added "the amount by which the aggregate of the following expenses of the family" in provisions preceding cl. (i).

1983—Subsec. (a). Pub. L. 98-181, § 206(a), in provisions preceding par. (1), added provision requiring annual review of family income, and inserted "(other than a family assisted under section 1437f(*o*) of this title)".

Subsec. (b)(2). Pub. L. 98-181, § 206(b), qualified the term "very low-income families" in authorizing the Secretary to establish, where necessary, variations in income ceilings higher or lower than 50 per centum of the median for the area.

Subsec. (b)(3). Pub. L. 98-181, § 202, added provision at end of par. (3) authorizing increase from 15 to 30 per centum in the single person occupancy limitation for nonoccupancy of the involved dwelling units.

Subsec. (b)(5). Pub. L. 98-181, § 206(c), amended par. (5) generally, substituting provisions designating cls. (A) to (D) for prior exclusion from "adjusted income" of such amounts or types of income as the Secretary might prescribe, taking into account the number of minor children and other appropriate factors.

DETERMINATION OF RENT PAYABLE BY TENANTS OCCUPYING ASSISTED HOUSING; DELAYED APPLICATION OR STAGED IMPLEMENTATION OF AMENDED PROVISIONS

Section 206(d) of Pub. L. 98-181 provided that:

"(1) The following provisions of this paragraph apply to determinations of the rent to be paid by or the contribution required of a tenant occupying housing assisted under the authorities amended by this section [amending subsecs. (a) and (b)(2), (5) of this section] or subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981 [amending sections 1437 to 1437d, 1437f, 1437g, 1437i, 1437j, and 1437*l* of this title and sections 1701s and 1715z-1 of Title 12, Banks and Banking, and repealing provisions set out as notes under this section and section 1701s of Title 12] (hereinafter referred to as 'assisted housing') on or before the effective date of regulations implementing this section:

"(A) Notwithstanding any other provision of this section or subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981, the Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary') may provide for delayed applicability, or for staged implementation, of the procedures for determining rents or contributions, as appropriate, required by such provisions if the Secretary determines that immediate application of such procedures would be impracticable, would violate the terms of existing leases, or would result in extraordinary hardship for any class of tenants.

"(B) The Secretary shall provide that the rent or contribution, as appropriate, required to be paid by a tenant shall not increase as a result of the amendments made by this section and subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981, and as a result of any other provision of Federal law or regulation, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such amendments, law, or regulation.

"(2) Tenants of assisted housing other than those referred to in paragraph (1) shall be subject to immediate rent payment or contribution determinations in accordance with applicable law and without regard to the provisions of paragraph (1), but the Secretary shall provide that the rent or contribution payable by any such tenant who is occupying assisted housing on the effective date of any provision of Federal law or regulation shall not increase, as a result of any such provision of Federal law or regulation, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such law or regulation.

"(3) In the case of tenants receiving rental assistance under section 521(a)(1) of the Housing Act of 1949 [42 U.S.C. 1490a(a)(1)] on the effective date of this section [Nov. 30, 1983] whose assistance is converted to assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] on or after such date, the Secretary shall provide that the rent or contribution payable by any such tenant shall not increase, as a result of such conversion, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such conversion or to any provision of Federal law or regulation.

"(4)(A) Notwithstanding any other provision of law, in the case of the conversion of any assistance under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], section 236(f)(2) of the National Housing Act [12 U.S.C. 1715z-1(f)(2)], or section 23 of the United States Housing Act of 1937 [42 U.S.C. 1421b] (as in effect before the date of the enactment of the Housing and Community Development Act of 1974 [Aug. 22, 1974]) to assistance under section 8 of the United States Housing Act of 1937, any increase in rent payments or contributions resulting from such conversion, and from the amendments made by this section of any tenant benefiting from such assistance who is sixty-two years of age or older may not exceed 10 per centum per annum.

"(B) In the case of any such conversion of assistance occurring on or after October 1, 1981, and before the date of the enactment of this section [Nov. 30, 1983], the rental payments due after such date of enactment by any tenant benefiting from such assistance who was sixty-two years of age or older on the date of such conversion shall be computed as if the tenant's rental payment or contribution had, on the date of conversion, been the lesser of the actual rental payment or contribution required, or 25 per centum of the tenant's income.

"(5) The limitations on increases in rent contained in paragraphs (1)(B), (2), (3), and (4) shall remain in effect and may not be changed or superseded except by another provision of law which amends this subsection.

"(6) As used in this subsection, the term 'contribution' means an amount representing 30 per centum of a tenant's monthly adjusted income, 10 per centum of the tenant's monthly income, or the designated amount of welfare assistance, whichever amount is used to determine the monthly assistance payment for the tenant under section 3(a) of the United States Housing Act of 1937 [42 U.S.C. 1437a(a)].

"(7) The provisions of subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981 shall be implemented and fully applicable to all affected tenants no later than five years following the date of enactment of such amendments [Aug. 13, 1981], except that the Secretary may extend the time for implementation if the Secretary determines that full implementation would result in extraordinary hardship for any class of tenants."

Prior provisions for determining rent payable by tenants occupying assisted housing under and authorizing delayed application or staged implementation of provisions amended by section 322 of Pub. L. 97-35 were contained in Pub. L. 97-35, title III, § 322(i), Aug. 13, 1981, 95 Stat. 404, which was repealed by Pub. L. 98-181, title II, § 206(e), Nov. 30, 1983, 97 Stat. 1181.

Section Referred to in Other Sections

This section is referred to in sections 1437f, 1437o, 1471, 5305 of this title; title 12 sections 1706e, 1715z-9, 1715z-15.

§ 1437b. Loans and commitments to make loans for lower income housing projects; authority of Secretary; interest rates; repayment date; use as security for obligations of public housing agency; issuance of obligations by Secretary; limitation on amounts; forms and denominations; terms and conditions; purchase, establishment of maturities and rates of interest, and sale by Secretary of Treasury

[*See main edition for text of* (a)]

(b) The Secretary may issue and have outstanding at any one time notes and other obligations for purchase by the Secretary of the Treasury in an amount which will not, unless authorized by the President, exceed $1,500,000,000. For the purpose of determining obligations incurred to make loans pursuant to this chapter against any limitation otherwise applicable with respect to such loans, the Secretary shall estimate the maximum amount to be loaned at any one time pursuant to loan agreements then outstanding with public housing agencies. Such notes or other obligations shall be in such forms and denominations and shall be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. The notes or other obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations of the Secretary issued hereunder and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 203(b)(1), 98 Stat. 2229.)

Amendments

1984—Subsec. (b). Pub. L. 98-479 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as amended" and "such chapter" for "such Act".

Section Referred to in Other Sections

This section is referred to in sections 1437c, 1437q of this title.

§ 1437c. Annual contributions for lower income housing projects

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Limitation on aggregate contractual contributions; contracts for preliminary loans; payments of annual contributions; limitations on specific authorities

(1) The Secretary may enter into contracts for annual contributions aggregating not more than $7,875,049,000 per annum, which amount shall be increased by $1,494,400,000 on October 1, 1980, and by $906,985,000 on October 1, 1981. The additional authority to enter into such contracts provided on or after October 1, 1980, shall be effective only in such amounts as may be approved in appropriation Acts. In addition, the aggregate amount which may be obligated over the duration of the contracts may not exceed $31,200,000,000 with respect to the additional authority provided on October 1, 1980, and $18,087,370,000 with respect to the additional authority provided on October 1, 1981.

(2) The Secretary shall enter into only such new contracts for preliminary loans as are consistent with the number of dwelling units for which contracts for annual contributions may be entered into.

(3) The full faith and credit of the United States is solemnly pledged to the payment of all annual contributions contracted for pursuant to this section, and there are hereby authorized to be appropriated in each fiscal year, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such payments.

(4) All payments of annual contributions pursuant to this section shall be made out of any funds available for purposes of this chapter when such payments are due, except that funds obtained through the issuance of obligations pursuant to section 1437b(b) of this title (including repayments or other realizations of the principal of loans made out of such funds) shall not be available for the payment of such annual contributions.

(5) During such period as the Secretary may precribe for starting construction, the Secretary may approve the conversion of public housing development authority for use under section 1437*l* of this title or for use for the acquisition and rehabilitation of property to be used in public housing, if the public housing agency, after consultation with the unit of local government, certifies that such assistance would be more effectively used for such purpose, and if the total number of units assisted will not be less than 90 per centum of the units covered by the original reservation.

(6) The aggregate amount of budget authority which may be obligated for contracts for annual contributions and for grants under section 1437*o* of this title is increased by $9,912,928,000 on October 1, 1983, and by such sums as may be approved in appropriation Acts on October 1, 1984.

(7)(A) Using the additional budget authority provided under paragraph (6) and the balances of budget authority which become available during fiscal year 1984, to the extent approved in appropriations Acts, the Secretary may reserve authority to enter into obligations aggregating—

(i) not to exceed $1,289,550,000 for public housing, of which not to exceed $389,550,000 shall be available for Indian housing;

(ii) not to exceed $1,926,400,000 for assistance under section 1437f of this title in connection with projects developed under section 1701q of title 12;

(iii) not to exceed $1,550,000,000 for comprehensive improvement assistance under section 1437*l* of this title;

(iv) not to exceed $2,217,150,000 for assistance under section 1437f(b)(1) of this title;

(v) not to exceed $540,000,000 for assistance under section 1437f(*e*)(5) of this title;

(vi) not to exceed $242,115,000 for assistance under section 1437f(*o*) of this title;

(vii) not to exceed $150,000,000 for assistance under section 1437*o* of this title with respect to rental rehabilitation;

(viii) not to exceed $200,000,000 with respect to rental development under section 1437*o* of this title; and

(ix) not to exceed $1,603,170,000 for additional assistance under section 1437f of this title.

(B) Using the additional budget authority provided under paragraph (6) and the balances of budget authority which become available during fiscal year 1985, to the extent approved in appropriations Acts, the Secretary may reserve authority to enter into obligations aggregating—

(i) not to exceed such sums as may be approved in an appropriation Act for public housing, of which not to exceed such sums as may be approved in an appropriation Act shall be available for Indian housing;

(ii) not to exceed such sums as may be approved in an appropriation Act for assistance under section 1437f of this title in connection with projects developed under section 1701q of title 12;

(iii) not to exceed such sums as may be approved in an appropriation Act for comprehensive improvement assistance under section 1437*l* of this title;

(iv) not to exceed such sums as may be approved in an appropriation Act for assistance under section 1437f(b)(1) of this title;

(v) not to exceed such sums as may be approved in an appropriation Act for assistance under section 1437f(e)(5) of this title;

(vi) not to exceed such sums as may be approved in an appropriation Act for assistance under section 1437f(*o*) of this title;

(vii) not to exceed $150,000,000 for assistance under section 1437*o* of this title with respect to rental rehabilitation;

(viii) not to exceed $115,000,000 with respect to rental development under section 1437*o* of this title; and

(ix) not to exceed such sums as may be approved in an appropriation Act for additional assistance under section 1437f of this title.

(C) The specific authorities under this paragraph are subject to such adjustments as may be made under paragraph (5).

[*See main edition for text of* (*d*) *to* (*i*)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title II, § 201(b), 97 Stat. 1176.)

Amendments

1983—Subsec. (c)(1). Pub. L. 98-181, § 201(b)(1), struck out concluding provision requiring the Secretary, in utilizing the additional authority to enter into contracts on and after Oct. 1, 1980, to administer the authorized programs to provide assistance, to the maximum extent practicable, consistent with section 1439(d) of this title.

Subsec. (c)(2). Pub. L. 98-181, § 201(b)(2), redesignated par. (4) as (2), and struck out former par. (2) which from funds made available on Oct. 1, 1980, had required at least $100,000,000 be available for section 1437*l* projects, and from remaining difference limited use of funds to 37.5 and 62.5 per centum for existing section 1437f projects and for newly constructed and substantially rehabilitated units.

Subsec. (c)(3). Pub. L. 98-181, § 201(b)(2), redesignated par. (5) as (3), and struck out former par. (3) which from funds made available on Oct. 1, 1981, had required at least $75,000,000 be available for section 1437*l* projects, from remaining difference allocated sums as provided in section 1439(d) for different community and area uses, and from remaining difference required the accommodation of preferences of units of local government based on stated factors.

Subsec. (c)(4). Pub. L. 98-181, § 201(b)(2), redesignated par. (6) as (4). Former par. (4) redesignated (2).

Subsec. (c)(5) to (7). Pub. L. 98-181, § 201(b)(3), added pars. (5) to (7). Former pars. (5) and (6) redesignated (3) and (4), respectively.

Section Referred to in Other Sections

This section is referred to in sections 1437d, 1437f, 1437g, 1437i, 1437*l*, 1437*o*, 1437p, 1437q of this title; title 12 sections 1701s, 1701z-3, 1715z, 1715z-1, 2294a; title 31 section 1305.

§ 1437d. Contract provisions and requirements; loans and annual contributions

(a) Conditions; playgrounds and elevators

Secretary may include in any contract for loans, annual contributions, sale, lease, mortgage, or any other agreement or instrument made pursuant to this chapter, such covenants, conditions, or provisions as he may deem necessary in order to insure the lower income character of the project involved. Any such contract may contain a condition requiring the maintenance of an open space or playground in connection with the housing project involved if deemed necessary by the Secretary for the safety or health of children. Any such contract shall require that, except in the case of housing predominantly for the elderly, high-rise elevator projects shall not be provided for families with children unless the Secretary makes a determination that there is no practical alternative.

(b) Repealed. Pub. L. 99-160, title I, § 101, Nov. 25, 1985, 99 Stat. 910

(c) Revision of maximum income limits; certification of compliance with requirements; notification of eligibility; informal hearing; compliance with procedures for sound management

Every contract for annual contributions shall provide that—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) the public housing agency shall comply with such procedures and requirements as the Secretary may prescribe to assure that sound management practices will be followed in the operation of the project, including requirements pertaining to—

(A) except for projects or portions of projects specifically designated for elderly families with respect to which the Secretary has determined that application of this clause would result in excessive delays in meeting the housing needs of such families, the establishment of tenant selection criteria which gives preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance under this chapter or are paying more than 50 per centum of family income for rent and which is designed to assure that, within a reasonable period of time, the project will include families with a broad range of incomes and will avoid concentrations of lower income and deprived families with serious social problems, but this shall not permit maintenance of vacancies to await higher income tenants where lower income tenants are available;

[*See main edition for text of* (*B*) *to* (*D*);
(*d*) *and* (*e*)]

(f) Repealed. Pub. L. 98-181, title II, § 214(b), Nov. 30, 1983, 97 Stat. 1185

[*See main edition for text of* (*g*)]

(h) New construction contracts

On or after October 1, 1983, the Secretary may enter into a contract involving new construction only if the public housing agency demonstrates to the satisfaction of the Secretary that the cost of new construction is less than the cost of acquisition or acquisition and rehabilitation, including any reserve fund under subsection (i) of this section, would be.

(i) Reserve fund; major repairs

The Secretary may, upon application by a public housing agency in connection with the acquisition of housing for use as public housing, establish and set aside a reserve fund in an amount not to exceed 30 per centum of the acquisition cost which shall be available for use for major repairs to such housing.

(j) Large family housing development priority

On or after October 1, 1983, in entering into commitments for the development of public housing, the Secretary shall give a priority to projects for the construction, acquisition, or acquisition and rehabilitation of housing suitable for occupancy by families requiring three or more bedrooms.

(k) Administrative grievance procedure regulations: grounds of adverse action, hearing, examination of documents, representation, evidence, decision; judicial hearing

The Secretary shall by regulation require each public housing agency receiving assistance under this chapter to establish and implement an administrative grievance procedure under which tenants will—

(1) be advised of the specific grounds of any proposed adverse public housing agency action;

(2) have an opportunity for a hearing before an impartial party upon timely request within any period applicable under subsection (*l*) of this section;

(3) have an opportunity to examine any documents or records or regulations related to the proposed action;

(4) be entitled to be represented by another person of his choice at any hearing;

(5) be entitled to ask questions of witnesses and have others make statements on his behalf; and

(6) be entitled to receive a written decision by the public housing agency on the proposed action.

An agency may exclude from its procedure any grievance concerning an eviction or termination of tenancy in any jurisdiction which requires that, prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process.

(*l*) Leases; terms and conditions; maintenance; termination

Each public housing agency shall utilize leases which—

(1) do not contain unreasonable terms and conditions;

(2) obligate the public housing agency to maintain the project in a decent, safe, and sanitary condition;

(3) require the public housing agency to give adequate written notice of termination of the lease which shall not be less than—

(A) a reasonable time, but not to exceed 30 days, when the health or safety of other tenants or public housing agency employees is threatened;

(B) 14 days in the case of nonpayment of rent; and

(C) 30 days in any other case; and

(4) require that the public housing agency may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause.

(m) Reporting requirements; limitation

The Secretary shall not impose any unnecessarily duplicative or burdensome reporting requirements on tenants or public housing agencies assisted under this chapter.

(As amended Nov. 30, 1983, Pub. L. 98-181, title II, §§ 201(c), 203(a), 204, 205, 214(b), 97 Stat. 1177-1179, 1185; Oct. 17, 1984, Pub. L. 98-479, title I, § 102(b)(4), (5), title II, § 204(b)(1), 98 Stat. 2221, 2233; Nov. 25, 1985, Pub. L. 99-160, title I, § 101, 99 Stat. 910.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-160 struck out subsec. (b) which related to the cost of construction and equipment of a project, and prototype costs.

1984—Subsec. (a). Pub. L. 98-479, § 204(b)(1), substituted "covenants" for "convenants".

Subsec. (j). Pub. L. 98-479, § 102(b)(4), added ", acquisition, or acquisition and rehabilitation" and substituted "families requiring three or more bedrooms" for "large families".

Subsec. (m). Pub. L. 98-479, § 102(b)(5), substituted "housing" for "hearing".

1983—Subsec. (c)(4)(A). Pub. L. 98-181, § 203(a), inserted "or are paying more than 50 per centum of family income for rent".

Subsec. (f). Pub. L. 98-181, § 214(b), repealed subsec. (f) which provided for modification or closeout of housing project.

Subsecs. (h) to (j). Pub. L. 98-181, § 201(c), added subsecs. (h) to (j).

Subsecs. (k), (*l*). Pub. L. 98-181, § 204, added subsecs. (k) and (*l*).

Subsec. (m). Pub. L. 98-181, § 205, added subsec. (m).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437f, 1437*o* of this title; title 12 section 24.

§ 1437f. Lower-income housing assistance

(a) Authorization for assistance payments

For the purpose of aiding lower-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section.

(b) Authorization for contracts for assistance payments for existing dwellings

[*See main edition for text of* (*1*)]

(2) Repealed. Pub. L. 98-181, title II, § 209(a)(2), Nov. 30, 1983, 97 Stat. 1183.

[*See main edition for text of* (c)]

(d) Required provisions and duration of contracts for assistance payments; waiver of limitation

(1) Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that—

(A) the selection of tenants for such unit shall be the function of the owner, subject to the provisions of the annual contributions contract between the Secretary and the agency, except that the tenant selection criteria used by the owner shall give preference to families which occupy substandard housing, are paying more than 50 per centum of family income for rent, or are involuntarily displaced at the time they are seeking assistance under this section;

[*See main edition for text of* (*B*) *to* (*D*)]

(2) Each contract for an existing structure entered into under this section shall be for a term of not less than one month nor more than one hundred and eighty months. Where the Secretary enters into an annual contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the contract for assistance payments may not be attached to the structure unless (A) the Secretary and the public housing agency approve such action, and (B) the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section.

[*See main edition for text of* (*3*)]

(e) Restrictions on contracts for assistance payments

(1) Nothing in this chapter shall be deemed to prohibit an owner from pledging, or offering as security for any loan or obligation, a contract for assistance payments entered into pursuant to this section: *Provided*, That such security is in connection with a project constructed or rehabilitated pursuant to authority granted in this section, and the terms of the financing or any refinancing have been approved by the Secretary.

(2) For the purpose of upgrading and thereby preserving the Nation's housing stock, the Secretary is authorized to make assistance payments under this section directly or through public housing agencies pursuant to contracts with owners or prospective owners who agree to upgrade housing so as to make and keep such housing decent, safe, and sanitary through upgrading which involves less than substantial rehabilitation, as such upgrading and rehabilitation are defined by the Secretary. The Secretary is authorized to prescribe such terms and conditions for contracts entered into under this section pursuant to this paragraph as the Secretary determines to be necessary and appropriate, except that such terms and conditions, to the maximum extent feasible, shall be consistent with terms and conditions otherwise applicable with respect to other dwelling units assisted under this section. Notwithstanding subsection (c)(1) of this section, the Secretary may, in carrying out the preceding sentence, establish a maximum monthly rent (for units upgraded pursuant to this paragraph) which exceeds the fair market rental by not more than 20 per centum if such units are located in an area where the Secretary finds cost levels so require, except that the Secretary may approve maximum monthly rents which exceed the fair market rentals by more than 20 but not more than 30 per centum where the Secretary determines that special circumstances warrant such higher rent or where necessary to the implementation of a local housing assistance plan. The Secretary is also authorized to make assistance available under this section pursuant to this paragraph to any unit in a housing project which, on an overall basis, reflects the need for such upgrading. The Secretary shall increase the amount of assistance provided under this paragraph above the amount of assistance otherwise permitted by this paragraph and subsection (c)(1) of this section, if the Secretary determines such increase necessary to assist in the sale of multifamily housing projects owned by the Department of Housing and Urban Development.

[*See main edition for text of* (*f*) *to* (*h*)]

(i) Repealed. Pub. L. 98–181, title II, § 209(a)(4), Nov. 30, 1983, 97 Stat. 1183

[*See main edition for text of* (*j*) *and* (*k*)]

(*l*), (m) Repealed. Pub. L. 98–181, title II, § 209(a)(5), Nov. 30, 1983, 97 Stat. 1183

(n) Assistance for dwellings without bathrooms and kitchens; conditions; waiver of limitations

In making assistance available under subsections (b)(1) and (e)(2) of this section, the Secretary may provide assistance with respect to residential properties in which some or all of the dwelling units do not contain bathroom or kitchen facilities, if—

(1) the property is located in an area in which there is a significant demand for such units, as determined by the Secretary;

(2) the unit of general local government in which the property is located and the local public housing agency approve of such units being utilized for such purpose; and

(3) in the case of assistance under subsection (b)(1) of this section, the unit of general local government in which the property is located and the local public housing agency certify to the Secretary that the property complies with local health and safety standards.

The Secretary may waive, in appropriate cases, the limitation and preference described in the second and third sentences of section 1437a(b)(3) of this title with respect to the assistance made available under this subsection.

(*o*) Payment standard for demonstration programs; amount; eligible families; types of housing; vacancies; quality standards; adjustments; annual contributions rate; use of surplus

(1) In connection with the rental rehabilitation and development program under section 1437(*o*) of this title or the rural housing preservation grant program under section 1490m of this title, or for other purposes, the Secretary is authorized to conduct a demonstration program using a payment standard in accordance with this subsection. The payment standard shall be used to determine the monthly assistance which may be paid for any family, as provided in paragraph (2) of this subsection, and shall be

based on the fair market rental established under subsection (c) of this section.

(2) The monthly assistance payment for any family shall be the amount by which the payment standard for the area exceeds 30 per centum of the family's monthly adjusted income, except that such monthly assistance payment shall not exceed the amount by which the rent for the dwelling unit (including the amount allowed for utilities in the case of a unit with separate utility metering) exceeds 10 per centum of the family's monthly income.

(3) Assistance payments may be made only for (A) a family determined to be a very low-income family at the time it initially receives assistance, (B) a family previously assisted under this chapter. In selecting families to be assisted, preference shall be given to families which, at the time they are seeking assistance, occupy substandard housing, are involuntarily displaced, or are paying more than 50 per centum of family income for rent, or (C) a family that is determined to be a lower income family at the time it initially receives assistance and that is displaced by activities under section 1437*o*(c) of this title.

(4) The Secretary shall use substantially all of the authority to enter into contracts under this subsection to make assistance payments for families residing in dwellings to be rehabilitated with assistance under section 1437*o* of this title and for families displaced as a result of rental housing development assisted under such section or as a result of activities assisted under section 1490m of this title.

(5) If a family vacates a dwelling unit before the expiration of a lease term, no assistance payment may be made with repsect to the unit after the month during which the unit was vacated.

(6) A contract with a public housing agency for annual contributions under this subsection shall be for an initial term of sixty months. The Secretary shall require (with respect to any unit) that (A) the public housing agency inspect the unit before any assistance payment may be made to determine that it meets housing quality standards for decent, safe, and sanitary housing established by the Secretary for the purpose of this section, and (B) the public housing agency make annual or more frequent inspections during the contract term. No assistance payment may be made for a dwelling unit which fails to meet such quality standards, unless any such failure is promptly corrected by the owner and the correction verified by the public housing agency.

(7)(A) The amount of assistance payments under this subsection may, in the discretion of the public housing agency, be adjusted as frequently as twice during any five-year period where necessary to assure continued affordability. The aggregate amount of adjustments pursuant to the preceding sentence may not exceed the amount of any excess of the annual contributions provided for in the contract over the amount of assistance payments actually paid (including amounts which otherwise become available during the contract period).

(B) For the purpose of subparagraph (A), each contract with a public housing agency for annual contributions under this subsection shall provide annual contributions equal to 115 per centum of the estimated aggregate amount of assistance required during the first year of the contract.

(C) Any amounts not needed for adjustments under subparagraph (A) may be used to provide assistance payments for additional families.

(D) Before making such adjustments the public housing agency shall consult with the public and the unit of general local government regarding the impact of such adjustments on the number of families that can be assisted.

(8) A public housing agency may utilize not to exceed 5 per centum of the amount of authority available under this subsection to provide assistance with respect to cooperative or mutual housing which has a resale structure which maintains affordability for lower income families where the agency determines such action will assist in maintaining the affordability of such housing for such families.

(p) Shared housing for elderly and handicapped

In order to assist elderly families (as defined in section 1437a(b)(3) of this title who elect to live in a shared housing arrangement in which they benefit as a result of sharing the facilities of a dwelling with others in a manner that effectively and efficiently meets their housing needs and thereby reduces their cost of housing, the Secretary shall permit assistance provided under the existing housing and moderate rehabilitation programs to be used by such families in such arrangements. In carrying out this subsection, the Secretary shall issue minimum habitability standards for the purpose of assuring decent, safe, and sanitary housing for such families while taking into account the special circumstances of shared housing.

(As amended Nov. 30, 1983, Pub. L. 98-181, title II, §§ 203(b)(1), (2), 207-209(a), 210, 211, 97 Stat. 1178, 1181-1183; Oct. 17, 1984, Pub. L. 98-479, title I, § 102(b)(6)-(10), 98 Stat. 2221, 2222.)

REFERENCES IN TEXT

Section 1720 of title 12, referred to in subsec. (c)(5), was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

AMENDMENTS

1984—Subsec. (d)(2). Pub. L. 98-479, § 102(b)(6), substituted "Where the Secretary enters into an annual contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the contract for assistance payments may not be attached to the structure unless (A) the Secretary and the public housing agency approve such action, and (B) the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section." for "A contract under this section may not be attached to the structure except where the Secretary specifically waives the foregoing limitation and the public housing agency approves such action, and the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section. The aggregate term of such contract and any contract extension may not be more than 180 months."

Subsec. (e)(2). Pub. L. 98-479, § 102(b)(7), added "The Secretary shall increase the amount of assistance provided under this paragraph above the amount of assistance otherwise permitted by this paragraph and subsection (c)(1) of this section, if the Secretary determines such increase necessary to assist in the sale of multifamily housing projects owned by the Department of Housing and Urban Development."

Subsec. (n). Pub. L. 98-479, § 102(b)(8), substituted "subsections (b)(1) and (e)(2) of this section" for "subsection (b)(1), subsection (e)(2) of this section".

Subsec. (*o*)(3)(C). Pub. L. 98-479, § 102(b)(9), added cl. (C).

Subsec. (*o*)(7)(D). Pub. L. 98-479, § 102(b)(10), added "unit of" before "general".

1983—Subsec. (a). Pub. L. 98-181, § 209(a)(1), substituted "existing housing" for "existing, newly constructed, and substantially rehabilitated housing".

Subsec. (b)(2). Pub. L. 98-181, § 209(a)(2), repealed par. (2) which related to authorization of assistance payments by the Secretary and contractually obligated public housing agencies for construction or substantial rehabilitation of housing, modest in design, with units for occupancy by low-income families and requirement that contracts providing housing assistance and entered into after Aug. 13, 1981, specify the number of units available for occupancy by eligible families.

Subsec. (d)(1)(A). Pub. L. 98-181, § 203(b)(1), inserted ", are paying more than 50 per centum of family income for rent,".

Subsec. (d)(2). Pub. L. 98-181, § 208, added second and third sentences respecting waiver of limitation and limitation of contract and any extension to prescribed period.

Subsec. (e)(1). Pub. L. 98-181, § 209(a)(3), redesignated par. (4) as (1) and struck out former par. (1) which prescribed terms of 20 to 30 years for newly constructed or substantially rehabilitated dwelling units.

Subsec. (e)(2). Pub. L. 98-181, § 209(a)(3), redesignated par. (5) as (2) and struck out former par. (2) which required owners to assume ownership, management, and maintenance responsibilities, including selection of tenants and termination of tenancy for newly constructed or substantially rehabilitated dwelling units.

Pub. L. 98-181, § 203(b)(2), inserted ", are paying more than 50 per centum of family income for rent," after "substandard housing".

Subsec. (e)(3). Pub. L. 98-181, § 209(a)(3), struck out par. (3) which required that construction or substantial rehabilitation of dwelling units be eligible for mortgages insured under the National Housing Act and that assistance not be withheld by reason of availability of mortgage insurance under section 1715z-9 of title 12 or tax-exempt status obligations used to finance the construction or rehabilitation.

Subsec. (e)(4), (5). Pub. L. 98-181, § 209(a)(3), redesignated pars. (4) and (5) as (1) and (2), respectively.

Subsec. (i). Pub. L. 98-181, § 209(a)(4), repealed subsec. (i) which related to contracts with respect to substantially rehabilitated dwelling units.

Subsecs. (*l*), (m). Pub. L. 98-181, § 209(a)(5), repealed subsec. (*l*) relating to limitation of cost and rent increases, and subsec. (m) relating to preference for projects on suitable State and local government tracts.

Subsec. (n). Pub. L. 98-181, § 209(a)(6), substituted "subsection (e)(2) of this section" for "subsection (e)(5) and subsection (i) of this section".

Pub. L. 98-181, § 210(1), (2), inserted "subsection (b)(1) of this section," before "subsection (e)(5)" and a comma after "subsection (e)(5) of this section".

Subsec. (n)(3). Pub. L. 98-181, § 210(3)-(5), added par. (3).

Subsec. (*o*). Pub. L. 98-181, § 207, added subsec. (*o*).

Subsec. (p). Pub. L. 98-181, § 211, added subsec. (p).

EFFECTIVE DATE OF 1983 AMENDMENT; SAVINGS PROVISION

Section 209(b) Pub. L. 98-181 provided that: "The amendments made by subsection (a) [amending subsecs. (a), (b), (e), (i), and (*l*) to (n) of this section] shall take effect on October 1, 1983, except that the provisions repealed [subsecs. (b)(2), (e)(1) to (3), (i), (*l*), and (m) of this section] shall remain in effect—

"(1) with respect to any funds obligated for a viable project under section 8 of the United States Housing Act of 1937 [this section] prior to January 1, 1984; and

"(2) with respect to any project financed under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437a, 1437c, 1437g, 1437j, 1437*l*, 1437m, 1437n, 1437*o*, 1437p, 1439, 1472, 1483, 1490j, 1490m, 5302 of this title; title 12 sections 1701q, 1701s, 1701z-12, 1701z-13, 1715*l*, 1715z-1, 1715z-1a, 1715z-15; title 26 sections 103, 1250; title 40 App. section 207.

§ 1437g. Annual contributions for operation of lower income housing

[*See main edition for text of (a) and (b)*]

(c) Authorization of appropriation

There are authorized to be appropriated, for the purpose of providing annual contributions pursuant to this section not to exceed $535.000,000 on or after July 1, 1975, not to exceed $80,000,000 on or after July 1, 1976, not to exceed $595,600,000 on or after October 1, 1976, not to exceed $685,000,000 on or after October 1, 1977, not to exceed $729,000,000 on or after October 1, 1978, not to exceed $741,500,000 on or after October 1, 1979, not to exceed $826,000,000 on or after October 1, 1980, not to exceed $1,500,000,000 on or after October 1, 1981, not to exceed $1,500,000,000 on or after October 1, 1983, and by such sums as may be necessary on or after October 1, 1984,.[1]

[*See main edition for text of (d)*]

(As amended Nov. 30, 1983, Pub. L. 98-181, title II, § 212, 97 Stat. 1184.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-181 substituted "October 1, 1980, and" for "October 1, 1980," and authorized appropriations of not to exceed $1,500,000,000 on or after Oct. 1, 1983, and of such sums as may be necessary on or after Oct. 1, 1984.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437*l*, 1439 of this title.

§ 1437h. Implementation of provisions by Secretary

(a) Preparation and submission of annual budget program; maintenance of accounts; annual audit by General Accounting Office

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter, the Secretary, notwithstanding the provisions of any other law, shall—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31; and

(2) maintain an integral set of accounts which shall be audited annually by the General Accounting Office in accordance with the

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[1] So in original.

principles and procedures applicable to commercial transactions as provided by chapter 91 of title 31, and no other audit shall be required.

[*See main edition for text of* (*b*)]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 203(b)(2), 98 Stat. 2229.)

AMENDMENTS

1984—Subsec. (a)(1), (2). Pub. L. 98-479 substituted "chapter 91 of title 31" for "the Government Corporations Control Act, as amended".

§ 1437i. Obligations of public housing agencies; contestability; full faith and credit of United States pledged as security; tax exemption

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437*o*, 1437q of this title; title 26 section 103.

§ 1437*l*. Comprehensive improvement assistance for existing public housing projects

(a) Purposes

It is the purpose of this section to provide assistance—

(1) to improve the physical condition of existing public housing projects; and

(2) to upgrade the management and operation of such projects;

in order to assure that such projects continue to be available to serve lower income families.

[*See main edition for text of* (*b*) *to* (*e*)]

(f) Repealed. Pub. L. 98-181, title II, § 214(b), Nov. 30, 1983, 97 Stat. 1185

[*See main edition for text of* (*g*) *to* (*j*)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title II, § 214(b), 97 Stat. 1185; Oct. 17, 1984, Pub. L. 98-479, title II, § 204(b)(2), 98 Stat. 2233.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-479 substituted a semicolon for the comma at end of pars. (1) and (2).

1983—Subsec. (f). Pub. L. 98-181 repealed subsec. (f) relating to applications proposing demolition of housing project.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437c, 1439 of this title.

§ 1437n. Income eligibility for assisted housing

(a) Not more than 25 per centum of the dwelling units which were available for occupancy under public housing annual contributions contracts and section 8 [42 U.S.C. 1437f] housing assistance payments contracts under this chapter before October 1, 1981, and which will be leased on or after October 1, 1981, shall be available for leasing by lower income families other than very low-income families.

[*See main edition for text of* (*b*)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title II, § 213, 97 Stat. 1184.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181 increased to 25 from 10 the percentage of dwelling units available for leasing.

§ 1437*o*. Rental rehabilitation and development grants

(a) Program authority

(1) The Secretary is authorized—

(A) to make rental rehabilitation grants to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes in accordance with subsection (c) of this section; and

(B) to make development grants for new construction or substantial rehabilitation in accordance with subsection (d) of this section.

(2) In connection with a grant under this section, the Secretary may reserve authority to provide housing assistance under section 1437f(*o*) of this title to the extent necessary—

(A) to provide housing assistance to persons displaced by activities under this section; or

(B) to support the grantee's program.

(3) To carry out the purposes of this section the Secretary may utilize not to exceed $615,000,000, as provided in section 1437c(c) of this title for fiscal years 1984 and 1985, of which amount—

(A) not to exceed $150,000,000 shall be available in each such year for rental rehabilitation, of which $1,000,000 shall be available each year for technical assistance; and

(B) not to exceed $200,000,000 for fiscal year 1984, and $115,000,000 for fiscal year 1985, shall be available for development grants.

(b) Distribution of rental rehabilitation grant funds

(1) Of the amount available in any fiscal year for rehabilitation grants under this section, the Secretary shall allocate amounts for rehabilitation grants under subsection (c) of this section to cities having populations of fifty thousand or more, urban counties, and States for use as provided in subsection (e) of this section, on the basis of a formula which shall be contained in a regulation proposed by the Secretary not later than sixty days after November 30, 1983. Such regulation shall be accompanied by the specific fund allocation for fiscal year 1984 for individual cities, urban counties, and States which would result from the proposed formula and any adjustments under paragraph (2). The formula contained in the regulation shall take into account objectively measurable conditions, including such factors as low income renter population, overcrowding of rental housing, the extent of physically inadequate housing stock, and such other objectively measurable conditions as the Secretary deems appropriate to reflect the need for assistance under this section, but excluding data relating to such factors which pertain to areas eligible for assistance under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(2) Before an allocation determined under paragraph (1) for any fiscal year is made available for use, the Secretary may adjust the allocation as follows:

(A) The Secretary is authorized to establish minimum allocation amounts for cities and urban counties, representing program levels below which, in the Secretary's determination, conduct of a rental rehabilitation program would not be feasible. The amount of any allocation which is below this minimum shall be added to the allocation for the State in which the city or county is located and shall be available in accordance with subsection (e) of this section.

(B) Beginning with fiscal years after fiscal year 1984, the Secretary is authorized to adjust the allocation for a city, urban county, or State administering a rental rehabilitation program as provided in subsection (e) of this section, by up to 15 per centum above or below the amount of such allocation, based on an annual review of performance in carrying out activities under this section in a timely manner and in achieving the result that at least 80 per centum of the units rehabilitated with assistance under this section in all program years have rents which are and remain at a level which would be affordable by lower income families. The last sentence of subparagrpah (A) shall not apply to an allocation which is below the minimum amount described therein by reason of an adjustment under this subparagraph. The Secretary shall establish by regulation performance criteria for purposes of this subparagraph.

(3) After the allocation of rehabilitation grant amounts, the Secretary is authorized to reallocate such amounts among grantees on the basis of the Secretary's assessment of the progress of grantees in carrying out activities under this section in accordance with their specified schedules. Reallocations under this paragraph shall be designed to encourage use of these resources expeditiously, consistent with the sound development and administration of the grantees' rental rehabilitation programs.

(4) Any rental rehabilitation grant amounts which are not obligated at the end of any fiscal year shall be added to the amount available for allocation for such grants for the succeeding fiscal year.

(c) Grants for moderate rehabilitation

(1) A rehabilitation grant may be made under this section on the basis of satisfactory information provided in a program description which shall be submitted by the grantee at such time and in such manner as the Secretary may prescribe and which shall contain—

(A) a description of the grantee's proposed rental rehabilitation program, which shall consist of the activities each grantee proposes to undertake for the fiscal year, including the grantee's anticipated schedule in carrying out those activities, or, in case of a State distributing resources as provided in subsection (e) of this section, its proposed method of distributing the resources, which shall have been made available to the public;

(B) a certification that the grantee's program was developed after consultation with the public;

(C) a statement of the procedures and standards which will govern selection of proposals by the grantee, which procedures and standards shall take into account the extent to which the proposal represents the efficient use of Federal resources and the extent to which the housing units involved will be adequately maintained and operated with rents at the levels proposed;

(D) an estimate of the effect of the proposed program on neighborhood preservation;

(E) evidence demonstrating the financial feasibility of the proposed program, including the availability of non-Federal and private resources and including evidence that the projects to be selected for rehabilitation will be located in neighborhoods where rents are generally affordable to lower income families and that the character of the neighborhood indicates that such rents will not materially change over an extended period; and

(F) such other information as the Secretary shall prescribe.

(2) A rental rehabilitation program assisted under this section shall provide that—

(A) grant assistance shall only be used to rehabilitate real property to be used for primarily residential rental purposes;

(B) grants shall only be used to assist the rehabilitation of real property located in neighborhoods where the median income does not exceed 80 per centum of the median income for the area;

(C) grant assistance for any structure shall not exceed 50 per centum of the total costs associated with the rehabilitation of that structure, as determined by the Secretary, except that where the Secretary determines that refinancing costs and the special nature of the project require a greater amount of assistance, the grant amount shall be limited to not to exceed 50 per centum of the development cost including acquisition;

(D) rehabilitation assisted under this section shall only be that which is necessary to correct substandard conditions, to make essential improvements, and to repair major systems in danger of failure;

(E) the amount of rental rehabilitation assistance provided under this section for any structure shall not exceed $5,000 per unit except as otherwise determined by the Secretary in areas of high material and labor costs where the grantee demonstrates that every appropriate step has been taken by the grantee to contain the amount of assistance within the limit set by this paragraph and that an exception is necessary to conduct a rehabilitation program while not exceeding the rehabilitation standards of subparagraph (D);

(F) a structure may be assisted under this section only if the rehabilitation of such structure will not cause the involuntary displacement of very low-income families by families who are not very low-income families;

(G) the owner of each assisted structure agrees—

(i) not to discriminate against prospective tenants on the basis of their receipt of or eligibility for housing assistance under any Federal, State, or local housing assistance program or, except for a structure for housing for the elderly, on the basis that the tenants have a minor child or children who will be residing with them; and

(ii) not to convert the units to condominium ownership (or in the case of a cooperative, to condominium ownership or any form of cooperative ownership not eligible for assistance under this section);

for at least 10 years beginning on the date on which the units in the project are completed;

(H) the grantee certifies to the satisfaction of the Secretary that the assistance will be made available in conformity with Public Law 88-352 [42 U.S.C. 2000a et seq.] and Public Law 90-284; and

(I) 100 per centum of the amount of assistance provided under this section shall be used by the grantee for the benefit of lower income families, except that such requirement shall be reduced to (i) 70 per centum if the grantee certifies in accordance with standards prescribed by the Secretary that such reduction is necessary, and that the grantee cannot develop a proposed program which complies with such requirement, after consultation with the public regarding the inability to develop a program which complies with such requirement, and (ii) to not less than 50 per centum where the Secretary determines that such further reduction is necessary.

(3) The Secretary shall assure that—

(A) an equitable share of the rehabilitation grants under this section is used to assist in the provision of housing for families with children, particularly families requiring three or more bedrooms; and

(B) a priority shall be given to projects containing units in substandard condition which are occupied by very low-income families.

(d) Grants for new construction and substantial rehabilitation

(1) Development grant funds may be used by the grantee to make grants or loans, provide interest reduction payments, or furnish other comparable assistance to support the new construction or substantial rehabilitation of real property to be used primarily for residential rental purposes.

(2) To be eligible for development grants under this subsection, a project must be located in an area that is experiencing a severe shortage of decent rental housing opportunities for families and individuals without other reasonable and affordable housing alternatives in the private market. The Secretary shall issue regulations, consistent with the preceding sentence, that set forth minimum standards for determining areas eligible for assistance. Such standards shall be based on objectively measurable conditions, and shall take into account the extent of proverty, the extent of occupancy of physically inadequate housing by lower income families, the extent of housing overcrowding experienced by lower income families, the level and duration of rental housing vacancies, the extent of the lag between the estimated need for and production of rental housing, and other objectively measurable conditions specified by the Secretary consistent with the first sentence of this subsection. The Secretary shall propose regulations under this paragraph not later than 60 days after November 30, 1983, and shall promptly transmit to the Congress such proposed regulations accompanied by a list of those areas which meet the minimum standards contained in such regulations. Any unit of general local government located in an area which meets such minimum standards is eligible to submit an application for a rental housing development grant under this section. Notwithstanding such minimum standards, a city shall also be eligible to submit such an application if (A) according to the most recent data compiled by the United States Bureau of the Census, such city has a population of not less than 450,000; and (B) the percentage of the total rental units in such city that are vacant and available for rent is less than 10 percent. The Secretary may also consider an application for a project to be located in an area which is not eligible under such standards where the Secretary determines that a project involving assistance for other than moderate rehabilitaiton is necessary in order to meet special housing needs or to advance a particular neighborhood preservation purpose.

(3) A development grant may be made under this section on the basis of information provided in an application which shall be submitted by the grantee at such time and in such manner as the Secretary may prescribe. In addition to information relating to the selection criteria set forth in paragraph (5), the application shall contain—

(A) a description of the grantee's proposed rental development program, which shall consist of the activities the grantee proposes to undertake for the fiscal year, including a specification of the grantee's anticipated schedule in carrying out those activities;

(B) a certification that the grantee's program was developed after consultation with the public;

(C) a statement of the procedures and standards which will govern selection of proposals by the grantee, which procedures and standards shall take into account the extent to which the proposal represents the efficient use of Federal resources and the extent to which the housing units involved will be adequately maintained and operated with rents maintained at the levels proposed;

(D) an estimate of the effect of the proposed program on neighborhood preservation; and

(E) such other information as the Secretary shall prescribe.

(4) A rental development program assisted under this section shall provide that—

(A) grant assistance shall be used to develop real property to be used for residential rental purposes only;

(B) grant assistance for any structure shall not exceed 50 per centum of the total costs associated with the rehabilitation or development of that structure, as determined by the Secretary, except that where the Secretary determines that refinancing costs and the special nature of the project require a greater amount of assistance, the grant amount shall be limited to not to exceed 50 per centum of the development cost including acquisition;

(C) a structure may be assisted under this section only if the development of such structure will not cause the involuntary displacemnet of very low-income families by families who are not very low-income families;

(D) the owner of each assisted structure agrees—

(i) not to discriminate against prospective tenants on the basis of their receipt of or eligibility for housing assistance under any Federal, State, or local housing assistance program or, except for a structure for housing for the elderly, on the basis that the tenants have a minor child or children who will be residing with them; and

(ii) not to convert the units to condominium ownership (or in the case of a cooperative, to condominium ownership or any form of cooperative ownership not eligible for assistance under this section);

during the 20-year period beginning on the date on which the units in the project are available for occupancy;

(E) the owner of each assisted structure agrees that, during the 20-year period beginning on the date on which 50 per centum of the units in the structure are occupied or completed, at least 20 per centum of the units the construction or substantial rehabilitation of which is provided for under the application shall be occupied, or available for occupancy by, lower income families;

(F) the structure—

(i) will have a value after rehabilitation or construction that is not more than the amount of a mortgage on the structure that could be insured under section 1713 of title 12; and

(ii) is secured by a mortgage which bears a rate of interest and contains such other terms and conditions as the Secretary determines are reasonable;

(G) the grantee must commence construction or substantial rehabilitation activities not later than 24 months after notice of project selection; and

(H) the State or unit of general local government that receives the assistance certifies to the satisfaction of the Secretary that the assistance will be made available in conformity with Public Law 88-352 [42 U.S.C. 2000a et seq.] and Public Law 90-284.

(5) In selecting projects to receive development grants, the Secretary shall make such selection on the basis of the extent—

(A) of the severity of the shortage of decent rental housing opportunities in the area in which the project or projects are to be located for families and individuals without other reasonable and affordable housing alternatives in the private market;

(B) of non-Federal public and private financial or other contributions that reduce the amount of assistance necessary under this section;

(C) to which the project or projects contribute to neighborhood development and mitigate displacement;

(D) to which the applicant has established a satisfactory record of performance in meeting assisted housing needs and has the capacity to undertake the program in a timely manner;

(E) to which the assistance requested will provide the maximum number of units for the least cost to the Federal Government, taking into consideration the extent to which assistance provided will be recaptured and cost differences among different areas, among financing alternatives, and among the types of projects and tenants being served;

(F) to which the grantee will establish a mechanism to assure the maintenance of affordable rentals for lower income families;

(G) to which the applicant has demonstrated the financial feasibility of the proposed program, including the availability of non-Federal and private resources; and

(H) to which an equitable share of the development grant funds under this section will be used to assist in the provision of housing for families with children, particularly families requiring three or more bedrooms.

(6) In selecting projects for grants under this subsection, the Secretary shall give a priority to proposals involving projects—

(A) which exceed the minimum requirements of paragraph (4)(E); and

(B) in areas where the waiting lists for housing assistance are relatively long and where families holding certificates under section 1437f of this title require an excessive length of time to find housing.

(7)(A) The grantee shall take appropriate legal action to enforce compliance with the requirements of this subsection by the owner of any assisted property or his or her successors in interest during the 20-year period beginning on the date on which 50 per centum of the units are occupied or are completed. For any violation of such agreements, the owner or his or her successors in interest shall make a payment to the grantee of an amount that equals the total amount of assistance provided under this title[2] with respect to such project, plus interest thereon (without compounding), for each year and any fraction thereof that the assistance was outstanding, at a rate determined by the Secretary taking into account the average yield on outstanding marketable long-term obligations of the United States during the month preceding the date on which the assistance was made available. The amount of such assistance (and accrued interest) which is required to be repaid shall be reduced by 10 per centum for each full year in excess of 10 years which intervened between the commencement of the period and the violation. Any amounts recovered by the grantee shall be used to furnish assistance under this section.

(B) Notwithstanding any other provision of law, any assistance provided under this subsection shall constitute a debt, which is payable in the case of any failure to carry out the agreements, and shall be secured by the security instruments provided by the owner to the grantee.

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[2] So in original. Probably should be "subsection".

(8)(A) Rents charged for units available for occupancy by lower income families in any project assisted under this subsection shall be approved by the grantee. In approving such rents, the grantee shall provide that the rents of such units are not more than 30 per centum of the adjusted income of a family whose income equals 50 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families. Not less than 30 days prior written notice of any increase in rents shall be provided to such tenants.

(B) Any schedule of rents submitted by an owner to the grantee for approval shall be deemed to be approved unless the grantee informs the owner, within 60 days after receivng such schedule, that such schedule is disapproved.

(9) The amount of a development grant provided under this subsection shall not be more than that amount which will provide decent rental or cooperative housing of modest design which is affordable for families and individuals without other reasonable and affordable housing alternatives in the private market, including an amount necessary to achieve compliance with paragraph (8)(A).

(e) State program

(1) Except as provided in paragraph (2), the State shall administer resources made available under subsection (b) of this section for any fiscal year. These resources shall only be used to carry out activities under this section in units of general local government and areas of the State that do not receive allocations under subsection (b) of this section and in urban counties and cities whose allocations are less than the minimum allocation amount established under subsection (b)(2) of this section, but may not be used in areas which are eligible for assistance under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.]. The State may use all or part of these resources (A) to carry out its own rental rehabilitation program, or (B) to distribute them to units of general local government. A city with a population over fifty thousand may, with the agreement of the State government, elect to contract with the State to administer the grant program under this section in any fiscal year.

(2) States may elect not to administer resources made available under subsection (b) of this section. This election shall be made in such manner and before such time as the Secretary may prescribe. The Secretary shall administer the resources available to any State exercising such an election in accordance with regulations and procedures prescribed by the Secretary, including the administration of grant programs of cities with populations over fifty thousand which elect not to administer their own program. Such regulations shall, to the maximum extent practicable, be comparable to those for cities and urban counties receiving resources under subsection (b) of this section.

(3) A State may apply for and receive, on behalf of a unit of local government located in that State and with the concurrence of that unit of general local government, a rental development grant to be used in accordance with the provisions of subsection (d) of this section.

(4) In any case in which the State is a grantee under any provision of this section, the Secretary shall require that the State take such actions as may be appropriate to assure compliance with the program requirements, owner agreements, and other provisions of this section.

(f) Applicability of requirements or agreements

Requirements imposed by or agreements made with States and units of general local government regarding rents in structures assisted under this section (including requirements relating to the rents which may be charged after rehabilitation) shall not apply to a structure assisted under this section unless (1) such requirements are imposed or agreements are entered into pursuant to a State law or local ordinance of general applicability which was enacted and in effect in that jurisdiction prior to November 30, 1983, and (2) such requirements or agreements would apply generally to structures not assisted under this section.

(g) Relocation

The Secretary shall by regulation establish such standards governing reasonable relocation payments and other related assistance as the Secretary determines to be appropriate.

(h) Administrative expenses

Grantees receiving assistance under this section shall not deduct therefrom any amounts to cover administrative expenses incurred by them in carrying out their responsibilities under this section.

(i) Preservation, environmental policy, and labor standards

(1) The Secretary shall establish procedures which support national historic preservation objectives and which assure that, if any rehabilitation or development proposed to be assisted under this section would affect property which is included on the National Register of Historic Places or which is eligible for inclusion on the National Register of Historic Places, such activity shall not be undertaken unless (A) it will reasonably meet the standards issued by the Secretary of the Interior and the appropriate State historic preservation officer is afforded the opportunity to comment on the specific rehabilitation or development program, or (B) the Advisory Council on Historic Preservation is afforded an opportunity to comment on cases for which the grantee of assistance, in consultation with the State historic preservation officer, determines that the proposed activity cannot reasonably meet such standards or would adversely affect historic property as defined therein.

(2) The Secretary's award and grantee's use of resources made available under this section shall be subject to section 104(f) of the Housing

and Community Development Act of 1974 [42 U.S.C. 5304(f)].

(3) A project assisted under this section shall be treated as a project subject to a mortgage insured under section 1715k of title 12 for the purpose of section 1715c of title 12.

(j) Financing

Subject to terms and conditions that are prescribed by the Secretary and are consistent with the purpose and other provisions of this section, any obligation issued by a State or local housing agency for the purpose of financing the development of a project or projects assisted under this section is hereby deemed an obligation that meets the requirements of, and has the benefits (including the benefit of interest earned with respect to the obligation being exempt from Federal taxation) associated with, an obligation described in section 1437i(b) of this title.

(k) Definitions

For the purpose of this section—

(1) the term "rehabilitation grant" means a grant to finance moderate rehabilitation;

(2) the term "development grant" means a grant to finance new construction or substantial rehabilitation;

(3) the Secretary shall use the same population data and rules for designating cities and urban counties as apply under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.];

(4) the term "real property to be used primarily for residential rental purposes" includes cooperative or mutual housing which has a resale structure which enables the cooperative to maintain affordability for lower income families;

(5) the term "grantee" means—

(A) any city or urban county receiving resources under subsection (b) of this section, and any unit of general local government receiving resources under subsection (d) of this section;

(B) any State administering a rental rehabilitation or development program as provided in subsection (e) of this section; and

(C) any unit of general local government which receives assistance from the Secretary as provided in subsection (e) of this section;

(6) the term "State" means each of the several States and the Commonwealth of Puerto Rico; and

(7) the term "unit of general local government" means (A) any city, county, town, township, parish, village, or other general purpose political subdivision of a State; (B) any Indian tribe (as defined in section 102(a)(17) of the Housing and Community Development Act of 1974 [42 U.S.C. 5302(a)(17)]); and (C) the District of Columbia, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

The Secretary shall encourage cooperation by units of general local government in the administration of grants under this section by permitting consortia of geographically proximate units of general local government to apply for assistance on behalf of their members, including establishment of eligibility under subsection (b) of this section for consortia whose combined populations exceed fifty thousand and which can otherwise meet the requirements of such subsection. Any amounts made available to such a consortium shall be deducted from the allocation to the State in which the units of general local government are located.

(*l*) Review and audit

The Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine—

(1) where the grantee is a unit of general local government, or a State carrying out its own program as provided in subsection (e)(1) of this section, whether the grantee has carried out its activities in a timely manner and in accordance with the requirements of this section, and has a continuing capacity to carry out those activities in a timely manner; and

(2) where the grantee is a State distributing resources made available under this section to units of general local government as provided in subsection (e)(1) of this section, whether the State (A) has distributed such resources in a timely manner and in accordance with the requirements of this section, and (B) has made such reviews and audits of the units of general local government as may be necessary or appropriate to determine whether they have satisfied the performance criteria described in paragraph (1).

In addition to the adjustments based on performance authorized by subsection (b)(2) of this section, the Secretary may adjust, reduce, or withdraw resources made available to States and units of general local government receiving assistance under this section, or take other action as appropriate in accordance with the findings of these reviews and audits, except that resources already expended on eligible activities shall not be recaptured or deducted from future resources made available to the grantee. Any amounts which become available as a result of actions under this paragraph shall be reallocated in the year in which they become available to such grantee or grantees as the Secretary may determine.

(m) Performance report

Prior to the beginning of fiscal year 1985 and each fiscal year thereafter, each grantee shall submit to the Secretary a performance report concerning the activities carried out pursuant to this section, together with an assessment by the grantee of the relationship of these activities to the objectives of this section. Such report shall contain an analysis of the program's cost effectiveness, the type and income levels of tenants who benefit from the rehabilitation program, any tenant displacement resulting from the program, and any other information the Secretary may require. To facilitate this reporting requirement, each grantee shall require owners of property rehabilitated under this section to provide verified income data and other pertinent tenant demographic information as prescribed by the Secretary (to include household size and race) or to otherwise arrange for the collection of such information on an annual basis. The Secretary shall stipulate the format for such data collection to assure that such information can be aggregated at the national level to allow congressional oversight.

(n) Report to Congress

Prior to the beginning of fiscal year 1985 and each fiscal year thereafter, the Secretary shall provide a report to the Congress as to the overall progress of grantees in meeting the objectives of this section. Such report shall include an analysis of program costs, services delivered, beneficiaries, and the extent to which lower income tenants have been displaced as a result of rehabilitation assisted under this section.

(*o*) Inapplicability of certain provisions

Unless otherwise specifically provided in this section, the following provisions of this chapter shall not apply to grants provided under this section: section 1437a(a) of this title, section 1437a(b)(1) of this title, the third sentence of section 1437a(b)(3) of this title, section 1437a(b)(7) of this title, the last sentence of section 1437d(a) of this title, and any other provision of this chapter that is inconsistent with the provisions of this section.

(Sept. 1, 1937, ch. 896, § 17, as added Nov. 30, 1983, Pub. L. 98-181, title III, § 301, 97 Stat. 1196, and amended Oct. 17, 1984, Pub. L. 98-479, title I, § 103, 98 Stat. 2223.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsecs. (b)(1) and (e)(1), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

Public Law 88-352, referred to in subsecs. (c)(2)(H) and (d)(4)(H), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Public Law 90-284, referred to in subsecs. (c)(2)(H) and (d)(4)(H), is Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73, as amended, popularly known as the Civil Rights Act of 1968. For complete classification of this Act to the Code, see Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (k)(3), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Dvelopment Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

AMENDMENTS

1984—Subsec. (a)(1)(A). Pub. L. 98-479, § 103(a), struck out "to States and units of general local government" after "rental rehabilitation grants".

Subsec. (b)(2)(B). Pub. L. 98-479, § 103(b), substituted "(e) of this section" for "(f) of this section".

Subsec. (c)(2)(H). Pub. L. 98-479, § 103(c)(1), substituted "grantee" for "State or unit of general local government that receives the assistance".

Subsec. (c)(3)(A). Pub. L. 98-479, § 103(c)(2), substituted "families with children, particularly families requiring three or more bedrooms" for "families, including large families with children".

Subsec. (d)(2). Pub. L. 98-479, § 103(d)(1), inserted "general local" before "government", and added "Notwithstanding such minimum standards, a city shall also be eligible to submit such an application if (A) according to the most recent data compiled by the United States Bureau of the Census, such city has a population of not less than 450,000; and (B) the percentage of the total rental units in such city that are vacant and available for rent is less than 10 percent."

Subsec. (d)(4)(E). Pub. L. 98-479, § 103(d)(2), substituted "lower income families" for "persons and families whose incomes do not exceed 80 per centum of the area median income.

Subsec. (d)(5)(H). Pub. L. 98-479, § 103(d)(3), substituted "families with children, particularly families requiring three or more bedrooms" for "families, including large families with children".

Subsec. (e)(1). Pub. L. 98-479, § 103(e)(1), substituted "(b) of this section" for "(b)(2) of this section" in first sentence, and "units of general local government and areas of the State that do not receive allocations under subsection (b) of this section" for "cities with populations of less than fifty thousand" in second sentence.

Subsec. (e)(2). Pub. L. 98-479, § 103(e)(2), substituted "(b) of this section" for "(b)(2) of this section".

Subsec. (i)(3). Pub. L. 98-479, § 103(f), substituted "project" for "structure" before "assisted under".

Subsec. (k)(5)(A). Pub. L. 98-479, § 103(g)(1), substituted "resources under subsection (b) of this section and any unit of general local government receiving resources under subsection (d) of this section" for "resources under this section".

Subsec. (k)(5)(B). Pub. L. 98-479, § 103(g)(2), substituted "(e) of this section" for "(f) of this section".

Subsec. (k)(5)(C). Pub. L. 98-479, § 103(g)(3), substituted "(e) of this section" for "(f)(2) of this section".

Subsec. (k)(6), (7). Pub. L. 98-479, § 103(g)(4), added pars. (6) and (7).

Subsec. (*l*)(1). Pub. L. 98-479, § 103(h)(1), added a comma after "government" and substituted "(e)(1) of this section" for "(f)(1) of this section".

Subsec. (*l*)(2). Pub. L. 98-479, § 103(h)(2), substituted "(e)(1) of this section" for "(e)(2) of this section".

Subsec. (*o*). Pub. L. 98-479, § 103(i), added subsec. (*o*).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437c, 1437f, 1439, 5305, 5306, 5307 of this title; title 12 sections 1715n, 1715z-9.

§ 1437p. Demolition and disposition of public housing

(a) Obsolescence; best-interests transfers; use of proceeds

The Secretary may not approve an application by a public housing agency for permission, with or without financial assistance under this chapter, to demolish or dispose of a public housing project or a portion of a public housing project unless the Secretary has determined that—

(1) in the case of an application proposing demolition of a public housing project or a portion of a public housing project, the project or portion of the project is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes, or no reasonable program of modifica-

tions is feasible to return the project or portion of the project to useful life; or in the case of an application proposing the demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project; or

(2) in the case of an application proposing disposition of real property of a public housing agency by sale or other transfer—

(A)(i) the property's retention is not in the best interests of the tenants or the public housing agency because developmental changes in the area surrounding the project adversely affect the health or safety of the tenants or the feasible operation of the project by the public housing agency, because disposition allows the acquisition, development, or rehabilitation of other properties which will be more efficiently or effectively operated as lower income housing projects and which will preserve the total amount of lower income housing stock available in the community, or because of other factors which the Secretary determines are consistent with the best interests of the tenants and public housing agency and which are not inconsistent with other provisions of this chapter; and

(ii) for property other than dwelling units, the property is excess to the needs of a project or the disposition is incidental to, or does not interfere with, continued operation of a project; and

(B) the net proceeds of the disposition will be used for (i) the payment of development cost for the project and for the retirement of outstanding obligations issued to finance original development or modernization of the project, and (ii) to the extent that any proceeds remain after the application of proceeds in accordance with clause (i), the provision of housing assistance for lower income families through such measures as modernization of lower income housing, or the acquisition, development, or rehabilitation of other properties to operate as lower income housing.

(b) Consultation with tenants and tenant councils; certification of activity

The Secretary may not approve an application or furnish assistance under this section[3] under this chapter unless—

(1) the application from the public housing agency has been developed in consultation with tenants and tenant councils, if any, who will be affected by the demolition or disposition and contains a certification by appropriate local government officials that the proposed activity is consistent with the applicable housing assistance plan; and

(2) all tenants to be displaced as a result of the demolition or disposition will be given assistance by the public housing agency and are relocated to other decent, safe, sanitary, and affordable housing, which is, to the maximum extent practicable, housing of their choice, including housing assisted under section 1437f of this title.

(c) Financial assistance; annual contributions

Notwithstanding any other provision of law, the Secretary is authorized to make available financial assistance for applications approved under this section using available annual contributions authorized under section 1437c(c) of this title.

(d) Homeownership qualification

The provisions of this section shall not apply to the conveyance of units in a public housing project for the purpose of providing homeownership opportunities for lower income families capable of assuming the responsibilities of homeownership.

(Sept. 1, 1937, ch. 896, § 18, as added Nov. 30, 1983, Pub. L. 98-181, title II, § 214(a), 97 Stat. 1184.)

§ 1437q. Financing limitations

On and after October 1, 1983, the Secretary—

(1) may only enter into contracts for annual contributions regarding obligations financing public housing projects authorized by section 1437c(c) of this title if such obligations are exempt from taxation under section 1437i(b) of this title, or if such obligations are issued under section 1437b of this title and such obligations are exempt from taxation; and

(2) may not enter into contracts for periodic payments to the Federal Financing Bank to offset the costs to the Bank of purchasing obligations (as described in the first sentence of section 2294(b) of title 12) issued by local public housing agencies for purposes of financing public housing projects authorized by section 1437c(c) of this title.

(Sept. 1, 1937, ch. 896, § 19, as added Nov. 30, 1983, Pub. L. 98-181, title II, § 215, 97 Stat. 1185.)

§ 1438. Special low-income housing projects for elderly or handicapped; consultations; applicable design and equipment standards

The Secretary shall consult with the Secretary of Health and Human Services to insure that special projects for the elderly or the handicapped authorized pursuant to this chapter shall meet acceptable standards of design and shall provide quality services and management consistent with the needs of the occupants. Such projects shall be specifically designed and equipped with such "related facilities" (as defined in section 1701q(d)(8) of title 12) as may be necessary to accommodate the special environmental needs of the intended occupants and shall be in support of and supported by the applicable State plans for comprehensive services pursuant to section 6063[4] of this title or State and area plans pursuant to title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.].

(Pub. L. 93-383, title II, § 209, Aug. 22, 1974, 88 Stat. 669; Pub. L. 98-479, title II, § 201(g), Oct. 17, 1984, 98 Stat. 2228.)

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[3] So in original. Probably should be followed by "or".

[4] See References in Text note below.

REFERENCES IN TEXT

Section 6063 of this title, referred to in text, which related to State plans for comprehensive services, was omitted in the general revision of chapter 75 (§ 6000 et seq.) of this title by Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662, and a new section 6063 was enacted, setting forth administrative provisions for grants to university-affiliated facilities. For provisions relating to State plans, see section 6022 of this title.

AMENDMENTS

1984—Pub. L. 98-479 substituted "Health and Human Services" for "Health, Education, and Welfare".

§ 1439. Local housing assistance plan

(a) Applicability of approved plan to housing assistance application; procedure upon receipt of application by Secretary of Housing and Urban Development; definitions

(1) The Secretary of Housing and Urban Development, upon receiving an application for housing assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], section 235 or 236 of the National Housing Act [12 U.S.C. 1715z, 1715z-1], section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], or section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], if the unit of general local government in which the proposed assistance is to be provided has an approved housing assistance plan, shall—

[*See main edition for text of* (*A*) *and* (*B*)]

Upon receiving an application for such housing assistance, the Secretary shall assure that funds made available under this section shall be utilized to the maximum extent practicable to meet the needs and goals identified in the unit of local government's housing assistance plan.

[*See main edition for text of* (*2*) *to* (*5*);
(*b*) *and* (*c*)]

(d) Allocation and reservation of housing assistance funds; purposes; prohibition against reallocation of unutilized funds; enumerated uses for retained funds

(1) The Secretary shall allocate assistance referred to in subsection (a) of this section (other than assistance approved in appropriation Acts for use under sections 9, 14, and 17 of the United States Housing Act of 1937 [42 U.S.C. 1437g, 1437*l*, 1437o) the first time it is available for reservation on the basis of a formula which is contained in a regulation prescribed by the Secretary, and which is based on the relative needs of different States, areas, and communities as reflected in data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other objectively measurable conditions specified in such regulation. Any amounts allocated to a State or areas or communities within a State which are not likely to be utilized within a fiscal year shall not be reallocated for use in another State unless the Secretary determines that other areas or communities within the same State cannot utilize the amounts within that same fiscal year.

(2) Not later than sixty days after approval in an appropriation Act, the Secretary shall allocate from the amounts available for use in nonmetropolitan areas an amount of authority for assistance under section 8(d) of the United States Housing Act of 1937 [42 U.S.C. 1437f(d)] determined in consultation with the Secretary of Agriculture for use in connection with section 1490m of this title during the fiscal year for which such authority is approved. The amount of assistance allocated to nonmetropolitan areas pursuant to this section in any fiscal year shall not be less than 20 nor more than 25 per centum of the total amount of such assistance.

[*See main edition for text of* (*3*) *and* (*4*)]

(As amended Pub. L. 98-181, title II, § 201(a)(1), (2), Nov. 30, 1983, 97 Stat. 1175; Pub. L. 98-479, title I, § 102(e), Oct. 17, 1984, 98 Stat. 2222.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to this chapter (§ 1437 et seq.). For complete classification of this Act to the Code, see Short Title note under section 1437 of this title and Tables.

The Housing and Urban Development Act of 1968, referred to in subsec. (b)(2), is Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IV of the Housing and Urban Development Act of 1968 which was classified principally to chapter 48 (§ 3901 et seq.) of this title, was omitted from the Code pursuant to section 4528 of this title, which terminated the authority to guarantee bonds, debentures, notes, or other obligations under such title IV, after Dec. 31, 1970. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 12, Banks and Banking, and Tables.

The Housing and Urban Development Act of 1970, referred to in subsec. (b)(2), is Pub. L. 91-609, Dec. 31, 1970, 84 Stat. 1770, as amended. Title VII of the Housing and Urban Development Act of 1970, known as the Urban Growth and New Community Development Act of 1970, is classified principally to chapter 59 (§ 4501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1701 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

1984—Subsec. (d)(2). Pub. L. 98-479 substituted "section 1490m of this title" for "section 1490*l* of this title".

1983—Subsec. (a)(1). Pub. L. 98-181, § 201(a)(1), inserted provision following subpar. (B) requiring that funds be utilized to meet the needs and goals identified in the unit of local government's housing assistance plan.

Subsec. (d)(1). Pub. L. 98-181, § 201(a)(2), amended par. (1) generally, inserting provision respecting assistance approved in appropriation Acts for sections 9 and 17 of the United States Housing Act of 1937 uses, requiring allocation of assistance to be based on a formula contained in a regulation, making the relative needs provision applicable to different States, deleting requirement that Secretary assure, in carrying out national housing and community development objectives, that funds available for housing assistance programs be allocated or reserved in accordance with goals described in approved housing assistance plans, and deleting provision respecting allocation of funds for nonmetropolitan areas, which was reenacted as last sentence of par. (2).

Subsec. (d)(2). Pub. L. 98-181, § 201(a)(2), amended par. (2) generally, inserting provision respecting allocation of nonmetropolitan area funds for use in connection with section 1490*l* of this title; reenacting as second sentence provision respecting amount of funds allocated for nonmetropolitan areas, which formerly constituted last sentence of par. (1); and deleting former provision respecting reservation of housing assistance funds for new community developments approved under title IV of the Housing and Urban Development Act of 1968 and title VII of the Housing and Urban Development Act of 1970 for persons of low- and moderate-income.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1437f of this title; title 12 section 1715z.

§ 1440. State housing finance and development agencies

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Revolving fund for payment of liabilities incurred pursuant to guarantees and payment of obligations issued to Secretary of Treasury; composition; availability, issuance of obligations to Secretary of Treasury for implementation of guarantees; amount, maturity, rate of interest, and purchase by Secretary of Treasury of obligations; payment of expenses and charges

[*See main edition for text of* (*1*)]

(2) The Secretary may issue obligations to the Secretary of the Treasury in an amount sufficient to enable the Secretary to carry out his functions with respect to the guarantees authorized by subsection (c) of this section. The obligations issued under this paragraph shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations so issued, and for that purpose he is authorized to use a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include purchases of the obligations hereunder.

[*See main edition for text of* (*3*); (*f*) *to* (*h*)]

(As amended Pub. L. 98-479, title II, § 203(*l*)(4), Oct. 17, 1984, 98 Stat. 2231.)

AMENDMENTS

1984—Subsec. (e)(2). Pub. L. 98-479 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act" and "such chapter" for "that Act".

CHAPTER 8A—SLUM CLEARANCE, URBAN RENEWAL, AND FARM HOUSING

SUBCHAPTER III—FARM HOUSING

Sec.
1482. Repealed.
1483. Program levels and authorizations.
  (a) Maximum aggregate amount of insured and guaranteed loans.
  (b) Authorization of appropriations.
  (c) Rental assistance contracts.
1490g. Repealed.
1490i. Repealed.
1490k. FHA insurance.
1490*l*. Processing of applications; preliminary reservation of assistance at time of initial approval of project.
1490m. Housing preservation grants.
  (a) Statement of purposes.
  (b) Mandatory program requirements.
  (c) Allocation formula; transfer of funds; maximum amounts.
  (d) Statement of activity by grantee; submission; contents; availability; consultations; evaluation by Secretary; criteria applicable; maximum amounts.
  (e) Limitations on assistance; failure to implement required agreement.
  (f) Advance payments of assistance.
  (g) Annual review and audit by Secretary of activities; adjustment, etc., of resources; reallocation of amounts.
  (h) Rules and regulations; delegation of authority.
  (i) National historic preservation objectives affected by rehabilitation activities; establishment of procedures for determining consonant purposes and measures.
  (j) Reporting requirements.
1490n. Review of rules and regulations.
  (a) Publication for public comment in Federal Register.
  (b) Transmittal to Congressional committee members prior to publication in Federal Register.
  (c) Rules and regulations issued on emergency basis.
1490o. Reciprocity in approval of housing subdivisions among Federal agencies.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1441. Congressional declaration of national housing policy

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-181, title V, § 501, Nov. 30, 1983, 97 Stat. 1240, provided that: "This title [enacting sections 1490k to 1490o of this title, amending sections 1471, 1472, 1474, 1476, 1479 to 1481, 1483 to 1487, 1490, 1490a, 1490c, 1490e, 1490f, and 1490j of this title, repealing sections 1482, 1490g, and 1490i of this title, and enacting provisions set out as notes under sections 1472 and 1490a of this title] may be cited as the 'Rural Housing Amendments of 1983'."

§ 1441a. National housing goals

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1441b of this title.

SUBCHAPTER II—SLUM CLEARANCE AND URBAN RENEWAL

PART A—URBAN RENEWAL PROJECTS, DEMOLITION PROGRAMS, AND CODE ENFORCEMENT PROGRAMS

§ 1452. Omitted

CODIFICATION

Section, acts July 15, 1949, ch. 338, title I, § 102, 63 Stat. 414; Aug. 2, 1954, ch. 649, title III, § 304, 68 Stat. 624; Aug. 7, 1956, ch. 1029, title III, §§ 301, 303, 70 Stat. 1097, 1099; Sept. 23, 1959, Pub. L. 86-372, title IV, §§ 402-404, 73 Stat. 671; June 30, 1961, Pub. L. 87-70, title III, §§ 302(a), 314(b), 75 Stat. 166, 172; Sept. 2, 1964, Pub. L. 88-560, title III, § 303(a), 78 Stat. 785; Aug. 10, 1965, Pub. L. 89-117, title III, § 303, 79 Stat. 475; May 25, 1967, Pub. L. 90-19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90-448, title V, § 507(a), 82 Stat. 522; Dec. 24, 1969, Pub. L. 91-152, title II, § 208, 83 Stat. 387; Oct. 17, 1984, Pub. L. 98-479, title II, § 203(d)(1), 98 Stat. 2229, which provided for temporary and definitive loans and advances for surveys and plans to local public agencies under this subchapter, as well as establishing requirements for advances for General Neighborhood Renewal Plans and the issuance and sale of notes and obligations under this subchapter, was omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this subchapter after Jan. 1, 1975.

§ 1452b. Rehabilitation loans

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Authorization of appropriations; revolving fund; limitations on multifamily property loans; prohibition of dwelling unit and priorities requirements

There is authorized to be appropriated not to exceed $150,000,000 for each fiscal year ending prior to July 1, 1975, not to exceed $100,000,000 for the fiscal year beginning on July 1, 1975, not to exceed $100,000,000 for the fiscal year beginning on October 1, 1976, not to exceed $60,000,000 for the fiscal year beginning on October 1, 1977, not to exceed $245,000,000 for the fiscal year beginning on October 1, 1978, not to exceed $140,000,000 for the fiscal year beginning on October 1, 1979, and not to exceed $144,000,000 for the fiscal year beginning on October 1, 1980, which shall constitute a revolving fund to be used by the Secretary in carrying out this section. All moneys in such revolving fund shall be available for necessary expenses of servicing loans made pursuant to this section, including reimbursement or payment for services and facilities of the Government National Mortgage Association and of any public or private agency for the servicing of such loans. The amount of commitments to make loans pursuant to this section entered into after August 22, 1976, shall not exceed amounts approved in appropriation Acts, and not more than $210,000,000 may be approved in appropriation Acts for such loans with respect to the fiscal year beginning on October 1, 1980. The Secretary may not establish (1) any requirement that a certain proportion of assistance received under this section be utilized for any particular type of dwelling unit; or (2) any priority for the receipt of such assistance that is based on the receipt or use of funds by an applicant or area under any other program of Federal assistance for housing or community development, other than the urban homesteading program established in section 810 of the Housing and Community Development Act of 1974 [12 U.S.C. 1706e].

[*See main edition for text of* (*e*) *to* (*g*)]

(h) Termination date

No loan shall be made under this section after March 17, 1986, except pursuant to a contract, commitment, or other obligation entered into pursuant to this section on or before such date.

[*See main edition for text of* (*i*) *to* (*k*)]

(As amended Pub. L. 98-109, § 3, Oct. 1, 1983, 97 Stat. 746; Pub. L. 98-181, title I, § 124, Nov. 30, 1983, 97 Stat. 1174; Pub. L. 99-120, § 2, Oct. 8, 1985, 99 Stat. 503; Pub. L. 99-156, § 2, Nov. 15, 1985, 99 Stat. 816; Pub. L. 99-219, § 2, Dec. 26, 1985, 99 Stat. 1731.)

REFERENCES IN TEXT

Subsection (c)(2) of section 1749a of title 12, referred to in subsec. (e), was repealed and subsec. (c)(3) was redesignated (c)(2) by Pub. L. 98-479, title II, § 201(d)(1), Oct. 17, 1984, 98 Stat. 2228.

AMENDMENTS

1985—Subsec. (h). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985" and "on or before such date" for "prior to December 16, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985" and "December 16, 1985" for "November 15, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1984" and "November 15, 1985" for "October 1, 1984".

1983—Subsec. (d). Pub. L. 98-181, § 124(a), added provision prohibiting dwelling unit requirement and assistance priorities to housing or community development programs receiving other Federal assistance.

Subsec. (h). Pub. L. 98-181, § 124(b), substituted "September 30, 1984" for "November 30, 1983" and "October 1, 1984" for "December 1, 1983".

Pub. L. 98-109, § 3, substituted "November 30, 1983" for "September 30, 1983" and "December 1, 1983" for "October 1, 1983".

§§ 1454, 1455. Omitted

CODIFICATION

Section 1454, acts July 15, 1949, ch. 338, title I, § 104, 63 Stat. 416; Aug. 2, 1954, ch. 649, title III, § 306, 68 Stat. 625; Aug. 7, 1956, ch. 1029, title III, § 306, 70 Stat. 1101; July 12, 1957, Pub. L. 85-104, title III, § 302(2), 71 Stat. 300; June 30, 1961, Pub. L. 87-70, title III, § 301(b), 75 Stat. 166, which related to requirements for local grants-in-aid, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1455, acts July 15, 1949, ch. 338, title I, § 105, 63 Stat. 416; Aug. 2, 1954, ch. 649, title III, § 307, 68 Stat. 625; Aug. 7, 1956, ch. 1029, title III, § 302(a)(1), 70 Stat. 1097; Sept. 23, 1959, Pub. L. 86-372, title IV, §§ 406, 407, 73 Stat. 673; June 30, 1961, Pub. L. 87-70, title III, § 315, 75 Stat. 172; Sept. 2, 1964, Pub. L. 88-560, title III, § 305(a)(1), (b), 78 Stat. 786; Aug. 10, 1965, Pub. L. 89-117, title III, § 305(a), 79 Stat. 475; Nov. 3, 1966, Pub. L. 89-754, title VII, §§ 703(a), 706, 80 Stat. 1281; May 25, 1967, Pub. L. 90-19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90-448, title V, § 512, 82 Stat. 524; Dec. 24, 1969, Pub. L. 91-152, title II, §§ 209, 210, 83 Stat. 388; Oct. 17, 1984, Pub. L. 98-479, title II, § 204(c)(1), 98 Stat. 2233, which related to requirements for loan or capital grant contracts, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

§§ 1456 to 1460. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1456, acts July 15, 1949, ch. 338, title I, § 106, 63 Stat. 417; June 3, 1952, ch. 362, 66 Stat. 98; June 30, 1953, ch. 170, § 22, 67 Stat. 127; Aug. 2, 1954, ch. 649, title III, § 308, title VIII, § 802(e), 68 Stat. 625, 643; Aug. 11, 1955, ch. 783, title I, § 106(b), 69 Stat. 637;

Aug. 7, 1956, ch. 1029, title III, §§ 304, 305, 70 Stat. 1100; July 12, 1957, Pub. L. 85-104, title III, §§ 303, 304, 71 Stat. 300; Sept. 23, 1959, Pub. L. 86-372, title IV, §§ 408, 409(a)(1), (b), 410, 417(1), 73 Stat. 673, 674, 676; June 30, 1961, Pub. L. 87-70, title III, § 304, 75 Stat. 167; Sept. 2, 1964, Pub. L. 88-560, title III, § 310(c), 78 Stat. 790; Aug. 10, 1965, Pub. L. 89-117, title III, § 306, 79 Stat. 476; Nov. 3, 1966, Pub. L. 89-754, title X, § 1020(a), 80 Stat. 1295; May 25, 1967, Pub. L. 90-19, § 6(b), (e), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90-448, title V, § 508(a), 82 Stat. 522; Dec. 31, 1970, Pub. L. 91-609, title II, § 213(a), 84 Stat. 1779; Nov. 30, 1983, Pub. L. 98-181, title I, § 126(b)(1), 97 Stat. 1175; Oct. 17, 1984, Pub. L. 98-479, title II, § 203(d)(2), 98 Stat. 2229, related to the duties of the Secretary of Housing and Urban Development under this subchapter.

SUBCHAPTER III—FARM HOUSING

Subchapter Referred to in Other Sections

This subchapter is referred to in section 1437o of this title; title 7 sections 1932, 1933; title 12 sections 1701r-1, 1717, 1721, 2803; title 26 section 1250; title 38 section 1811.

§ 1471. Financial assistance by Secretary of Agriculture

[See main edition for text of (a)]

(b) Definitions

[See main edition for text of (1) to (3)]

(4) For the purpose of this subchapter, the terms "low income families or persons" and "very low-income families or persons" means those families and persons whose incomes do not exceed the respective levels established for lower income families and very low-income families under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(5) For the purpose of this subchapter, the terms "income" and "adjusted income" have the meanings given by sections 3(b)(4) and 3(b)(5), respectively, of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(4), (5)].

(6) For the purposes of this subchapter, the term "Indian tribe" means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) [25 U.S.C. 450 et seq.] or under chapter 67 of title 31.

[See main edition for text of (7) and (8); (c) to (g)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 502, 97 Stat. 1240; Oct. 17, 1984, Pub. L. 98-479, title I, § 105(a), title II, § 203(d)(3), 98 Stat. 2226, 2229.)

References in Text

The United States Housing Act of 1937, referred to in subsec. (a)(4), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Amendments

1984—Subsec. (b)(4). Pub. L. 98-479, § 105(a), struck out "by the Secretary of Housing and Urban Development" before "under the United States Housing Act of 1937."

Subsec. (b)(6). Pub. L. 98-479, § 203(d)(3), substituted "chapter 67 of title 31" for "the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512)". .

1983—Subsec. (b)(4). Pub. L. 98-181, § 502(a), amended par. (4) generally, substituting definition of low and very low-income families or persons as those whose incomes do not exceed levels established by the Secretary under the United States Housing Act of 1937 for definition of persons of low income as those whose incomes do not exceed 80 per centum of the area median income, except when it is impracticable to use such median income or variations are necessary because of other factors.

Subsec. (b)(5). Pub. L. 98-181, § 502(b), amended par. (5) generally, substituting definition of income and adjusted income as having the meanings given by sections 3(b)(4) and 3(b)(5) of the United States Housing Act of 1937 for definition of income as income from all sources of each household member, as determined in accordance with criteria prescribed by the Secretary.

Section Referred to in Other Sections

This section is referred to in sections 1472, 1476, 1477, 1478, 1484, 1487 of this title; title 7 section 1933.

§ 1472. Loans for housing and buildings on adequate farms

(a) Terms of loan

(1) If the Secretary determines that an applicant is eligible for assistance as provided in section 1471 of this title and that the applicant has the ability to repay in full the sum to be loaned, with interest, giving due consideration to the income and earning capacity of the applicant and his family from the farm and other sources, and the maintenance of a reasonable standard of living for the owner and the occupants of said farm, a loan may be made by the Secretary to said applicant for a period of not to exceed thirty-three years from the making of the loan with interest. The Secretary may accept the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability. At the borrower's option, the borrower may prepay to the Secretary as escrow agent, on terms and conditions prescribed by him, such taxes, insurance, and other expenses as the Secretary may require in accordance with section 1471(e) of this title.

(2) The Secretary may extend the period of any loan made under this section if the Secretary determines that such extension is necessary to permit the making of such loan to any person whose income does not exceed 60 per centum of the median income for the area and who would otherwise be denied such loan because the payments required under a shorter period would exceed the financial capacity of such person. The aggregate period for which any loan may be extended under this paragraph may not exceed 5 years.

[See main edition for text of (b) and (c)]

(d) Dwelling units available to very low-income families or persons

On and after November 30, 1983—

(1) not less than 40 percent of the funds approved in appropriation Acts for use under this section shall be set aside and made available only for very low-income families or persons; and

(2) not less than 30 percent of the funds allocated to each State under this section shall be available only for very low-income families or persons.

(e) Manufactured homes; qualifications for loans made or insured; energy conservation requirements

(1) A loan which may be made or insured under this section with respect to housing shall be made or insured with respect to a manufactured home or with respect to a manufactured home and lot, whether such home or such home and lot is real property, personal property, or mixed real and personal property, if—

(A) the manufactured home meets the standards prescribed pursuant to title VI of the Housing and Community Development Act of 1974 [42 U.S.C. 5401 et seq.];

(B) the manufactured home, or the manufactured home and lot, meets the installation, structural, and site requirements which would apply under title II of the National Housing Act [12 U.S.C. 1707 et seq.]; and

(C) the manufactured home meets the energy conserving requirements established under paragraph (2), or until the energy conserving requirements are established under paragraph (2), the manufactured home meets the energy conserving requirements applicable to housing other than manufactured housing financed under this subchapter.

(2) Energy conserving requirements established by the Secretary for the purpose of paragraph (1)(C) shall—

(A) reduce the operating costs for a borrower by maximizing the energy savings and be cost-effective over the life of the manufactured home or the term of the loan, whichever is shorter, taking into account variations in climate, types of energy used, the cost to modify the home to meet such requirements, and the estimated value of the energy saved over the term of the mortgage; and

(B) be established so that the increase in the annual loan payment resulting from the added energy conserving requirements in excess of those required by the standards prescribed under title VI of the Housing and Community Development Act of 1974 [42 U.S.C. 5401 et seq.] shall not exceed the projected savings in annual energy costs.

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 503(a), (d), 97 Stat. 1240, 1241; Oct. 17, 1984, Pub. L. 98-479, title I, § 105(b)(1), 98 Stat. 2226.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (e)(1)(A), (2)(B), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title VI of the Housing and Community Development Act of 1974 is known as the National Manufactured Housing Construction and Safety Standards Act of 1974 and is classified generally to chapter 70 (§ 5401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The National Housing Act, referred to in subsec. (e)(1)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the National Housing Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1984—Subsec. (d)(1). Pub. L. 98-479 substituted "percent of the funds approved in appropriation Acts for use under this section shall be set aside and made available only for very low-income families or persons" for "per centum of the dwelling units financed under this section shall be available only for occupancy by very low-income families or persons".

Subsec. (d)(2). Pub. L. 98-479 substituted "percent of the funds allocated to each State under this section shall be available only for very low-income families or persons" for "per centum of the dwelling units in each State financed under this section shall be available only for occupancy by very low-income families or persons".

1983—Subsec. (a)(1). Pub. L. 98-181, § 503(d)(1), (2), designated existing provisions as par. (1), and in par. (1) as so designated, substituted "The Secretary may accept the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability. At the borrower's option, the borrower may prepay to the Secretary as escrow agent, on terms and conditions prescribed by him, such taxes, insurance, and other expenses as the Secretary may require in accordance with section 1471(e) of this title" for "in the case of applicants described in clauses (1) and (2) of section 1471(a) of this title, at a rate not to exceed 5 per centum per annum on the unpaid balance of principal, and, in the case of applicants described in clause (3) of section 1471(a) of this title and applicants under sections 1473 and 1474 of this title, at a rate not to exceed 4 per centum per annum on such unpaid balance. Loans made or insured under this subchapter shall be conditioned on the borrower paying such fees and other charges as the Secretary may require and on the borrower prepaying to the Secretary as escrow agent, on terms and conditions prescribed by him, such taxes, insurance, and other expenses as the Secretary may require in accordance with section 1471(e) of this title. The Secretary may accept the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability".

Subsec. (a)(2). Pub. L. 98-181, § 503(d)(3), added par. (2).

Subsecs. (d), (e). Pub. L. 98-181, § 503(a), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 105(b)(2) of Pub. L. 98-479 provided that: "Notwithstanding any other provision of law, the provisions of section 502(d) of the Housing Act of 1949 [subsec. (d) of this section], as amended by paragraph (1), shall apply with respect to fiscal year 1985 and thereafter, and the provisions of such section, as so amended, may not be changed or superseded except by another provision of law which amends such section."

STUDY AND REPORT OF COMPARISON OF CONSTRUCTION COSTS AND ENERGY SAVINGS BETWEEN MANUFACTURED HOMES BUILT UNDER NATIONAL MANUFACTURED HOUSING SAFETY STANDARDS AND OTHER HOMES

Section 503(b) of Pub. L. 98-181 provided that: "Within 18 months from the issuance by the Secretary of Agriculture of regulations under section 502(e)(2) of the Housing Act of 1949 [subsec. (e)(2) of this section], the Secretary of Energy, in consultation with the Secretary of Housing and Urban Development and the Secretary of Agriculture, shall conduct a study and transmit to the Congress a report that compares the increased construction costs, actual annual energy use, and the projected value of energy saved over the expected life of the home or the mortgage term, whichever is shorter, of manufactured homes which are financed under titles I and II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.], or under title V of the Housing Act of 1949 [this subchapter] and which are built according to national manufactured housing safety standards with other homes insured under either such Act."

Section Referred to in Other Sections

This section is referred to in sections 1473, 1477, 1479, 1480, 1484, 1485, 1487, 1490a, 1490f of this title; title 7 section 1933.

§ 1473. Loans for housing and buildings on potentially adequate farms; conditions and terms

Section Referred to in Other Sections

This section is referred to in sections 1471, 1474, 1477, 1480, 1483 of this title.

§ 1474. Loans and grants for repairs or improvements of rural dwellings

(a) Prerequisites; purposes; amounts; terms

The Secretary may make a loan, grant, or combined loan and grant to an eligible very low-income applicant in order to improve or modernize a rural dwelling, to make the dwelling safer or more sanitary, or to remove hazards. The Secretary may make a loan or grant under this subsection to the applicant to cover the cost of any or all repairs, improvements, or additions such as repairing roofs, providing sanitary waste facilities, providing a convenient and sanitary water supply, repairing or providing structural supports, or making similar repairs, additions, improvements, including all preliminary and installation costs in obtaining central water and sewer service. The maximum amount of a grant, a loan, or a loan and grant shall not exceed such limitations as the Secretary determines to be appropriate. Any portion of the sums advanced to the borrower treated as a loan shall be secured and be repayable within twenty years in accordance with the principles and conditions set forth in this subchapter, except that a loan for less than $2,500 need be evidenced only by a promissory note. Sums made available by grant may be made subject to the conditions set forth in this subchapter for the protection of the Government with respect to contributions made on loans made by the Secretary.

[*See main edition for text of* (*b*) *and* (c)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 504, 97 Stat. 1242.)

References in Text

The Older American Community Service Employment Act, referred to in subsec. (c)(3), is title V of Pub. L. 89-73, as added Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 720, and amended, which is classified generally to subchapter IX (§ 3056 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 3001 of this title and Tables.

Amendments

1983—Subsec. (a). Pub. L. 98-181 substituted "The Secretary may make a loan, grant, or combined loan and grant to an eligible very low-income applicant in order to improve or modernize a rural dwelling, to make the dwelling safer or more sanitary, or to remove hazards. The Secretary may make a loan or grant under this subsection to the applicant to cover the cost of any or all repairs, improvements, or additions such as repairing roofs, providing sanitary waste facilities, providing a convenient and sanitary water supply, repairing or providing structural supports, or making similar repairs, additions, improvements, including all preliminary and installation costs in obtaining central water and sewer service. The maximum amount of a grant, a loan, or a loan and grant shall not exceed such limitations as the Secretary determines to be appropriate." for "In the event the Secretary determines that an eligible applicant cannot qualify for a loan under the provisions of sections 1472 and 1473 of this title and that repairs or improvements should be made to a rural dwelling occupied by him in order to make such dwelling safe and sanitary and remove hazards to the health of the occupant, his family, or the community, and that repairs should be made to farm buildings in order to remove hazards and make such buildings safe, the Secretary may make a grant or a combined loan and grant to the applicant to cover the cost of improvements or additions, such as repairing roofs, providing toilet facilities, providing a convenient and sanitary water supply, supplying screens, repairing or providing structural supports, or making similar repairs, additions, or improvements, including all preliminary and installation costs in obtaining central water and sewer service. No assistance shall be extended to any individual or family under this subsection in the form of a grant in excess of $5,000, and no assistance shall be extended to any individual or family under this subsection in the form of a loan or a combined loan and grant in excess of $7,500."

Section Referred to in Other Sections

This section is referred to in sections 1471, 1477, 1480, 1483, 1490m, 6863, 6873 of this title.

§ 1475. Moratorium on loan payments

Section Referred to in Other Sections

This section is referred to in section 1480 of this title.

§ 1476. Buildings and repairs

[*See main edition for text of* (*a*)]

(b) Research and technical studies for reduction of costs and adaptation and development of fixtures and appurtenances

The Secretary is further authorized and directed to conduct research, technical studies, and demonstrations relating to the mission and programs of the Farmers Home Administration and the national housing goals defined in section 1441 of this title. In connection with such activities, the Secretary shall seek to promote the construction of adequate farm and other rural housing, with particular attention to the housing needs of the elderly, handicapped, migrant and seasonal farmworkers, Indians and other identifiable groups with special needs. The Secretary shall conduct such activities for the purposes of stimulating construction and improving the architectural design and utility of dwellings and buildings. In carrying out this subsection, the Secretary may permit demonstrations involving innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies if the Secretary finds that in so doing, the health and safety of the population of the area in which the demonstration is carried out will not be adversely affected, except that the aggregate expenditures for such demonstrations may not exceed $10,000,000 in any fiscal year. The Secretary shall report to the Congress at the close of each fiscal year on the results of such demonstrations.

[*See main edition for text of* (*c*) *to* (*f*)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 505, 97 Stat. 1242.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-181 added provision relating to demonstrations involving innovative housing units and systems not meeting existing standards with expenditures not to exceed $10,000,000 in any fiscal year and a report to be made to Congress at the close of each fiscal year.

§ 1479. General powers of Secretary

(a) Standards of adequate farm housing and other buildings; criteria

The Secretary, for the purposes of this subchapter, shall have the power to determine and prescribe the standards of adequate farm housing and other buildings, by farms or localities, taking into consideration, among other factors, the type of housing which will provide decent, safe, and sanitary dwelling for the needs of the family using the housing, the type and character of the farming operations to be conducted, and the size and earning capacity of the land. The Secretary shall approve a residential building as meeting such standards if the building is constructed in accordance with (1) the minimum standards prescribed by the Secretary, (2) the minimum property standards prescribed by the Secretary of Housing and Urban Development for mortgages insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.], (3) the standards contained in any of the voluntary national model building codes, or (4) in the case of manufactured housing, the standards referred to in section 1472(e) of this title. To the maximum extent feasible, the Secretary shall promote the use of energy saving techniques through standards established by such Secretary for newly constructed residential housing assisted under this subchapter. Such standards shall, insofar as is practicable, be consistent with the standards established pursuant to section 526 of the National Housing Act [12 U.S.C. 1735f-4] and shall incorporate the energy performance requirements developed pursuant to such section.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 506(a), 97 Stat. 1242.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the National Housing Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181 added provisions relating to standards, designated cls. (1) to (4), the compliance with which will result in approval by the Secretary, and added provision relating to the promotion of the use of energy saving techniques.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1480, 1483, 1490m of this title.

§ 1480. Administrative powers of Secretary

In carrying out the provisions of this subchapter, the Secretary shall have the power to—

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Purchase of pledged or mortgaged property at foreclosure or other sales; operation, sale or disposition of said property

bid for and purchase at any foreclosure or other sale or otherwise to acquire the property pledged or mortgaged to secure a loan or other indebtedness owing under this subchapter, to accept title to any property so purchased or acquired, to operate or lease such property for such period as may be necessary or advisable, to protect the interest of the United States therein, to repair and rehabilitate such property, and to sell or otherwise dispose of the property so purchased or acquired by such terms and for such considerations as the Secretary shall determine to be reasonable and to make loans as provided herein to provide adequate farm dwellings and buildings for the purchasers of such property; except that the Secretary may not sell or otherwise dispose of such property unless (1) the Secretary assures that such property will meet decent, safe, and sanitary standards, including cost-effective energy conservation standards prescribed under section 1479(a) of this title, (2) the recipient of the property is obligated, as a condition of the sale or other disposition of the property, to meet such standards with respect to the property before such property is occupied, or (3) such recipient is precluded, as a condition of the sale or other disposition of the property, from using the property for residential purposes and the authority of the Secretary under this paragraph includes the authority to transfer section 1472 inventory properties for use as rental or cooperative units under section 1485 of this title with mortgages containing repayment terms with up to fifty years to private nonprofit organizations or public bodies; such a transfer may be made even where rental assistance may be required so long as the authority to provide such assistance is available after taking into account the requirements of section 1490a(d)(1) of this title; where the Secretary determines the transfer will contribute to the provision of housing for very low-income persons and families, the transfer may be made at the lesser of the appraised value or the Farmers Home Administration's investment;

[*See main edition for text of (f) to (i)*]

(j) Fee inspectors and appraisers

utilize the services of fee inspectors and fee appraisers to expedite the processing of applications for loans and grants under this subchapter, which services shall be utilized in any case in which a county or district office is unable to expeditiously process such loan and grant applications, and to include the cost of such services in the amount of such loans and grants; and

(k) Rules and regulations

make such rules and regulations as he deems necessary to carry out the purposes of this subchapter.

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 507, 97 Stat. 1243; Oct. 17, 1984, Pub. L. 98-479, title I, § 105(c), 98 Stat. 2227.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-479 substituted "; such" and "; where" for ". Such" and ". Where", respectively.

1983—Subsec. (e). Pub. L. 98-181, § 507(a), added provisions relating to the authority of the Secretary to transfer section 1472 inventory property to private nonprofit organizations or public bodies.

Subsecs. (j), (k). Pub. L. 98-181, § 507(b), added subsec. (j) and redesignated former subsec. (j) as (k).

§ 1481. Issuance of notes and obligations for loan funds; amount; limitation; security; form and denomination; interest; purchase and sale by Treasury; public debt transaction

The Secretary may issue notes and other obligations for purchase by the Secretary of the Treasury for the purpose of making direct loans under this subchapter. The notes and obligations issued by the Secretary shall be secured by the obligations of borrowers and the Secretary's commitments to make contributions under this subchapter and shall be repaid from the payment of principal and interest on the obligations of the borrowers and from funds appropriated hereunder. The notes and other obligations issued by the Secretary shall be in such forms and denominations, shall have such maturities, and shall be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Each such note or other obligation shall bear interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note or other obligation is issued, which are neither due nor callable for redemption for 15 years from their date of issue. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Secretary issued hereunder and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such obligations. The Secretary of the Treasury may at any time sell any of the notes or obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or obligations shall be treated as public debt transactions of the United States.

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 508, 97 Stat. 1243; Oct. 17, 1984, Pub. L. 98-479, title II, § 203(d)(4), 98 Stat. 2229.)

AMENDMENTS

1984—Pub. L. 98-479 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as amended" and "such chapter" for "such Act".

1983—Pub. L. 98-181 struck out the second sentence providing that the total principal amount of such notes and obligations issued pursuant to this section during the period beginning July 1, 1956, and ending October 1, 1969, shall not exceed $850,000,000.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1483, 1484 of this title.

§ 1482. Repealed. Pub. L. 98-181, title V, § 509, Nov. 30, 1983, 97 Stat. 1243

Section, act July 15, 1949, ch. 338, title V, § 512, 63 Stat. 438; July 14, 1952, ch. 723, § 11(b), 66 Stat. 604; June 29, 1954, ch. 410, § 5(b), 68 Stat. 320; Aug. 2, 1954, ch. 649, title VIII, § 812(b), 68 Stat. 647; Aug. 11, 1955, ch. 783, title V, § 501(2), 69 Stat. 654; Aug. 7, 1956, ch. 1029, title VI, § 606(b), 70 Stat. 1114; June 30, 1961, Pub. L. 87-70, title VIII, § 801(c), 75 Stat. 186; Sept. 4, 1964, Pub. L. 88-560, title V, § 501(b), 78 Stat. 796; Aug. 10, 1965, Pub. L. 89-117, title X, § 1005(a), 79 Stat. 501, related to authorization to make commitments for contributions aggregating not to exceed $10,000,000 during the period beginning July 1, 1956, and ending October 1, 1969, in connection with loans made pursuant to section 1473 of this title.

§ 1483. Program levels and authorizations

(a) Maximum aggregate amount of insured and guaranteed loans

(1) The Secretary may insure and guarantee loans under this subchapter during fiscal years 1984 and 1985 in an aggregate amount not to exceed such sums as may be approved in an appropriation Act.

(2) Notwithstanding any other provision of law, insured and guaranteed loan authority authorized in this subchapter for any fiscal year beginning after September 30, 1984, shall not be transferred or used for any purpose not specified in this subchapter.

(b) Authorization of appropriations

There are authorized to be appropriated for fiscal years 1984 and 1985—

(1) such sums as may be necessary for grants pursuant to section 1474 of this title;

(2) such sums as may be necessary for the purposes of section 1479(c) of this title;

(3) such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to (A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title, and (B) the interest due on a similar sum represented by

notes or other obligations issued by the Secretary;

(4) such sums as may be necessary for financial assistance pursuant to section 1486 of this title;

(5) such sums as may be necessary for the purposes of section 1490c of this title;

(6) such sums as may be necessary for purposes of section 1490e(a) of this title;

(7) not to exceed $100,000,000 for each such year for grants under section 1490m of this title, of which 5 per centum shall be available for technical assistance; and

(8) such sums as may be required by the Secretary to administer the provisions of sections 1715z and 1715z-1 of title 12 and section 1437f of this title.

(c) Rental assistance contracts

The Secretary may enter into rental assistance contracts aggregating such sums as may be approved in appropriation Acts under section 1490a(a)(2)(A) of this title during fiscal years 1984 and 1985.

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 511(a), 97 Stat. 1243; Oct. 17, 1984, Pub. L. 98-479, title I, § 105(d), 98 Stat. 2227.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-479, § 105(d)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(7). Pub. L. 98-479, § 105(d)(2), substituted "1490m of this title" for "1490k of this title".

1983—Subsec. (a). Pub. L. 98-181 amended subsec. (a) generally, substituting "The Secretary may insure and guarantee loans under this subchapter during fiscal years 1984 and 1985 in an aggregate amount not to exceed such sums as may be approved in an appropriation Act" for "The Secretary may, as approved in appropriation Acts, insure and guarantee loans under the authorities provided in this subchapter in an aggregate principal amount not to exceed $3,700,600,000 with respect to the fiscal year ending September 30, 1982; except that—

"(1) not less than $3,170,000,000 of any amount so approved in appropriation Acts for such year shall be made available for loans insured or guaranteed on behalf of borrowers receiving assistance pursuant to subparagraph (B) or (C) of section 1490a(a)(1) of this title;

"(2) not more than $25,600,000 of such amount so approved for such fiscal year may be made available for loans insured under section 1484 of this title;

"(3) not more than $5,000,000 of such amount so approved shall be available for making advances under section 1471(e) of this title for such fiscal year; and

"(4) none of such amount shall be available for loans guaranteed pursuant to this title on behalf of borrowers who do not receive assistance pursuant to subparagraph (B) or (C) of section 1490a(a)(1) of this title.

Subsec. (b). Pub. L. 98-181 amended subsec. (b) generally, substituting "There are authorized to be appropriated for fiscal years 1984 and 1985—

"(1) such sums as may be necessary for grants pursuant to section 1474 of this title;

"(2) such sums as may be necessary for the purposes of section 1479(c) of this title;

"(3) such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to (A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title, and (B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary;

"(4) such sums as may be necessary for financial assistance pursuant to section 1486 of this title;

"(5) such sums as may be necessary for the purposes of section 1490c of this title;

"(6) such sums as may be necessary for purposes of section 1490e(a) of this title;

"(7) not to exceed $100,000,000 for each such year for grants under section 1490k of this title; of which 5 per centum shall be available for technical assistance; and

"(8) such sums as may be required by the Secretary to administer the provisions of sections 1715z and 1715z-1 of title 12 and section 1437f of this title" for "There are authorized to be appropriated—

"(1) such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to (A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title, and (B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary;

"(2) not to exceed $50,000,000 for loans and grants pursuant to section 1474 of this title for the fiscal year ending September 30, 1982, of which not more than $25,000,000 shall be available for grants;

"(3) not to exceed $25,000,000 for financial assistance pursuant to section 1486 of this title for the fiscal year ending September 30, 1982;

"(4) not to exceed $2,000,000 for the purposes of section 1490e(a) of this title, of which not less than $1,000,000 shall be used for counseling purchasers and delinquent borrowers, for the fiscal year ending September 30, 1982;

"(5) such sums as may be required by the Secretary to administer the provisions of sections 1752 and 1752-1 of title 12 and section 1437f of this title; and

"(6) not to exceed $2,000,000 for the purposes of section 1479(c) of this title for the fiscal year ending September 30, 1982."

Subsec. (c). Pub. L. 98-181 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1484, 1485, 1490*l* of this title.

§ 1484. Insurance of loans for housing and related facilities for domestic farm labor

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Determination of need for assistance

In making available assistance in any area under this section or section 1486 of this title, the Secretary shall—

(1) in determining the need for the assistance, take into consideration the housing needs only of domestic farm labor, including migrant farmworkers, in the area; and

(2) in determining whether to provide such assistance, make such determination without regard to the extent or nature of other housing needs in the area.

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 510, 97 Stat. 1243.)

AMENDMENTS

1983—Subsec. (h). Pub. L. 98-181 added subsec. (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1472, 1487, 1490a, 1490j of this title.

§ 1485. Housing and related facilities for elderly persons and families or other persons and families of low income

(a) Direct loans; authorization; terms and conditions; revolving fund; appropriation

The Secretary is authorized to make loans to private nonprofit corporations and consumer cooperatives and Indian tribes to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families of low or moderate income or other persons and families of low income in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

(1) no such loan shall exceed the development cost or the value of the security, whichever is less;

(2) such a loan may be made for a period of up to fifty years from the making of the loan; and

(3) such a loan, when made to a consumer cooperative for cooperative housing purposes, may, notwithstanding any other provision of law, be made upon the condition that any person who is admitted as an eligible member and tenant of the cooperative may not subsequently be deprived of his membership or tenancy by reason of his no longer meeting the income eligibility requirements established by the Secretary.

There is authorized to be appropriated not to exceed $50,000,000, which shall constitute a revolving fund to be used by the Secretary in carrying out this subsection.

(b) Insurance of loans; authorization; terms and conditions; utilization of Agricultural Credit Insurance Fund; expiration date

The Secretary is authorized to insure and make commitments to insure loans made to any individual, corporation, association, trust, Indian tribe, or partnership to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families or other persons and families of moderate income in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

(1) no such loan shall exceed the development cost or the value of the security, whichever is less;

(2) provide for complete amortization by periodic payments within such term as the Secretary may prescribe;

(3) for insuring such loans, the Secretary shall utilize the Agricultural Credit Insurance Fund subject to all the provisions of section 1929 of title 7 and the second and third sentences of section 1928 of title 7, including the authority in section 1929(f)(1) of title 7 to utilize the insurance fund to make, sell, and insure loans which could be insured under this subsection; but the aggregate of the principal amounts of such loans made by the Secretary and not disposed of shall not exceed $10,000,000 outstanding at any one time; and the Secretary may take liens running to the United States though the notes may be held by other lenders;

(4) no loan shall be insured under this subsection after March 17, 1986;

(5) such a loan, when made to a consumer cooperative for cooperative housing purposes, may, notwithstanding any other provision of law, be made upon the condition that any person who is admitted as an eligible member and tenant of the cooperative may not subsequently be deprived of his membership or tenancy by reason of his no longer meeting the income eligibility requirements established by the Secretary; and

(6) loans may be made to owners who are otherwise eligible under this section to purchase and convert single-family residences to rental units of two or more dwellings.

(c) Construction requirements; detached units for cooperative housing

No loan shall be made or insured under subsection (a) or (b) of this section unless the Secretary finds that the construction involved will be undertaken in an economical manner and will not be of elaborate or extravagant design or materials. However, specifically designed equipment required by elderly or handicapped persons or families shall not be considered elaborate or extravagant. A loan may be made or insured under subsection (a) or (b) of this section with respect to detached units, including those on scattered sites, for cooperative housing.

(d) Definitions

As used in this section—

(1) the term "housing" means new or existing housing suitable for dwelling use by occupants eligible under this section, and such term also means manufactured home rental parks where either the lots or both the lots and the homes are available for use by occupants eligible under this section; and such term also means congregate housing facilities for elderly or handicapped persons or families who require some supervision and central services but are otherwise able to care for themselves; such housing for the handicapped may be utilized in conjunction with educational and training facilities;

[*See main edition for text of* (2) *to* (4); (*e*) *and* (*f*)]

(g) Limitations on increases in rents for newly constructed or substantially rehabilitated projects; determination of amounts

The Secretary shall limit increases in rents on or after November 30, 1983, for newly constructed or substantially rehabilitated projects assisted under this section to the lesser of the actual operating cost increases incurred or the amount of operating cost increases incurred with respect to comparable rental dwelling units of various sizes and types in the same market area which are suitable for occupancy by families and persons assisted under this section. Where no comparable dwelling units exist in the same market area, the Secretary shall have authority to approve such increases in accordance with the best available data regarding operating cost increases in rental dwelling units.

(h) Limitations on cost increases after approval for project involving newly constructed or substantially rehabilitated units; applicable factors

After approving a project involving newly constructed or substantially rehabilitated units under this section, the Secretary shall limit cost increases to those approved by the Secretary. The Secretary may approve those increases only for unforeseen factors beyond the owner's control, design changes required by the Secretary or the local government, or changes in financing approved by the Secretary.

(i) Contract preferences for providing units in newly constructed projects

For the purpose of achieving the lowest cost in providing units in newly constructed projects assisted under this section, the Secretary shall give a preference in entering into contracts under this section for projects which are to be located on specific tracts of land provided by States, units of local government, or others if the Secretary determines that the tract of land is suitable for such housing, and that affording such preference will be cost effective.

(j) Management fees

The Secretary shall assure that management fees are not excessive when a project developed under this section is managed by the developer or an affiliate of the developer.

(k) Determination of market feasibility of project

For purposes of determining the market feasibility of any project to be assisted under this section—

(1) in the case of any applicant whose project is expected to utilize rental assistance payments under section 1490a of this title, the Secretary shall only require such applicant to demonstrate that a market exists for persons and families eligible for such rental assistance payments; and

(2) in the case of any applicant whose project is expected to utilize any assistance under a program of a State, or political subdivision thereof, that is similar to such assistance payments under section 1490a of this title, the Secretary shall only require such applicant to demonstrate that—

(A) a market exists for persons and families eligible for such program of assistance;

(B) such program of assistance will provide rental assistance for a period of not less than five years, and, at the option of the applicant, either that there is a reasonable assurance that the contract for assistance will be extended or renewed, or for the term of the loan remaining after the period of such assistance, that an adequate rental market exists for the project without such assistance; and

(C) during the term of such rental assistance contracts, such State or political subdivision shall make available the amounts required for such rental assistance not less than annually.

(*l*) Standards for housing and related facilities rehabilitated or repaired; establishment, criteria, etc.

The Secretary shall establish standards for housing and related facilities rehabilitated or repaired with amounts received under a loan made or insured under this section. Standards established by the Secretary under this subsection shall provide that except for substantial rehabilitation the particular items or systems repaired or rehabilitated must meet appropriate levels of quality or performance comparable to those levels prescribed by the Secretary of Housing and Urban Development for rehabilitation, but shall not require that such items or systems or the remainder of the property meet the standards which are applicable to new construction. The Secretary shall ensure that standards prescribed under this subsection provide decent, safe, and sanitary housing and related facilities.

(m) Assistance to projects located on more than one site

The Secretary may not deny assistance under this section or section 1490a of this title on the basis that the project involved is to be located on more than one site.

(n) Rental assistance payments as affecting assistance to projects or occupancy by eligible persons

The Secretary may not (1) deny assistance under this section on the basis that rental assistance payments under section 1490a of this title may be required unless the authority to provide such assistance is not available; or (2) promulgate any regulation that would have the effect of denying occupancy to eligible persons on the basis that such persons require rental assistance payments under section 1490a of this title.

(*o*) Occupancy by low income persons and families other than very low-income persons and families

(1) To the extent assistance is available under section 1490a(a)(2) of this title, not more than 25 per centum of the dwelling units which were available for occupancy under this section prior to November 30, 1983, and which will be leased on or after November 30, 1983, shall be available for leasing by low income persons and families other than very low-income persons and families.

(2) To the extent assistance is available under section 1490a(a)(2) of this title, not more than 5 per centum of the dwelling units which become available for occupancy under this section on or after November 30, 1983, shall be available for leasing by low income persons and families other than very low-income persons and families.

(3) Units in projects financed under this section which become available for occupancy after November 30, 1983, shall not be available for occupancy by persons and families other than very low-income persons and families if the authority to provide assistance for such persons is available.

(p) Determination of income of person or family occupying financed housing

In determining the income of a person or family occupying housing financed under this section, the Secretary shall consider the value of that person's or family's assets in the same manner as the Secretary of Housing and Urban Development considers such value for the purpose of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(As amended May 26, 1983, Pub. L. 98-35, § 3(a), 97 Stat. 198; Oct. 1, 1983, Pub. L. 98-109, § 4(a), 97 Stat. 746; Nov. 30, 1983, Pub. L. 98-181, title V, §§ 511(b), 512, 97 Stat. 1244; Oct. 17, 1984, Pub. L. 98-479, title I, § 105(e), 98 Stat. 2227; Oct. 8, 1985, Pub. L. 99-120, § 3(a), 99 Stat. 503; Nov. 15, 1985, Pub. L. 99-156, § 3(a), 99 Stat. 816; Dec. 26, 1985, Pub. L. 99-219, § 3(a), 99 Stat. 1731.)

References in Text

The United States Housing Act of 1937, referred to in subsec. (p), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Codification

In subsecs. (g) and (*o*), "November 30, 1984" was substituted for "the date of enactment of this subsection" and "such effective date" wherever appearing.

Amendments

1985—Subsec. (b)(4). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1984—Subsec. (k)(2)(B). Pub. L. 98-479 added ", at the option of the applicant, either that there is a reasonable assurance that the contract for assistance will be extended or renewed, or".

1983—Subsec. (a)(2) to (4). Pub. L. 98-181, § 512(c)(1), (2), struck out par. (2) which related to rates of interest on loans, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (b)(2) to (4). Pub. L. 98-181, § 512(c)(3), (4), struck out par. (2) which related to rates of interest on loans and redesignated pars. (3) to (5) as (2) to (4), respectively.

Subsec. (b)(5). Pub. L. 98-181, § 512(c)(4), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 98-181, § 511(b), substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

Subsec. (b)(6), (7). Pub. L. 98-181, § 512(c)(4), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Pub. L. 98-181, § 512(b), added par. (7).

Subsec. (c). Pub. L. 98-181, § 512(d), added provisions relating to detached units, on scattered sites, for cooperative housing.

Subsec. (d)(1). Pub. L. 98-181, § 512(e), added provisions relating to applicability to manufactured home rental parks.

Subsecs. (g) to (p). Pub. L. 98-181, § 512(a), added subsecs. (g) to (p).

Section Referred to in Other Sections

This section is referred to in sections 1472, 1480, 1486, 1487, 1490a, 1490f, 1490j of this title; title 40 App. section 207.

§ 1486. Financial assistance to provide low-rent housing for domestic farm labor

[*See main edition for text of* (*a*) *to* (*h*)]

(i) Farm labor housing

The Secretary shall utilize not more than 10 per centum of the amounts available for any fiscal year for purposes of this section for financial assistance to eligible private and public nonprofit agencies to encourage the development of domestic and migrant farm labor housing projects under this subchapter.

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 513, 97 Stat. 1247.)

Amendments

1983—Subsec. (i). Pub. L. 98-181 added subsec. (i).

Section Referred to in Other Sections

This section is referred to in sections 1483, 1484 of this title; title 20 section 244.

§ 1487. Rural Housing Insurance Fund

(a) Authority to make and insure loans for housing and buildings on adequate farms; amounts

The Secretary may insure loans meeting the requirements of section 1472 of this title, and may make loans in accordance with the requirements of such section to be sold and insured. The amount of such a loan to a low income person or family shall not exceed the amount necessary to provide adequate housing which is modest in size, design, and cost (as determined by the Secretary).

(b) Authority to make and insure loans for housing and related facilities for domestic farm labor and elderly persons; transfer of notes, contracts, and mortgages from Agricultural Credit Insurance Fund; compensation

The Secretary may insure loans in accordance with the requirements of section 1484 of this title (exclusive of subsections (a)(3), (a)(5), and (b) thereof), 1485 of this title (exclusive of subsections (a) and (b)(3) thereof), 1490d, and 1490f of this title, and may make loans meeting such requirements to be sold and insured. Upon the expiration of ninety days after the original capitalization of the Rural Housing Insurance Fund, created by subsection (e) of this section, no new loans shall be made or insured under section 1484 or 1485(b) of this title, except in conformity with this section. The notes held in the Agricultural Credit Insurance Fund (section 1929 of title 7) which evidence loans made or insured by the Secretary under section 1484 or 1485(b) of this title, the rights and liabilities of that Fund under insurance contracts relating to such loans held by insured investors, the mortgages securing the obligations of the borrowers under such loans held in the Fund or by insured investors, and all rights to subsequent collections on and proceeds of such notes, contracts, and mortgages, are hereby transferred to the Rural Housing Insurance Fund and for the purposes of this subchapter and any other Act shall be subject to the provisions of this section as if created pursuant thereto. The Rural Housing Insurance Fund shall compensate the Agricultural Credit Insurance Fund for the aggregate unpaid principal balance plus accrued interest of the notes so transferred.

[*See main edition for text of* (*c*) *to* (*g*)]

(h) Issuance of notes; form and denominations; interest rate; purchase by Secretary of the Treasury; debt transactions

The Secretary is authorized to issue notes to the Secretary of the Treasury to obtain funds necessary for discharging obligations under this section and for authorized expenditures out of the Fund, but, except as may be authorized in appropriation Acts, not for the original or any additional capital of the Fund. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Each note shall bear interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note is issued, which are neither due nor callable for redemption for fifteen years from their date of issue. The Secretary of the Treasury is authorized and directed to purchase any notes of the Secretary issued hereunder, and for that purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which such securities may be issued under such chapter are extended to include purchases of notes issued by the Secretary. All redemption, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States. The notes issued by the Secretary to the Secretary of the Treasury shall constitute obligations of the Fund.

[*See main edition for text of* (*i*)]

(j) Additional uses of Fund moneys

The Secretary may also utilize the Fund—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) to make assistance payments authorized by section 1490a(a) of this title; and

(5) after October 1, 1977, and as approved in appropriations Acts, to make advances authorized by section 1471(e) of this title.

(k) Sale of loans as sale of assets

Any sale by the Secretary of loans individually or in blocks, pursuant to subsections (c) and (g) of this section, shall be treated as a sale of assets for the purposes of chapter 11 of title 31, notwithstanding the fact that the Secretary, under an agreement with the purchaser, holds the debt instruments evidencing the loans and holds or reinvests payments thereon as trustee and custodian for the purchaser.

[*See main edition for text of* (*l*) *to* (*n*)]

(*o*) Rules to encourage rehabilitation or purchase of existing buildings

The Secretary shall promulgate rules which encourage the rehabilitation or purchase of existing buildings for the purpose of providing housing which is economical in cost and operation.

(As amended May 26, 1983, Pub. L. 98-35, § 3(b), 97 Stat. 198; Oct. 1, 1983, Pub. L. 98-109, § 4(b), 97 Stat. 746; Nov. 30, 1983, Pub. L. 98-181, title V, §§ 511(c), 514, 97 Stat. 1244, 1247; Oct. 17, 1984, Pub. L. 98-479, title I, § 105(f), title II, § 203(d)(5), (6), 98 Stat. 2227, 2230.)

AMENDMENTS

1984—Subsec. (h). Pub. L. 98-479, § 203(d)(5), substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as amended" and "such chapter" for "such Act".

Subsec. (j)(4). Pub. L. 98-479, § 105(f), added "and" after the semicolon at the end.

Subsec. (k). Pub. L. 98-479, § 203(d)(6), substituted "chapter 11 of title 31" for "the Budget and Accounting Act, 1921".

1983—Subsec. (a). Pub. L. 98-181, § 514(a)(1), substituted provisions relating to amount of loan to low income person or family, for provisions designated as pars. (1) and (2) relating to restrictions on loans with respect to amounts, interest, etc., where the borrowers are persons of low or moderate income, and similar restrictions where the borrowers are other persons.

Subsec. (a)(1). Pub. L. 98-181, § 511(c), substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

Subsec. (b). Pub. L. 98-181, § 514(a)(2), substituted "(b)(3)" for "(b)(4)".

Subsec. (j)(6). Pub. L. 98-181, § 514(b), struck out par. (6) which related to making expenditures under section 1479(c) of this title after Oct. 1, 1977.

Subsec. (*o*). Pub. L. 98-181, § 514(c), (d), added subsec. (*o*), and struck out former subsec. (*o*) which related to loans to persons of low income and to the minimum amounts available to such persons.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1490a, 1490j of this title; title 7 section 1933.

§ 1490. "Rural" and "rural area" defined

As used in this subchapter, the terms "rural" and "rural area" mean any open country, or any place, town, village, or city which is not part of or associated with an urban area and which (1) has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or (3) has a population in excess of 10,000 but not in excess of 20,000, and (A) is not contained within a standard metropolitan statistical area, and (B) has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary and the Secretary of Housing and Urban Development. For purposes of this subchapter, any area classified as "rural" or a "rural area" prior to the receipt of data from or after the 1980 decennial census and determined not to be "rural" or a "rural area" as a result of such data shall continue to be so classified through

March 17, 1986, if such area has a population in excess of 10,000 but not in excess of 20,000.

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 515, 97 Stat. 1247; Oct. 17, 1984, Pub. L. 98-479, title I, § 105(g), 98 Stat. 2227; Oct. 8, 1985, Pub. L. 99-120, § 3(b), 99 Stat. 503; Nov. 15, 1985, Pub. L. 99-156, § 3(b), 99 Stat. 816; Dec. 26, 1985, Pub. L. 99-219, § 3(b), 99 Stat. 1731.)

AMENDMENTS

1985—Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "the end of fiscal year 1985".

1984—Pub. L. 98-479 substituted "1985" for "1984".

1983—Pub. L. 98-181 added provisions relating to applicability of this subchapter through fiscal year 1984 to areas classified pursuant to 1980 decennial census.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437a, 1480 of this title.

§ 1490a. Loans to provide occupant owned, rental, and cooperative housing for low and moderate income, elderly or handicapped persons or families

(a) Interest rates; credits; determination of eligibility; recoupment; multi-family housing projects; assistance payments to owners; amount limitations; recordkeeping and payment requirements for owners; shared housing for the elderly and handicapped; rental assistance tenant contribution

[*See main edition for text of* (*1*)]

(2)(A) The Secretary shall make and insure loans under this section and sections 1484, 1485, and 1487 of this title to provide rental or cooperative housing and related facilities for persons and families of low income in multifamily housing projects, and shall make, and contract to make, assistance payments to the owners of such rental, congregate, or cooperative housing in order to make available to low-income occupants of such housing rentals at rates commensurate to income and not exceeding the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of monthly income;[1] or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs. Any rent or contribution of any recipient shall not increase as a result of this section or any other provision of Federal law or regulation by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law or regulation.

[*See main edition for text of* (*B*) *to* (*D*)]

(E) In order to assist elderly or handicapped persons or families who elect to live in a shared housing arrangement in which they benefit as a result of sharing the facilities of a dwelling with others in a manner that effectively and efficiently meets their housing needs and thereby reduces their cost of housing, the Secretary shall permit rental assistance to be used by such persons or families if the shared housing arrangement is in a single-family dwelling. For the purpose of this subparagraph, the Secretary shall prescribe minimum habitability standards to assure decent, safe, and sanitary housing for such families while taking into account the special circumstances of shared housing.

(3)(A) In the case of loans under sections 1484 and 1485 of this title approved prior to the effective date of this paragraph with respect to which rental assistance is provided, the rent for tenants receiving such assistance shall not exceed the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of monthly income, or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs.

(B) In the case of a section 1485 loan approved prior to the effective date of this paragraph with respect to which interest credits are provided, the tenant's rent shall not exceed the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of monthly income, or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs, or, where no rental assistance authority is available, the rent level established on a basis of a 1 per centum interest rate on debt service.

(C) No rent for a unit financed under section 1484 or 1485 of this title shall be increased as a result of this subsection or other provision of Federal law or Federal regulation by more than 10 per centum in any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law, or regulation.

(4) In the case of a loan with respect to the purchase of a manufactured home with respect to which rental assistance is provided, the monthly payment for principal and interest on the manufactured home and for lot rental and utilities shall not exceed the highest of (A) 30 per centum of monthly adjusted income, (B) 10 per centum of monthly income, or (C) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs.

[*See main edition for text of* (*b*) *and* (*c*)]

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[1] So in original. The semicolon probably should be a comma.

(d) Rental assistance contract authority; preconditions, limitations, etc.

(1) In utilizing the rental assistance payments authority pursuant to subsection (a)(2) of this section—

(A) the Secretary shall make such assistance available in existing projects for units occupied by low income families or persons to extend expiring contracts or to provide additional assistance when necessary to provide the full amount authorized pursuant to existing contracts;

(B) any such authority remaining after carrying out subparagraph (A) shall be used in projects receiving commitments under section 1484, 1485, or 1486 of this title after fiscal year 1983 for contracts to assist very low-income families or persons to occupy the units in such projects, except that not more than 5 percent of the units assisted may be occupied by low income families or persons who are not very low-income families or persons; and

(C) any such authority remaining after carrying out subparagraphs (A) and (B) may be used to provide further assistance to existing projects under section 1484, 1485, or 1486 of this title.

(2) The Secretary shall transfer rental assistance contract authority under this section from projects where such authority is unused after initial rentup and not needed because of a lack of eligible tenants in the area to projects where such authority is needed.

(e) Increases in rent or contribution of any recipient

Any rent or contribution of any recipient shall not increase as a result of this section, any amendment thereto, or any other provision of Federal law or regulation by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law or regulation.

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, §§ 516, 517(a)-(c), (e), 97 Stat. 1247-1249; Oct. 17, 1984, Pub. L. 98-479, title I, § 105(h), 98 Stat. 2227.)

REFERENCES IN TEXT

Section 1487(a) of this title, referred to in subsecs. (a)(1)(A) and (b), was amended by Pub. L. 98-181, title V, § 514(a)(1), Nov. 30, 1983, 98 Stat. 1247, and as so amended does not contain a par. (1).

Section 1709-1 of title 12, referred to in subsec. (a)(1)(A), was repealed by Pub. L. 98-181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208.

The effective date of this paragraph, referred to in subsec. (a)(3)(A) and (B), is six months after Nov. 30, 1983, or upon the earlier promulgation of implementing regulations by the Secretary. See section 517(f) of Pub. L. 98-181, set out as an Effective Date of 1983 Amendment note below.

AMENDMENTS

1984—Subsec. (d)(1). Pub. L. 98-479 in amending par. (1) generally, added provisions preceding subpar. (A), in subpar. (A) substituted provisions authorizing Secretary to make assistance available in existing projects for former provisions which required Secretary to first assure that expiring contracts are extended for those units occupied by persons or families of low income and that additional assistance is used when necessary to provide the full amount authorized pursuant to existing contracts, in subpar. (B) substituted "any such authority remaining after carrying out subparagraph (A)" for "Remaining funds" and added provisions relating to persons who are not very low-income families or persons, and in subpar. (C) substituted provisions that remaining authority may be used to provide assistance under sections 1484 to 1486 of this title for former provisions which authorized the Secretary to use remaining funds for existing projects for very low-income families except that 5 per centum of the units assisted may be occupied by families and persons of low income.

1983—Subsec. (a)(2)(A). Pub. L. 98-181, § 517(c), substituted provisions setting forth factors applicable to determination of maximum amount, for provisions setting forth maximum amount as 25 per centum of income, and added provisions relating to limitations on increases of any rent or contribution of recipient.

Pub. L. 98-181, § 517(a), struck out provisions requiring assistance payments to be made on a unit basis and maximum amount of such payments, and provisions respecting priority for approval of projects under this paragraph.

Subsec. (a)(2)(E). Pub. L. 98-181, § 516, added subpar. (E).

Subsec. (a)(3), (4). Pub. L. 98-181, § 517(b), added pars. (3) and (4).

Subsecs. (d), (e). Pub. L. 98-181, § 517(e), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 517(f) of Pub. L. 98-181 provided that: "The amendments made by this section [amending sections 1490a and 1490j of this title] shall take effect six months after the date of enactment of this Act [Nov. 30, 1983], or upon the earlier promulgation of regulations implementing this section by the Secretary."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1472, 1480, 1483, 1485, 1487, 1490c, 1490j, 1490*l* of this title.

§ 1490b. Housing for rural trainees

(a) Authorization; financial and technical assistance; selection of training sites and location of housing

Upon the application of any State or political subdivision thereof, or any public or private nonprofit organization, the Secretary is authorized, after consultation with the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, and the Director of the Office of Economic Opportunity, and after the Secretary determines that the housing and related facilities cannot reasonably be provided in any other way, to provide financial and technical assistance for the establishment, in rural areas, of housing and related facilities for trainees and their families who are residents of a rural area and have a rural background, while such trainees are enrolled and participating in training courses designed to improve their employment capability. The selection of training sites and location of housing shall be made with due regard to the economic viability of the area, and only after consideration of a labor area survey and full coordination among all Government agencies having primary responsibility for administering related programs.

[See main edition for text of (b) to (j)]

(July 15, 1949, ch. 338, title V, § 522, as added Aug. 1, 1968, Pub. L. 90-448, title X, § 1002, 82 Stat. 551, and amended Oct. 17, 1984, Pub. L. 98-479, title II, § 201(c), 98 Stat. 2228.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-479 substituted "Health and Human Services" for "Health, Education, and Welfare".

§ 1490c. Mutual and self-help housing

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Termination date

No grant or loan may be made or contract entered into under the authority of this section after March 17, 1986, except pursuant to a commitment or other obligation entered into pursuant to this section before that date.

(g) Deposit in Self-Help Fund; availability of amounts; assets

Amounts appropriated under this subsection, together with principal collections from loans made under appropriations in any previous fiscal years, shall be deposited in the Self-Help Housing Land Development Fund, which shall be available, to the extent approved in appropriation Acts, as a revolving fund for making loans under subsection (b)(1)(B) of this section; except that not more than $5,000,000 may be made available during fiscal year 1985. Instruments and property acquired by the Secretary in or as a result of making such loans shall be assets of the Self-Help Housing Land Development Fund.

[*See main edition for text of* (*h*)]

(As amended May 26, 1983, Pub. L. 98-35, § 3(c), 97 Stat. 198; Oct. 1, 1983, Pub. L. 98-109, § 4(c), 97 Stat. 746; Nov. 30, 1983, Pub. L. 98-181, title V, § 511(d), (e), 97 Stat. 1244; Oct. 17, 1984, Pub. L. 98-479, title II, § 204(c)(2), 98 Stat. 2233; Oct. 8, 1985, Pub. L. 99-120, § 3(c), 99 Stat. 503; Nov. 15, 1985, Pub. L. 99-156, § 3(c), 99 Stat. 816; Dec. 26, 1985, Pub. L. 99-219, § 3(c), 99 Stat. 1731.)

AMENDMENTS

1985—Subsec. (f). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1984—Subsec. (g). Pub. L. 98-479 added "Housing" before "Land" after "Self-Help" in last sentence.

1983—Subsec. (f). Pub. L. 98-181, § 511(d), substituted "September 30, 1985" for "November 30, 1983", and struck out first sentence which authorized not to exceed $5,000,000 to carry out this section for fiscal year 1983.

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983" the second time it appeared.

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983" in two places.

Subsec. (g). Pub. L. 98-181, § 511(e), substituted "1985" for "1982" and struck out first sentence which authorized not to exceed $3,000,000 to carry out subsec. (b)(1)(B) for fiscal year 1982.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1483 of this title.

§ 1490e. Programs of technical and supervisory assistance for low-income individuals and families in rural areas

[*See main edition for text of* (*a*)]

(b) Loans to public or private nonprofit corporations, etc., for necessary planning and financing expenses; interest rates; factors determinative of amount; terms and conditions of repayment

The Secretary is authorized to make loans to public or private nonprofit corporations, agencies, institutions, organizations, Indian tribes, and other associations approved by him for the necessary expenses, prior to construction, of planning, and obtaining financing for, the rehabilitation or construction of housing for low-income individuals or families under any Federal, State, or local housing program which is or could be used in rural areas. Such loans shall be made without interest and shall be for the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing prior to the availability of financing, including but not limited to preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, and construction loan fees and discounts. The Secretary shall require repayment of loans made under this subsection, under such terms and conditions as he may require, upon completion of the housing or sooner.

(c) Repealed. Pub. L. 98-181, title V, § 518(b), Nov. 30, 1983, 97 Stat. 1249

[*See main edition for text of* (*d*)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 518, 97 Stat. 1249.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-181, § 518(a), struck out provisions setting forth conditions under which any part or all of the loan is subject to cancellation.

Subsec. (c). Pub. L. 98-181, § 518(b), struck out subsec. (c), which related to authorization of appropriations for fiscal years ending June 30, 1975, June 30, 1976, and Sept. 30, 1979, and availability of amounts.

§ 1490f. Loans and insurance of loans for condominium housing in rural areas

(a) Individual loans and insurance of loans to low or moderate income persons or families for purchase of units; terms and conditions

The Secretary is authorized, and[3] upon such terms and conditions (substantially identical insofar as may be feasible with those specified in section 1472 of this title) as he may prescribe, to make loans to persons and families of low or moderate income, and to insure and make commitments to insure loans made to persons and families of low or moderate income, to assist them in purchasing dwelling units in condominiums located in rural areas.

[*See main edition for text of* (*b*)]

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[3] So in original. The word "and" probably should not appear.

(c) Blanket loans and insurance of loans; terms and conditions; certification by borrower of future ownership of multifamily project; maximum amount of principal obligation

In addition to individual loans made or insured under subsection (a) of this section the Secretary is authorized, and [1] upon such terms and conditions (substantially identical insofar as may be feasible with those specified in section 1485 of this title) as he may prescribe, to make or insure blanket loans to a borrower who shall certify to the Secretary, as a condition of obtaining such loan or insurance, that upon completion of the multifamily project the ownership of the project will be committed to a plan of family unit ownership under which (1) each family unit will be eligible for a loan or insurance under subsection (a) of this section, and (2) the individual dwelling units in the project will be sold only on a condominium basis and only to purchasers eligible for a loan or insurance under subsection (a) of this section. The principal obligation of any blanket loan made or insured under this subsection shall in no case exceed the sum of the individual amounts of the loans which could be made or insured with respect to the individual dwelling units in the project under subsection (a) of this section.

[*See main edition for text of* (*d*)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 519(a), 97 Stat. 1249.)

Amendments

1983—Subsecs. (a), (c). Pub. L. 98-181 struck out "in his discretion" after "Secretary is authorized,".

§ 1490g. Repealed. Pub. L. 98-181,§ title V, § 503(c), Nov. 30, 1983, 97 Stat. 1241

Section, act July 15, 1949, ch. 338, title V, § 527, as added Aug. 22, 1974, Pub. L. 93-383, title V, § 518, 88 Stat. 699, defined "housing" as including mobile homes and mobile home sites, and authorized the Secretary to prescribe property standards for mobile homes financed under this subchapter.

§ 1490h. Taxation of property held by Secretary

[*See main edition for text*]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 204(c)(3), 98 Stat. 2233.)

Amendments

1984—Pub. L. 98-479 substituted "property held by Secretary" for "Farmers Home Administration-held property" in section catchline.

§ 1490i. Repealed. Pub. L. 98-181, title V, § 506(b), Nov. 30, 1983, 97 Stat. 1242

Section, act July 15, 1949, ch. 338, title V, § 529, as added Nov. 9, 1978, Pub. L. 95-619, title II, § 252(b), 92 Stat. 3236, required the Secretary of Agriculture to promote the use of energy saving techniques through the establishment of minimum property standards for newly constructed residential housing.

§ 1490j. Conditions on rent increases in projects receiving assistance under other provisions of law

The Secretary may not approve any increase in rental payments, with respect to units in which the tenants are paying rentals in excess of 30 per centum of their incomes, in any project which is assisted under section 1484, 1485, or 1487 of this title and under section 1490a(a)(1)(B) of this title unless the project owner is receiving, or has applied for (within the most recent period of 180 days prior to the effective date of such increase), rental assistance payments with respect to such project under section 1490a(a)(2)(A) of this title or section 1437f of this title.

(As amended Nov. 30, 1983, Pub. L. 98-181, title V, § 517(d), 97 Stat. 1248.)

Amendments

1983—Pub. L. 98-181 substituted "30 per centum" for "25 per centum".

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-181 effective six months after Nov. 30, 1983, or upon the earlier promulgation of implementing regulations, see section 517(f) of Pub. L. 98-181, set out as a note under section 1490a of this title.

§ 1490k. FHA insurance

The Secretary is authorized to act as an agent of the Secretary of Housing and Urban Development to recommend insurance of any mortgage meeting the requirements of section 1709 of title 12.

(July 15, 1949, ch. 338, title V, § 531, as added Nov. 30, 1983, Pub. L. 98-181, title V, § 520, 97 Stat. 1249.)

§ 1490*l*. Processing of applications; preliminary reservation of assistance at time of initial approval of project

(a) The Secretary shall, in making assistance available under this subchapter, give a priority to applications submitted by—

(1) persons and families that have the greatest housing assistance needs because of their low income and their residing in inadequate dwellings;

(2) applicants applying for assistance for projects that will serve such persons and families; and

(3) applicants residing in areas which are the most rural in character.

(b) In making available the assistance authorized by section 1483 of this title and section 1490a(a) of this title with respect to projects involving insured and guaranteed loans and interest credits and rental assistance payments, the Secretary shall process and approve requests for such assistance in a manner that provides for a preliminary reservation of assistance at the time of initial approval of the project.

(July 15, 1949, ch. 338, title V, § 532, as added Nov. 30, 1983, Pub. L. 98-181, title V, § 521, 97 Stat. 1250.)

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[1] So in original. The word "and" probably should not appear.

§ 1490m. Housing preservation grants

(a) Statement of purposes

The purpose of this section is to authorize the Secretary to make grants to eligible grantees including private nonprofit organizations, Indian tribes, general units of local government, counties, States, and consortia of other eligible grantees, in order to—

(1) rehabilitate single family housing in rural areas which is owned by low- and very low-income persons and families, and

(2) rehabilitate rental properties or cooperative housing which has a membership resale structure that enables the cooperative to maintain affordability for persons of low income in rural areas serving low- and very low-income occupants.

The Secretary may also provide assistance payments as provided by section 1437f(*o*) of this title upon the request of grantees in order to minimize the displacement of very low-income tenants residing in units rehabilitated with assistance under this section.

(b) Mandatory program requirements

Rehabilitation programs assisted under this section shall—

(1) be used to provide loans or grants to owners of single family housing in order to cover the cost of repairs and improvements;

(2) be used to provide interest reduction payment;

(3) be used to provide loans or grants to owners of rental housing, except that rental rehabilitation assistance provided under this subsection for any structure shall not exceed 75 per centum of the total costs associated with the rehabilitation of that structure;

(4) be used to provide other comparable assistance that the Secretary deems appropriate to carry out the purpose of this section, designed to reduce the costs of such repair and rehabilitation in order to make such housing affordable by persons of low income and, to the extent feasible, by persons and families whose incomes do not exceed 50 per centum of the area median income;

(5) benefit low- and very low-income persons and families in rural areas, without causing the displacement of current residents; and

(6) raise health and safety conditions to meet those specified in section 1479(a) of this title.

(c) Allocation formula; transfer of funds; maximum amounts

(1) The Secretary shall allocate rehabilitation grant funds for use in each State on the basis of a formula contained in a regulation prescribed by the Secretary using the average of the ratios between—

(A) the population of the rural areas in that State and the population of the rural areas of all States;

(B) the extent of poverty in the rural areas in that State and the extent of poverty in the rural areas of all States; and

(C) the extent of substandard housing in the rural areas of that State and the extent of substandard housing in the rural areas of all States.

Any funds which are allocated to a State but uncommitted to grantees will be transferred to the State office of the Farmers Home Administration in a timely manner and be used for authorized rehabilitation activities under section 1474 of this title.

(2) Unless there is only one eligible grantee in a State, a single grantee may not receive more than 50 per centum of a State's allocation.

(d) Statement of activity by grantee; submission; contents; availability; consultations; evaluation by Secretary; criteria applicable; maximum amounts

(1) Eligible grantees may submit a statement of activity to the Secretary at the time specified by the program administrator, containing a description of its proposed rehabilitation program. The statement shall consist of the activities each entity proposes to undertake for the fiscal year, and the projected progress in carrying out those activities. The statement of activities shall be made available to the public for comment.

(2) In preparing such statement, the grantee shall consult with and consider the views of appropriate local officials.

(3) The Secretary shall evaluate the merits of each statement on the basis of such criteria as the Secretary shall prescribe, including the extent—

(A) to which the repair and rehabilitation activities will assist persons of low income who lack adequate shelter, with priority given to applications assisting the maximum number of persons and families whose incomes do not exceed 50 per centum of the area median income;

(B) to which the repair and rehabilitation activities include the participation of other public or private organizations in providing assistance, in addition to the assistance provided under this section, in order to lower the costs of such activities or provide for the leveraging of available funds to supplement the rural housing preservation grant program;

(C) to which such activities will be undertaken in rural areas having populations below 10,000 or in remote parts of other rural areas;

(D) to which the repair and rehabilitation activities may be expected to result in achieving the greatest degree of repair or improvement for the least cost per unit or dwelling;

(E) to which the program would minimize displacement;

(F) to which the program would alleviate overcrowding in rural residences inhabited by low- and very low-income persons and families;

(G) to which the program would minimize the use of grant funds for administrative purposes; and

(H) to which the owner agrees to meet the requirement of subsection (e)(1)(B)(iv) of this section for a period longer than 5 years;

and shall assess the demonstrated capacity of the grantee to carry out the program as well as the financial feasibility of the program.

(4) The amount of assistance provided under this section with respect to any housing shall be the least amount that the Secretary deter-

mines is necessary to provide, through the repair and rehabilitation of such housing, decent housing of modest design that is affordable for persons of low income.

(e) Limitations on assistance; failure to implement required agreement

(1) Assistance under this section may be provided with respect to rental or cooperative housing only if—

(A) the owner has entered into such agreements with the Secretary as may be necessary to assure compliance with the requirements of this section, to assure the financial feasibility of such housing, and to carry out the other provisions of this section;

(B) the owner agrees—

(i) to pass on to the tenants any reduction in the debt service payments resulting from the assistance provided under this section;

(ii) not to convert the units to condominium ownership (or in the case of a cooperative, to condominium ownership or any form of cooperative ownership not eligible for assistance under this section);

(iii) not refuse to rent a dwelling unit in the structure to a family solely because the family is receiving or is eligible to receive assistance under any Federal, State, or local housing assistance program; and

(iv) that the units repaired and rehabilitated with such assistance will be occupied, or available for occupancy, by persons of low income;

during the 5-year period beginning on the date on which the units in the housing are available for occupancy;

(C) the unit of general local government or nonprofit organization that receives the assistance certifies to the satisfaction of the Secretary that the assistance will be made available in conformity with Public Law 88-352 [42 U.S.C. 2000a et seq.] and Public Law 90-284;

(D) the owner agrees to enter into and abide by written leases with the tenants, which leases shall provide that tenants may be evicted only for good cause; and

(E) the unit of general local government or nonprofit organization will agree to supervise repairs and rehabilitation and will agree to have a disinterested party inspect such repairs and rehabilitation.

(2) Assistance under this section provided with respect to any housing other than rental or cooperative housing may be provided only if the owner complies with the requirements set forth in subparagraph (E) of paragraph (1) and any other requirements established by the Secretary to carry out the purpose of this section.

(3)(A) The Secretary shall provide that if the owner or his or her successors in interest fail to carry out the agreements described in subparagraphs (A) and (B) of paragraph (1) during the applicable period, the owner or his or her successors in interest shall make a payment to the Secretary of an amount that equals the total amount of assistance provided under this section with respect to such housing, plus interest thereon (without compounding), for each year and any fraction thereof that the assistance was outstanding, at a rate determined by the Secretary taking into account the average yield on outstanding marketable long-term obligations of the United States during the month preceding the date on which the assistance was made available.

(B) Notwithstanding any other provision of law, any assistance provided under this section shall constitute a debt, which is payable in the case of any failure to carry out the agreements described in subparagraphs (A), (B), and (C) of paragraph (1), and shall be secured by the security instruments provided by the owner to the Secretary.

(f) Advance payments of assistance

The Secretary shall provide for such advance payments of assistance under this section as the Secretary determines is necessary to effectively carry out the provisions of this section.

(g) Annual review and audit by Secretary of activities; adjustment, etc., of resources; reallocation of amounts

The Secretary shall, at least on an annual basis, make such review and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner and in accordance with the requirements of this section, the degree to which the activities assisted benefitted persons of low income and very low-income who lacked adequate housing, and whether the grantee has a continuing capacity to carry out the activities in a timely manner. The Secretary may adjust, reduce, or withdraw resources made available to grantees receiving assistance under this section, or take other action as appropriate in accordance with the findings of these reviews and audits. Any amounts which became available as a result of actions under this subsection shall be reallocated in the year in which they become available to such grantee or grantees as the Secretary may determine.

(h) Rules and regulations; delegation of authority

The Secretary is authorized to prescribe such rules and regulations and make such delegations of authority as he deems necessary to carry out this section within 90 days after November 30, 1983.

(i) National historic preservation objectives affected by rehabilitation activities; establishment of procedures for determining consonant purposes and measures

The Secretary shall establish procedures which support national historic preservation objectives and which assure that, if any rehabilitation proposed to be assisted under this section would affect property that is included or is eligible for inclusion on the National Register of Historic Places, such activity shall not be undertaken unless (1) it will reasonably meet the standards for rehabilitation issued by the Secretary of the Interior and the appropriate State historic preservation officer is afforded the opportunity to comment on the specific rehabilitation plan, or (2) the Advisory Council on Historic Preservation is afforded an opportunity to comment on cases for which the recipient of assistance, in consultation with the State historic preservation officer, determines that the proposed rehabilitation activity cannot reasonably meet such standards or would adversely affect historic property as defined therein.

(j) Reporting requirements

Not later than 180 days after the close of each fiscal year in which assistance under this section is furnished, the Secretary shall submit to the Congress a report which shall contain—

(1) a description of the progress made in accomplishing the objectives of this section; and

(2) a summary of the use of such funds during the preceding year.

The Secretary shall require grantees under this section to submit to him such reports, and other information as may be necessary in order for the Secretary to make the report required by this subsection.

(July 15, 1949, ch. 338, title V, § 533, as added Nov. 30, 1983, Pub. L. 98-181, title V, § 522, 97 Stat. 1250.)

REFERENCES IN TEXT

Public Law 88-352, referred to in subsec. (e)(1)(C), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Public Law 90-284, referred to in subsec. (e)(1)(C), is Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73, as amended, popularly known as the Civil Rights Act of 1968. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437f, 1439, 1483 of this title.

§ 1490n. Review of rules and regulations

(a) Publication for public comment in Federal Register

Notwithstanding any other provision of law, no rule or regulation pursuant to this subchapter may become effective unless it has first been published for public comment in the Federal Register for at least 60 days, and published in final form for at least 30 days.

(b) Transmittal to Congressional committee members prior to publication in Federal Register

The Secretary shall transmit to the chairman and ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House, all rules and regulations at least 15 days before they are sent to the Federal Register for purposes of subsection (a) of this section.

(c) Rules and regulations issued on emergency basis

The provisions of this section shall not apply to a rule or regulation which the Secretary certifies is issued on an emergency basis.

(July 15, 1949, ch. 338, title V, § 534, as added Nov. 30, 1983, Pub. L. 98-181, title V, § 523, 97 Stat. 1254.)

§ 1490o. Reciprocity in approval of housing subdivisions among Federal agencies

The Secretary of Agriculture, the Secretary of Housing and Urban Development, and the Administrator of Veterans' Affairs shall each accept an administrative approval of any housing subdivision made by any of the others so that not later than January 1, 1984, there is total reciprocity for housing subdivision approvals among the agencies which they head.

(July 15, 1949, ch. 338, title V, § 535, as added Nov. 30, 1983, Pub. L. 98-181, title V, § 523, 97 Stat. 1254.)

CHAPTER 8B—PUBLIC WORKS OR FACILITIES

§§ 1491 to 1497. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this chapter after Jan. 1, 1975.

Section 1493, acts Aug. 11, 1955, ch. 783, title II, § 203, 69 Stat. 643; Sept. 14, 1960, Pub. L. 86-788, § 2(c), 74 Stat. 1028; June 30, 1961, Pub. L. 87-70, title V, § 501(d)(2), (h), (j), 75 Stat. 174, 175; May 25, 1967, Pub. L. 90-19, § 12(b), 81 Stat. 23; Oct. 17, 1984, Pub. L. 98-479, title II, § 203(f), 98 Stat. 2230, related to forms and denominations, maturities, terms and conditions, etc., respecting notes and obligations.

CHAPTER 8C—OPEN-SPACE LAND

§§ 1500 to 1500b. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this chapter after Jan. 1, 1975.

Section 1500, acts Pub. L. 87-70, title VII, § 701, June 30, 1961, 75 Stat. 183; Pub. L. 89-177, title IX, § 901(b), (c), Aug. 10, 1965, 79 Stat. 494; Pub. L. 89-754, title VI, § 605(b), (c), Nov. 3, 1966, 80 Stat. 1279; Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1781, set forth the Congressional declaration of findings and purpose for open-space land provisions.

Section 1500a, acts Pub. L. 87-70, title VII, § 702, June 30, 1961, 75 Stat. 184; Pub. L. 88-560, title X, § 1001, Sept. 2, 1964, 78 Stat. 806; Pub. L. 89-117, title IX, §§ 902(a), (b), 903, 904, 909(b), (c), Aug. 10, 1965, 79 Stat. 495, 497; Pub. L. 89-754, title VI, § 605(d), Nov. 3, 1966, 80 Stat. 1279; Pub. L. 90-19, § 18(c), (d), May 25, 1967, 81 Stat. 25; Pub. L. 90-448, title VI, § 606(a), Aug. 1, 1968, 82 Stat. 534; Pub. L. 91-152, title III, § 303, Dec. 24, 1969, 83 Stat. 391; Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1781, related to authorizations, limitations and restrictions, etc., respecting grants to States and local public bodies for acquisition and development of open-space land.

Section 1500b, acts Pub. L. 87-70, title VII, § 703, June 30, 1961, 75 Stat. 184; Pub. L. 89-117, title IX, § 905, Aug. 10, 1965, 79 Stat. 495; Pub. L. 90-19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1782, related to planning requirements.

§ 1500c. Repealed. Pub. L. 98-181, title I, § 126(b)(3), Nov. 30, 1983, 97 Stat. 1175

Section 1500c, acts Pub. L. 87-70, title VII, § 704, June 30, 1961, 75 Stat. 185; Pub. L. 89-117, title IX, § 909(d), Aug. 10, 1965, 79 Stat. 497; Pub. L. 90-19, § 18(c), May 25, 1967, 81 Stat 25; Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1782, related to conversion to other uses.

§§ 1500c-1 to 1500e. Omitted

CODIFICATION

Sections 1500c-1 to 1500d-1 were omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this chapter after Jan. 1, 1975.

Section 1500c-1, acts Pub. L. 87-70, title VII, § 705, as added Pub. L. 89-117, title IX, § 906, Aug. 10, 1965, 79 Stat. 496, and amended Pub. L. 90-19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1782, related to conversions of land involving historic or architectural purposes.

Section 1500c-2, acts Pub. L. 87-70, title VII, § 706, as added Pub. L. 89-117, title IX, § 906, Aug. 10, 1965, 79 Stat. 496, and amended Pub. L. 89-754, title VI, § 605(e), Nov. 3, 1966, 80 Stat. 1280; Pub. L. 90-19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1783; Pub. L. 98-181, title I, § 126(b)(3), Nov. 30, 1983, 97 Stat. 1175, related to acquisition of interests to guide urban development.

Section 1500c-3, acts Pub. L. 87-70, title VII, § 707, as added Pub. L. 89-117, title IX, § 907, Aug. 10, 1965, 79 Stat. 496, and amended Pub. L. 90-19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1783, related to labor standards.

Section 1500d, acts Pub. L. 87-70, title VII, § 708, formerly § 705, June 30, 1961, 75 Stat. 185, renumbered and amended Pub. L. 89-117, title IX, §§ 906, 908, Aug. 10, 1965, 79 Stat. 495, 497; Pub. L. 89-754, title VI, § 605(f), Nov. 3, 1966, 80 Stat. 1280; Pub. L. 90-19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 90-448, title VI, § 606(b), Aug. 1, 1968, 82 Stat. 534; Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1783; Pub. L. 92-213, § 8(b), Dec. 22, 1971, 85 Stat. 776; Pub. L. 92-335, § 5, July 1, 1972, 86 Stat. 405; Pub. L. 93-117, § 7, Oct. 2, 1973, 87 Stat. 422, authorized appropriations for purpose of making grants under this chapter.

Section 1500d-1, acts Pub. L. 87-70, title VII, § 709, as added Pub. L. 89-754, title VI, § 605(g), Nov. 3, 1966, 80 Stat. 1280, and amended Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1783, defined the terms "open-space land", "urban area", "State", "local public body", and "open-space uses" for purposes of this chapter.

Section 1500e, acts Pub. L. 87-70, title VII, § 710, formerly § 706, June 30, 1961, 75 Stat. 185, renumbered § 709 and amended Pub. L. 89-117, title IX, §§ 902(c), 906, Aug. 10, 1965, 79 Stat. 495, renumbered § 710, Pub. L. 89-754, title VI, § 605(g), Nov. 3, 1966, 80 Stat. 1280, and amended Pub. L. 90-19, § 18(c), May 25, 1967, 81 Stat. 25, which defined "open-space land", "urban area", "State", and "open space uses", was omitted in the general amendment of this chapter by Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1781.

CHAPTER 11—COMPENSATION FOR DISABILITY OR DEATH TO PERSONS EMPLOYED AT MILITARY, AIR, AND NAVAL BASES OUTSIDE THE UNITED STATES

§ 1651. Compensation authorized

(a) Places of employment

Except as herein modified, the provisions of the Longshore and Harbor Workers' Compensation Act, approved March 4, 1927 (44 Stat. 1424), as amended [33 U.S.C. 901 et seq.], shall apply in respect to the injury or death of any employee engaged in any employment—

[*See main edition for text of* (*1*) *to* (*6*)]

irrespective of the place where the injury or death occurs, and shall include any injury or death occurring to any such employee during transportation to or from his place of employment, where the employer or the United States provides the transportation or the cost thereof.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) "Contractor" defined

As used in this section, the term "contractor" means any individual, partnership, corporation, or association, and includes any trustee, receiver, assignee, successor, or personal representative thereof, and the rights, obligations, liability, and duties of the employer under such Longshore and Harbor Workers' Compensation Act [33 U.S.C. 901 et seq.] shall be applicable to such contractor.

[*See main edition for text of* (*e*) *and* (*f*)]

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(d)(2), 98 Stat. 1654.)

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, referred to in subsecs. (a) and (d), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

AMENDMENTS

1984—Subsecs. (a), (d). Pub. L. 98-426 substituted "Longshore and Harbor Workers' Compensation Act" for "Longshoremen's and Harbor Workers' Compensation Act".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

§ 1652. Computation of benefits; application to aliens and nonnationals

[*See main edition for text*]

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(d)(2), 98 Stat. 1654.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-426 substituted references to sections of the Longshore and Harbor Workers' Compensation Act for sections of the Longshoremen's and Harbor Workers' Compensation Act, which references have been translated to sections of title 33, thus requiring no change in text.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

§ 1653. Compensation districts; judicial proceedings

(a) The Secretary of Labor is authorized to extend compensation districts established under the Longshore and Harbor Workers' Compensation Act, approved March 4, 1927 (44 Stat. 1424) [33 U.S.C. 901 et seq.], or to establish new compensation districts, to include any area to which this chapter applies; and to assign to each such district one or more deputy commissioners, as the Secretary may deem necessary.

(b) Judicial proceedings provided under sections 18 and 21 of the Longshore and Harbor

Workers' Compensation Act [33 U.S.C. 918, 921] in respect to a compensation order made pursuant to this chapter shall be instituted in the United States district court of the judicial district wherein is located the office of the deputy commissioner whose compensation order is involved if his office is located in a judicial district, and if not so located, such judicial proceedings shall be instituted in the judicial district nearest the base at which the injury or death occurs.

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(d)(2), 98 Stat. 1654.)

References in Text

The Longshore and Harbor Workers' Compensation Act, referred to in text, is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

Amendments

Subsecs. (a), (b). Pub. L. 98-426 substituted "Longshore and Harbor Workers' Compensation Act" for "Longshoremen's and Harbor Workers' Compensation Act".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

CHAPTER 12—COMPENSATION FOR INJURY, DEATH, OR DETENTION OF EMPLOYEES OF CONTRACTORS WITH THE UNITED STATES OUTSIDE THE UNITED STATES

SUBCHAPTER I—COMPENSATION, REIMBURSEMENT, ETC., BY SECRETARY OF LABOR

§ 1701. Compensation for injury or death resulting from war-risk hazard

[*See main edition for text*]

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(d)(2), 98 Stat. 1654.)

Amendments

1984—Subsec. (b)(1). Pub. L. 98-426 substituted references to sections of the Longshore and Harbor Workers' Compensation Act for sections of the Longshoremen's and Harbor Workers' Compensation Act, which references have been translated to sections of title 33, thus requiring no change in text.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

§ 1702. Application of Longshore and Harbor Workers' Compensation Act

[*See main edition for text*]

(As amended Sept. 28, 1984, Pub. L. 98-426, § 27(d)(2), 98 Stat. 1654.)

References in Text

The Longshore and Harbor Workers' Compensation Act, referred to in section catchline, is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

Amendments

1984—Pub. L. 98-426 substituted "Longshore and Harbor Workers' Compensation Act" for "Longshoremen's and Harbor Workers' Compensation Act" wherever appearing.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

CHAPTER 13—SCHOOL LUNCH PROGRAMS

§ 1762a. Commodity distribution program

[*See main edition for text of* (a) *and* (b)]

(c) Authorization of appropriations for purchase of products or for cash payments in lieu of donations

The Secretary may use funds appropriated from the general fund of the Treasury to purchase agricultural commodities and their products of the types customarily purchased for donation under section 311(a)(4) of the Older Americans Act of 1965 [42 U.S.C. 3030a(a)(4)] or for cash payments in lieu of such donations under section 311(b)(1) of such Act [42 U.S.C. 3030a(b)(1)]. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subsection.

[*See main edition for text of* (d) *to* (f)]

(As amended Oct. 9, 1984, Pub. L. 98-459, title VIII, § 801(a), 98 Stat. 1792.)

Amendments

1984—Subsec. (c). Pub. L. 98-459 substituted "(b)(1)" for "(c)(1)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

CHAPTER 13A—CHILD NUTRITION

Chapter Referred to in Other Sections

This chapter is referred to in sections 1752, 1755, 1759a, 1760, 1761, 1762, 1762a, 1763, 1765, 1766, 1767, 1768, 1769, 1769a, 1776a, 1776b of this title; title 7 sections 2018, 4004.

§ 1786. Special supplemental food program

Section Referred to in Other Sections

This section is referred to in section 1776 of this title; title 7 section 2018.

CHAPTER 16—NATIONAL SCIENCE FOUNDATION

Sec.
1873a. Repealed.
1884. Repealed.
1886. Data collection and analysis.

Sec.
1887. Indemnification of grantees, contractors, and subcontractors under ocean drilling program; approvals and certifications by Director.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 section 3707; title 20 section 3444.

§ 1861. Establishment; composition

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-159, title I, § 101, Nov. 22, 1985, 99 Stat. 887, provided that: "This title [enacting section 1886 of this title, amending sections 1862, 1863, 1864, 1868 to 1872, 1873, 1874, 1881a, 1882, and 1885 to 1885d of this title, repealing sections 1873a and 1884 of this title, and amending provisions set out as notes under sections 1861 and 1882 of this title] may be cited as the 'National Science Foundation Authorization Act for Fiscal Year 1986'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96-516, § 1, Dec. 12, 1980, 94 Stat. 3007, as amended by Pub. L. 99-159, title I, § 111(a), Nov. 22, 1985, 99 Stat. 892, provided: "That this Act [enacting sections 1885 to 1885d of this title, amending sections 1863, 1874, 1875, 1881, and 1881a of this title, and enacting provisions set out as notes under sections 1861, 1864, 1866, and 1885 of this title] may be cited as the 'National Science Foundation Authorization and Science and Engineering Equal Opportunities Act'."

Pub. L. 96-516, § 31, Dec. 12, 1980, 94 Stat. 3010, as amended by Pub. L. 99-159, title I, § 111(b)(1), Nov. 22, 1985, 99 Stat. 892, provided that: "This part [part B, sections 31 to 39, enacting sections 1885 to 1885d of this title, and provisions set out as notes under section 1885 of this title] may be cited as the 'Science and Engineering Equal Opportunities Act'."

§ 1862. Functions

(a) Initiation and support of studies and programs; scholarships; current register of scientific and engineering personnel

The Foundation is authorized and directed—

(1) to initiate and support basic scientific research and programs to strengthen scientific research potential and science education programs at all levels in the mathematical, physical, medical, biological, social, and other sciences, and to initiate and support research fundamental to the engineering process and programs to strengthen engineering research potential and engineering education programs at all levels in the various fields of engineering, by making contracts or other arrangements (including grants, loans, and other forms of assistance) to support such scientific, engineering, and educational activities and to appraise the impact of research upon industrial development and upon the general welfare;

(2) to award, as provided in section 1869 of this title, scholarships and graduate fellowships for study and research in the sciences or in engineering;

(3) to foster the interchange of scientific and engineering information among scientists and engineers in the United States and foreign countries;

(4) to foster and support the development and use of computer and other scientific and engineering methods and technologies, primarily for research and education in the sciences and engineering;

(5) to evaluate the status and needs of the various sciences and fields of engineering as evidenced by programs, projects, and studies undertaken by agencies of the Federal Government, by individuals, and by public and private research groups, employing by grant or contract such consulting services as it may deem necessary for the purpose of such evaluations; and to take into consideration the results of such evaluations in correlating the research and educational programs undertaken or supported by the Foundation with programs, projects, and studies undertaken by agencies of the Federal Government, by individuals, and by public and private research groups;

(6) to maintain a current register of scientific and engineering personnel, and in other ways to provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and engineering resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal Government; and

(7) to initiate and maintain a program for the determination of the total amount of money for scientific and engineering research, including money allocated for the construction of the facilities wherein such research is conducted, received by each educational institution and appropriate nonprofit organization in the United States, by grant, contract, or other arrangement from agencies of the Federal Government, and to report annually thereon to the President and the Congress.

(b) Contracts, grants, loans, etc., for scientific and engineering activities; financing of programs

The Foundation is authorized to initiate and support specific scientific and engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and engineering applications upon society by making contracts or other arrangements (including grants, loans, and other forms of assistance) for the conduct of such activities. When initiated or supported pursuant to requests made by any other Federal department or agency, including the Office of Technology Assessment, such activities shall be financed whenever feasible from funds transferred to the Foundation by the requesting official as provided in section 1873(f) of this title, and any such activities shall be unclassified and shall be identified by the Foundation as being undertaken at the request of the appropriate official.

(c) Scientific and engineering research programs at academic and other nonprofit institutions; applied scientific and engineering research programs by Presidential directive; employment of consulting services; coordination of activities

In addition to the authority contained in subsections (a) and (b) of this section, the Foundation is authorized to initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions. When so directed by the President, the Foundation is further authorized to support, through other appropriate organizations, applied scientific research and engineering research relevant to national problems involving the public interest. In exercising the authority contained in this subsection, the Foundation may employ by grant or contract such consulting services as it deems necessary, and shall coordinate and correlate its activities with respect to any such problem with other agencies of the Federal Government undertaking similar programs in that field.

(d) Promotion of research and education in science and engineering

The Board and the Director shall recommend and encourage the pursuit of national policies for the promotion of research and education in science and engineering.

(e) Balancing of research and educational activities in the sciences and engineering

In exercising the authority and discharging the functions referred to in the foregoing subsections, it shall be an objective of the Foundation to strengthen research and education in the sciences and engineering, including independent research by individuals, throughout the United States, and to avoid undue concentration of such research and education.

[*See main edition for text of* (*f*)]

(May 10, 1950, ch. 171, § 3, 64 Stat. 149; July 11, 1958, Pub. L. 85-510, § 1, 72 Stat. 353; Sept. 8, 1959, Pub. L. 86-232, § 1, 73 Stat. 467; July 8, 1968, Pub. L. 90-407, § 1, 82 Stat. 360; Aug. 10, 1972, Pub. L. 92-372, § 8, 86 Stat. 528; Oct. 13, 1972, Pub. L. 92-484, § 10(b), 86 Stat. 802; Apr. 21, 1976, Pub. L. 94-273, § 11(3), 90 Stat. 378; Aug. 15, 1977, Pub. L. 95-99, § 12(a), formerly § 14(a), 91 Stat. 835, renumbered § 12(a), Nov. 22, 1985, Pub. L. 99-159, title I, § 109(h), 99 Stat. 890; Nov. 22, 1985, Pub. L. 99-159, title I, §§ 109(e)(2), 110(a)(1)-(11), 99 Stat. 890, 891.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-159, § 110(a)(1), struck out "engineering," after "biological," and added provisions relating to research fundamental to the engineering process, engineering programs, and engineering activities.

Subsec. (a)(2). Pub. L. 99-159, § 110(a)(2), substituted "for study and research in the sciences or in engineering" for "in the mathematical, physical, medical, biological, engineering, social, and other sciences".

Subsec. (a)(3). Pub. L. 99-159, § 110(a)(3), added applicability to engineering and engineers.

Subsec. (a)(4). Pub. L. 99-159, § 110(a)(4), added applicability to engineering.

Subsec. (a)(5). Pub. L. 99-159, § 110(a)(5), added applicability to fields of engineering.

Subsec. (a)(6). Pub. L. 99-159, § 110(a)(6), substituted "engineering" for "technical" in two places.

Subsec. (a)(7). Pub. L. 99-159, § 110(a)(7), added applicability to engineering.

Subsec. (b). Pub. L. 99-159, §§ 109(e)(2), 110(a)(8), added reference to engineering in two places and substituted "1873(f)" for "1873(g)".

Subsec. (c). Pub. L. 99-159, § 110(a)(9), added applicability to engineering research.

Subsec. (d). Pub. L. 99-159, § 110(a)(10), substituted "research and education in science and engineering" for "basic research and education in the sciences".

Subsec. (e). Pub. L. 99-159, § 110(11), added applicability to engineering.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1873 of this title; title 20 sections 3811, 3831.

§ 1863. National Science Board

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Meetings; nominations; quorum; notice

The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation. In making nominations under this section, the President shall give due regard to equitable representation of scientists and engineers who are women or who represent minority groups. The President is requested, in the making of nominations of persons for appointment as members, to give due consideration to any recommendations for nomination which may be submitted to him by the National Academy of Sciences, the National Academy of Engineering, the National Association of State Universities and Land Grant Colleges, the Association of American Universities, the Association of American Colleges, the Association of State Colleges and Universities, or by other scientific, engineering, or educational organizations.

[*See main edition for text of* (*d*)]

(e) Meetings; quorum; notice

The Board shall meet annually on the third Monday in May unless, prior to May 10 in any year, the Chairman has set the annual meeting for a day in May other than the third Monday, and at such other times as the Chairman may determine, but he shall also call a meeting whenever one-third of the members so request in writing. A majority of the members of the Board shall constitute a quorum. Each member shall be given notice, not less than fifteen days prior to any meeting, of the call of such meeting.

[*See main edition for text of* (*f*) *to* (*j*)]

(May 10, 1950, ch. 171, § 4, 64 Stat. 150; Sept. 8, 1959, Pub. L. 86-232, § 2, 73 Stat. 467; June 11, 1960, Pub. L. 86-507, § 1(36), 74 Stat. 202; July 18, 1968, Pub. L. 90-407, § 2, 82 Stat. 361; Apr. 21, 1976, Pub. L. 94-273, § 11(3), 90 Stat. 378; May 11, 1976, Pub. L. 94-282, title V, § 503, 90 Stat. 473; Oct. 11, 1976, Pub. L. 94-471, § 9, 90 Stat. 2057; Aug. 15, 1977, Pub. L. 95-99, § 12(b), formerly § 14(b), 91 Stat. 835, renumbered § 12(b), Nov. 22, 1985, Pub. L. 99-159, title I, § 109(h), 99 Stat. 890; Dec. 12, 1980, Pub. L. 96-516, § 21(a), 94 Stat. 3010; Dec. 21, 1982, Pub. L. 97-375, title II, § 214, 96 Stat. 1826; Nov. 22, 1985, Pub. L. 99-159, title I, §§ 109(a), 110(a)(12), 99 Stat. 889, 891.)

Amendments

1985—Subsec. (c). Pub. L. 99-159, § 110(a)(12), added "and engineering", "and engineers", and "the National Academy of Engineering," and added ", engineering," after "other scientific".

Subsec. (e). Pub. L. 99-159, § 109(a), struck out requirement that notice be made to members by registered or certified mail mailed to the last known address of record.

§ 1864. Director of Foundation

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Authority to grant, contract, etc.; delegation of authority or imposition of conditions; reporting requirement; termination of provisions

(1) The Director may make grants, contracts, and other arrangements pursuant to section 1870(c) of this title only with the prior approval of the Board or under authority delegated by the Board, and subject to such conditions as the Board may specify.

(2) Any delegation of authority or imposition of conditions under the preceding sentence shall be effective only for such period of time, not exceeding two years, as the Board may specify, and shall be promptly published in the Federal Register and reported to the Committees on Labor and Human Resources and Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives. On October 1 of each odd-numbered year the Board shall submit to the Congress a concise report which explains and justifies any actions taken by the Board under this subsection to delegate its authority or impose conditions within the preceding two years. The provisions of this subsection shall cease to be effective at the end of fiscal year 1989.

[*See main edition for text of* (*f*)]

(As amended Nov. 22, 1985, Pub. L. 99-159, title I, § 109(b), 99 Stat. 889.)

Amendments

1985—Subsec. (e). Pub. L. 99-159 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "The Director shall not make any contract, grant, or other arrangement pursuant to section 1870(c) of this title without the prior approval of the Board, except that a grant, contract, or other arrangement involving a total commitment of less than $2,000,000, or less than $500,000 in any one year, or a commitment of such lesser amount or amounts and subject to such other conditions as the Board in its discretion may from time to time determine to be appropriate and publish in the Federal Register, may be made if such action is taken pursuant to the terms and conditions set forth by the Board, and if each such action is reported to the Board at the Board meeting next following such action."

§ 1868. Special commissions

(a) Each special commission established under section 1863(h) of this title shall be appointed by the Board and shall consist of such members as the Board considers appropriate.

(b) Special commissions may be established to study and make recommendations to the Foundation on issues relating to research and education in science and engineering.

(As amended Nov. 22, 1985, Pub. L. 99-159, title I, § 109(d), 99 Stat. 889.)

Amendments

1985—Pub. L. 99-159 amended section generally. Prior to amendment, section read as follows:

"(a) Each special commission established pursuant to section 1863(i) of this title shall consist of eleven members appointed by the Board, six of whom shall be eminent scientists and five of whom shall be persons other than scientists. Each special commission shall choose its own chairman and vice chairman.

"(b) It shall be the duty of each such special commission to make a comprehensive survey of research, both public and private, being carried on in its field, and to formulate and recommend to the Foundation at the earliest practicable date an over-all research program in its field."

§ 1869. Scholarships and graduate fellowships

The Foundation is authorized to award, within the limits of funds made available specifically for such purpose pursuant to section 1875 of this title, scholarships and graduate fellowships for study and research in the sciences or in engineering at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time. Persons shall be selected for such scholarships and fellowships from among citizens or nationals of the United States, and such selections shall be made solely on the basis of ability; but in any case in which two or more applicants for scholarships or fellowships, as the case may be, are deemed by the Foundation to be possessed of substantially equal ability, and there are not sufficient scholarships or fellowships, as the case may be, available to grant one to each of such applicants, the available scholarship or scholarships or fellowship or fellowships shall be awarded to the applicants in such manner as will tend to result in a wide distribution of scholarships and fellowships throughout the United States. Nothing contained in this chapter shall prohibit the Foundation from refusing or revoking a scholarship or fellowship award, in whole or in part, in the case of any applicant or recipient, if the Board is of the opinion that such award is not in the best interests of the United States.

(As amended Nov. 22, 1985, Pub. L. 99-159, title I, § 110(a)(13), 99 Stat. 891.)

Amendments

1985—Pub. L. 99-159 substituted "study and research in the sciences or in engineering" for "scientific study or scientific work in the mathematical, physical, medical, biological, engineering, social, and other sciences".

§ 1869a. Contracts for precollege science or engineering curriculum development activities; inspection of materials by parent or guardian

After August 9, 1975, the Director of the National Science Foundation, shall require, as a condition of any award made by the National Science Foundation for the purpose of precollege science or engineering curriculum development activities, that the awardee, and any subcontractors involved in the distribution, marketing, or selling of such science or engineering curricula, shall include in any testing agreement, sales contract, or other comparable legal instrument a provision requiring that all instructional materials, including teacher's manuals, films, tapes, or other supplementary instructional materials developed or provided under such award, subcontract, or other legal instrument, will be made available within the school district using such materials for inspection by parents or guardians of children engaged in educational programs or projects of that school district. In addition, the Director of the National Science Foundation shall take such action as may be necessary and feasible to modify awards made for the purpose of precollege science or engineering curriculum development and implementation activities on or before August 9, 1975, to include such a provision in all possible cases.

(As amended Pub. L. 99-159, title I, § 110(b), Nov. 22, 1985, 99 Stat. 892.)

Amendments

1985—Pub. L. 99-159 added "or engineering" after "science" in three places.

§ 1869b. Issuance of instructions to grantees of precollege curriculum projects

[*See main edition for text*]

(Pub. L. 95-99, § 8, formerly § 9, Aug. 15, 1977, 91 Stat. 833; renumbered § 8, Pub. L. 99-159, title I, § 109(h), Nov. 22, 1985, 99 Stat. 890.)

§ 1870. General authority of Foundation

The Foundation shall have the authority, within the limits of available appropriations, to do all things necessary to carry out the provisions of this chapter, including, but without being limited thereto, the authority—

[*See main edition for text of* (*a*) *and* (*b*)]

(c) to enter into contracts or other arrangements, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such scientific or engineering activities as the Foundation deems necessary to carry out the purposes of this chapter, and, at the request of the Secretary of State or Secretary of Defense, specific scientific or engineering activities in connection with matters relating to international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrangements, or modifications thereof may be entered into without legal consideration, without performance or other bonds, and without regard to section 5 of title 41;

(d) to make advance, progress, and other payments which relate to scientific or engineering activities without regard to the provisions of section 3324(a) and (b) of title 31;

[*See main edition for text of* (*e*) *and* (*f*)]

(g) to publish or arrange for the publication of scientific and engineering information so as to further the full dissemination of information of scientific or engineering value consistent with the national interest, without regard to the provisions of section 501 of title 44;

[*See main edition for text of* (*h*)]

(i) to prescribe, with the approval of the Comptroller General of the United States, the extent to which vouchers for funds expended under contracts for scientific or engineering research shall be subject to itemization or substantiation prior to payment, without regard to the limitations of other laws relating to the expenditure of public funds and accounting therefor; and

[*See main edition for text of* (*j*)]

(As amended Nov. 22, 1985, Pub. L. 99-159, title I, § 110(a)(14), 99 Stat. 891.)

Amendments

1985—Subsecs. (c), (d). Pub. L. 99-159, § 110(a)(14)(A), added reference to engineering.

Subsec. (g). Pub. L. 99-159, § 110(a)(14)(B), (C), substituted "engineering" for "technical" and added reference to engineering value.

Subsec. (i). Pub. L. 99-159, § 110(a)(14)(A), added applicability to engineering.

§ 1871. Disposition of inventions produced under contracts or other arrangements

Each contract or other arrangement executed pursuant to this chapter which relates to scientific or engineering research shall contain provisions governing the disposition of inventions produced thereunder in a manner calculated to protect the public interest and the equities of the individual or organization with which the contract or other arrangement is executed: *Provided, however,* That nothing in this chapter shall be construed to authorize the Foundation to enter into any contractual or other arrangement inconsistent with any provision of law affecting the issuance or use of patents.

(As amended Nov. 22, 1985, Pub. L. 99-159, title I, §§ 109(c), 110(a)(15), 99 Stat. 889, 891.)

Amendments

1985—Pub. L. 99-159 struck out subsec. (a) designation, inserted "or engineering" after "scientific", and struck out subsec. (b) which prohibited Foundation officers and employees from acquiring, etc., patent rights in inventions.

§ 1872. International cooperation and coordination with foreign policy

(a) The Foundation is authorized to cooperate in any international scientific or engineering activities consistent with the purposes of this chapter and to expend for such international scientific or engineering activities such sums within the limit of appropriated funds as the Foundation may deem desirable. The Director may defray the expenses of representatives of Government agencies and other organizations and of individual scientists or engineers to accredited international scientific or engineering congresses and meetings whenever he deem[1] it necessary in the promotion of the objectives of this chapter. In this connection, with the approval of the Secretary of State, the Foundation may undertake programs granting fellowships to, or making other similar arrangements with, foreign nationals for study and research in the sciences or in engineering in the United States without regard to section 1869 of this title or the affidavit of allegiance to the United States required by section 1874(d)(2) [2] of this title.

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[1] So in original. Probably should be "deems".

(b)(1) The authority to enter into contracts or other arrangements with organizations or individuals in foreign countries and with agencies of foreign countries, as provided in section 1870(c) of this title, and the authority to cooperate in international scientific or engineering activities as provided in subsection (a) of this section, shall be exercised only with the approval of the Secretary of State, to the end that such authority shall be exercised in such manner as is consistent with the foreign policy objectives of the United States.

[*See main edition for text of* (*2*)]

(As amended Nov. 22, 1985, Pub. L. 99-159, title I, § 110(a)(16), (17), 99 Stat. 891.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-159, § 110(a)(16), added "or engineering" after "scientific" the first three places appearing and "or engineers" after "scientists" and substituted "study and research in the sciences or in engineering" for "scientific study or scientific work".

Subsec. (b)(1). Pub. L. 99-159, § 110(a)(17), added reference to engineering.

§ 1873. Employment of personnel

[*See main edition for text of* (*a*)]

(b) Operation of laboratories and pilot plants

The Foundation shall not, itself, operate any laboratories or pilot plants.

(c) Compensation of members of Board and special commissions

The members of the Board and the members of each special commission shall receive compensation for each day engaged in the business of the Foundation at a rate fixed by the Chairman but not exceeding the rate specified for the daily rate for GS-18 of the General Schedule under section 5332 of title 5 and shall be allowed travel expenses as authorized by section 5703 of title 5.

(d) Federal officers as members of special commissions; compensation

Persons holding other offices in the executive branch of the Federal Government may serve as members of special commissions, but they shall not receive remuneration for their services as such members during any period for which they receive compensation for their services in such other offices.

(e) Utilization of appropriations in making contracts

In making contracts or other arrangements for scientific or engineering research, the Foundation shall utilize appropriations available therefor in such manner as will in its discretion best realize the objectives of (1) having the work performed by organizations, agencies, and institutions, or individuals in the United States or foreign countries, including Government agencies of the United States and of foreign countries, qualified by training and experience to achieve the results desired, (2) strengthening the research staff of organizations, particularly nonprofit organizations, in the United States, (3) adding institutions, agencies, or organizations which, if aided, will advance scientific or engineering research, and (4) encouraging independent scientific or engineering research by individuals.

(f) Transfer of research funds of other Government departments or agencies

Funds available to any department or agency of the Government for scientific or engineering research, or the provision of facilities therefor, shall be available for transfer, with the approval of the head of the department or agency involved, in whole or in part, to the Foundation for such use as is consistent with the purposes for which such funds were provided, and funds so transferred shall be expendable by the Foundation for the purposes for which the transfer was made.

(g) "United States" defined

For purposes of this chapter, the term "United States" when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(h) Expiration of authorization

Notwithstanding any other provision of law, the authorization of any appropriation to the Foundation shall expire (unless an earlier expiration is specifically provided) at the close of the second fiscal year following the fiscal year for which the authorization was enacted, to the extent that such appropriation has not theretofore actually been made.

(i) Public disclosure of information

Information supplied to the Foundation or a contractor of the Foundation by an industrial or commercial organization in survey forms, questionnaires, or similar instruments for the purposes of subsection (a)(5) or (a)(6) of section 1862 of this title may not be disclosed to the public unless such information has been transformed into statistical or aggregate formats that do not allow the identification of the supplier. The names of organizations supplying such information may not be disclosed to the public.

(May 10, 1950, ch. 171, § 14, 64 Stat. 154, renumbered § 15, July 11, 1958, Pub. L. 85-510, § 2, 72 Stat. 353, amended Sept. 8, 1959, Pub. L. 86-232, § 8, 73 Stat. 469, and renumbered § 14, and amended July 18, 1968, Pub. L. 90-407, §§ 11(2), 12, 82 Stat. 365, 366; Nov. 18, 1969, Pub. L. 91-120, § 3, 83 Stat. 203; Aug. 15, 1977, Pub. L. 95-99, § 12(c), formerly § 14(c), 91 Stat. 835, renumbered § 12(c), Nov. 22, 1985, Pub. L. 99-159, title I, § 109(h), 99 Stat. 890; Nov. 22, 1985, Pub.

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[2] See References in Text note below.

L. 99-159, title I, §§ 109(e)(1), 110(a)(18), 99 Stat. 889, 891.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-159, § 109(e)(1)(A), (B), struck out subsec. (b) relating to outside employment and activities, and redesignated subsec. (c) as (b).

Subsecs. (c), (d). Pub. L. 99-159, § 109(e)(1)(B), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsec. (e). Pub. L. 99-159, §§ 109(e)(1)(B), 110(a)(18)(A), redesignated subsec. (f) as (e) and inserted "or engineering" after "scientific" wherever appearing. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 99-159, §§ 109(e)(1)(B), 110(a)(18)(B), redesignated subsec. (g) as (f) and substituted "engineering" for "technical". Former subsec. (f) redesignated (e).

Subsecs. (g), (h). Pub. L. 99-159, § 109(e)(1)(B), redesignated subsecs. (h) and (i) as (g) and (h), respectively. Former subsec. (g) redesignated (f).

Subsec. (i). Pub. L. 99-159, § 109(e)(1)(B), (C), added subsec. (i). Former subsec. (i) redesignated (h).

§ 1873a. Repealed. Pub. L. 99-159, title I, § 109(f), Nov. 22, 1985, 99 Stat. 890

Section, Pub. L. 95-99, § 10, Aug. 15, 1977, 91 Stat. 834, amended Pub. L. 96-470, title I, § 119, Oct. 19, 1980, 94 Stat. 2241, related to prohibition respecting financial or other interest of employees processing applications or proposals for Foundation grants or contracts.

§ 1874. Security provisions

[*See main edition for text of* (*a*)]

(b) Research relating to national defense

(1) In the case of scientific or engineering research activities under this chapter in connection with matters relating to the national defense, with respect to which funds have been transferred to the Foundation from the Department of Defense in accordance with the provisions of section 1873(f) of this title, the Secretary of Defense shall establish such security requirements and safeguards, including restrictions with respect to access to information and property, as he deems necessary.

(2) In the case of scientific or engineering research activities under this chapter in connection with matters relating to the national defense other than research activities referred to in paragraph (1) of this subsection, the Foundation shall establish such security requirements and safeguards, including restrictions with respect to access to information and property, as it deems necessary.

[*See main edition for text of* (*3*); (*c*)]

(As amended Nov. 22, 1985, Pub. L. 99-159, title I, §§ 109(e)(2), 110(a)(19), 99 Stat. 890, 891.)

AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99-159, §§ 109(e)(2), 110(a)(19)(A), substituted "engineering" for "technical" and "1873(f)" for "1873(g)".

Subsec. (b)(2). Pub. L. 99-159, § 110(a)(19)(B), added applicability to engineering.

§ 1881. Award of National Medal of Science

EXTENSION OF TERM OF PRESIDENT'S COMMITTEE ON THE NATIONAL MEDAL OF SCIENCE

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1987, see Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1985, see Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

§ 1881a. Alan T. Waterman Award

(a) Establishment; amounts; terms

The National Science Foundation is authorized to establish the Alan T. Waterman Award for research or advanced study in the mathematical, physical, medical, biological, engineering, behavioral, social, social,[4] or other sciences. The award authorized by this section shall consist of a suitable medal and a grant to support further research or study by the recipient. The National Science Board will periodically establish the amounts and terms of such grants under this section.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 99-159, title I, § 109(g), Nov. 22, 1985, 99 Stat. 890.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-159 substituted provisions requiring the National Science Board to periodically establish amounts and terms of grants, for provisions limiting the grant awarded to $50,000 per year for a period not exceeding three years.

§ 1882. Information furnished to Congressional committees

Notwithstanding any other provision of this or any other Act, the Director of the National Science Foundation and the National Science Board shall keep the Committee on Labor and Human Resources of the Senate and the Committee on Science and Technology of the House of Representatives fully and currently informed with respect to all of the activities of the National Science Foundation.

(As amended Pub. L. 99-159, title I, § 109(i), Nov. 22, 1985, 99 Stat. 890.)

AMENDMENTS

1985—Pub. L. 99-159 added "and the National Science Board".

SIMILAR PROVISIONS

Similar provisions were contained in the following prior authorization acts:

Pub. L. 95-434, § 7, Oct. 10, 1978, 92 Stat. 1050.

Pub. L. 95-99, § 11, formerly § 13, Aug. 15, 1977, 91 Stat. 835, renumbered § 11, Pub. L. 99-159, title I, § 109(h), Nov. 22, 1985, 99 Stat. 890.

§ 1884. Repealed. Pub. L. 99-159, title I, § 109(h), Nov. 22, 1985, 99 Stat. 890

Section, Pub. L. 95-99, § 6, Aug. 15, 1977, 91 Stat. 833, related to the establishment, etc., of the Resource Center for Science and Engineering.

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[4] So in original.

§ 1885. Congressional statement of findings and declaration of policy respecting equal opportunities in science and engineering

(a) The Congress finds that it is in the national interest to promote the full use of human resources in science and engineering and to insure the full development and use of the scientific and engineering talents and skills of men and women, equally, of all ethnic, racial, and economic backgrounds.

(b) The Congress declares it is the policy of the United States to encourage men and women, equally, of all ethnic, racial, and economic backgrounds to acquire skills in science, engineering, and mathematics, to have equal opportunity in education, training, and employment in scientific and engineering fields, and thereby to promote scientific and engineering literacy and the full use of the human resources of the Nation in science and engineering. To this end, the Congress declares that the highest quality science and engineering over the long-term requires substantial support, from currently available research and educational funds, for increased participation in science and engineering by women and minorities. The Congress further declares that the impact on women and minorities which is produced by advances in science and engineering must be included as essential factors in national and international science, engineering, and economic policies.

(As amended Pub. L. 99-159, title I, § 111(b)(2)-(5), Nov. 22, 1985, 99 Stat. 892.)

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-159, § 111(b)(2), substituted "engineering" for "technology" and "scientific and engineering talents and skills" for "scientific talent and technical skills".

Subsec. (b). Pub. L. 99-159, § 111(b)(3)-(5), added ", engineering," after "skills in science", substituted "engineering" for "technical", "scientific and engineering literacy" for "scientific literacy", and "engineering" for "technology" wherever appearing, and added "and engineering" after "highest quality science".

SHORT TITLE

For short title of sections 31 et seq. of Pub. L. 96-516 as the "Science and Engineering Equal Opportunities Act", see section 31 of Pub. L. 96-516, as amended, set out as a Short Title of 1980 Amendment note under section 1861 of this title.

SEVERABILITY OF SCIENCE AND ENGINEERING EQUAL OPPORTUNITIES ACT

Section 38 of Pub. L. 96-516 provided that: "If a provision of this Act [enacting sections 1885 to 1885d of this title and provisions set out as notes under sections 1861 and 1885 of this title] is held invalid, the validity of the other provisions of the Act shall not be affected. If an application of a provision of this Act to a person or circumstance is held invalid, the validity of the application of the provisions to another person or circumstance shall not be affected."

§ 1885a. Women in science and engineering; support of activities by Foundation for promotion, etc.

The Foundation is authorized to—

(1) support activities designed to—

(A) increase the participation of women in courses of study at the undergraduate, graduate, and postgraduate levels leading to degrees in scientific and engineering fields;

(B) encourage women to consider and prepare for careers in science and engineering; or

(C) provide traineeship and fellowship opportunities for women in science and engineering;

(2) support programs in science, engineering, and mathematics in elementary and secondary schools so as to stimulate the acquisition of knowledge, skills, and information by female students and to increase female student awareness of career opportunities requiring scientific and engineering skills;

(3) support activities in continuing education in science and engineering which provide opportunities for women who—

(A) are in the work force, or

(B) who are not in the work force because their careers have been interrupted,

to acquire new knowledge, techniques, and skills in scientific and engineering fields;

(4) undertake a comprehensive research program designed to increase public understanding of (A) the potential contribution of women in science and engineering and (B) the means to facilitate the participation and advancement of women in scientific and engineering careers;

(5) establish a visiting women scientists and engineers program;

(6) support activities designed to improve the availability and quality of public information concerning the importance of the participation of women in careers in science and engineering;

(7) support activities of museums and science centers which demonstrate potential to interest and involve women in science and engineering;

(8) make grants, to be known as the National Research Opportunity Grants, to women scientists and engineers who (A) have received their doctorates within five years prior to the date of the award or (B) have received their doctorates, have had their careers interrupted, and are re-entering the work force within five years after such interruption;

(9) make grants to women eligible under paragraph (8) to assist such women in planning and developing a research project eligible for support under such paragraph;

(10) provide support to individuals or academic institutions for full-time or part-time visiting professorships for women in science and engineering; and

(11) support demonstration project activities of individuals, public agencies, and private entities designed to encourage the employment and advancement of women in science and engineering.

(As amended Pub. L. 99-159, title I, § 111(b)(6), Nov. 22, 1985, 99 Stat. 892.)

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1985—Par. (1). Pub. L. 99-159, § 111(b)(6)(A), substituted "engineering" for "technology" and "technical" wherever appearing.

Par. (2). Pub. L. 99-159, § 111(b)(6)(A), (B), inserted ", engineering," after "science", and substituted "engineering" for "technical".

Par. (3). Pub. L. 99-159, § 111(b)(6)(A), substituted "engineering fields" for "technical fields".

Par. (4). Pub. L. 99-159, § 111(b)(6)(A), substituted "engineering" for "technology" and "technical".

Par. (5). Pub. L. 99-159, § 111(b)(6)(C), added applicability to engineers.

Pars. (6), (7). Pub. L. 99-159, § 111(b)(6)(A), substituted "engineering" for "technology".

Par. (8). Pub. L. 99-159, § 111(b)(6)(C), added applicability to engineers.

Par. (10). Pub. L. 99-159, § 111(b)(6)(D), added applicability to engineering.

Par. (11). Pub. L. 99-159, § 111(b)(6)(E), substituted "science and engineering" for "science, engineering, and technology".

§ 1885b. Minorities in science and engineering; support of program and activities by Foundation for promotion, etc.; report to Congress

(a) The Foundation is authorized (1) to undertake or support a comprehensive science and engineering education program to increase the participation of minorities in science and engineering, and (2) to support activities to initiate research at minority institutions.

(b) By September 30, 1981, the Director, with the advice and assistance of the Committee on Equal Opportunities in Science and Technology established in section 1885c of this title, shall prepare and transmit to the Committee on Labor and Human Resources of the Senate and the Committee on Science and Technology of the House of Representatives a report proposing a comprehensive and continuing program at the Foundation to promote the full participation of minorities in science and engineering. Such report shall contain budgetary and legislative recommendations for the carrying out of such program by the Foundation.

(As amended Pub. L. 99-159, title I, § 111(b)(7), Nov. 22, 1985, 99 Stat. 892.)

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-159, § 111(b)(7), substituted "science and engineering education" for "science education" and "engineering" for "technology".

Subsec. (b). Pub. L. 99-159, § 111(b)(7)(B), substituted "engineering" for "technology".

CHANGE OF NAME

The name of the Committee on Equal Opportunities in Science and Technology, referred to in subsec. (b), was changed to the Committee on Equal Opportunities in Science and Engineering. See section 1885d of this title as amended by Pub. L. 99-159.

§ 1885c. Committee on Equal Opportunities in Science and Engineering

(a) Establishment; purposes

There is established within the Foundation a Committee on Equal Opportunities in Science and Engineering (hereinafter referred to as the "Committee"). The Committee shall provide advice to the Foundation concerning (1) the implementation of the provisions of sections 1885 to 1885d of this title and (2) other policies and activities of the Foundation to encourage full participation of women, minorities, and other groups currently underrepresented in scientific, engineering, and professional fields.

[*See main edition for text of* (*b*)]

(c) Subcommittee on Women in Science and Engineering; purposes; membership

There shall be a subcommittee of the Committee which shall be known as the Subcommittee on Women in Science and Engineering. The Subcommittee on Women in Science and Engineering shall have responsibility for all Committee matters relating to (1) the participation in and opportunities for the education, training, and research of women in science and engineering and (2) the impact of science and engineering on women. The Subcommittee shall be composed of all the women members of the Committee and such other members of the Committee as the Committee may designate.

(d) Subcommittee on Minorities in Science and Engineering; purposes; membership

There shall be a subcommittee of the Committee which shall be known as the Subcommittee on Minorities in Science and Engineering. The Subcommittee on Minorities in Science and Engineering shall have responsibility for all Committee matters relating to (1) the participation in and opportunities for education, training, and research for minorities in science and engineering and (2) the impact of science and engineering on minorities. The Subcommittee shall be composed of all minority members of the Committee and such other members of the Committee as the Committee may designate.

[*See main edition for text of* (*e*) *and* (*f*)]

(As amended Pub. L. 99-159, title I, § 111(b)(8), Nov. 22, 1985, 99 Stat. 893.)

REFERENCES IN TEXT

Sections 1885 to 1885d of this title, referred to in subsec. (a), was in the original "this Act", meaning sections 31 et seq. of Pub. L. 96-516, as amended, known as the Science and Engineering Equal Opportunities Act, which enacted sections 1885 to 1885d of this title and provisions set out as notes under sections 1861 and 1885 of this title. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1985—Pub. L. 99-159, § 111(b)(8)(A), substituted "Engineering" for "Technology" in section catchline.

Subsec. (a). Pub. L. 99-159 substituted "Engineering" for "Technology" and "scientific, engineering, and professional" for "scientific engineering, professional, and technical".

Subsecs. (c), (d). Pub. L. 99-159, § 111(b)(8)(A), substituted "Engineering" for "Technology" and "engineering" for "technology" wherever appearing.

§ 1885d. Biennial reports

[*See main edition for text of* (*a*)]

(b) The report required by subsection (a) of this section shall contain—

(1) an accounting and comparison, by sex, race, and ethnic group and by discipline, of the participation of women and men in scientific and engineering positions, including—

(A) the number of individuals in permanent and temporary and in full-time and part-time scientific and engineering positions by appropriate level or similar category;

(B) the average salary of individuals in such scientific and engineering positions;

(C) the number and type of promotional opportunities realized by individuals in such scientific and engineering positions;

(D) the number of individuals serving as principal investigators in federally conducted or federally supported research and development; and

(E) the unemployment rate of individuals seeking scientific and engineering positions;

(2) an assessment, including quantitative and other data, of the proportion of women and minorities studying scientific and engineering fields, including mathematics and computer skills, at all educational levels; and

(3) such other data, analyses, and evaluations as the Director, acting on the advice of the Committee on Equal Opportunities in Science and Engineering, determines appropriate to carry out the Foundation's functions as well as the policies and programs of sections 1885 to 1885d of this title.

(As amended Pub. L. 99-159, title I, § 111(b)(9), Nov. 22, 1985, 99 Stat. 893.)

REFERENCES IN TEXT

Sections 1885 to 1885d of this title, referred to in subsec. (b)(3), was in the original "this Act", meaning sections 31 et seq. of Pub. L. 96-516, as amended, known as the Science and Engineering Equal Opportunities Act, which enacted sections 1885 to 1885d of this title and provisions set out as notes under sections 1861 and 1885 of this title. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1985—Subsec. (b)(1), (2). Pub. L. 99-159, § 111(b)(9)(A), substituted "engineering" for "technical" wherever appearing.

Subsec. (b)(3). Pub. L. 99-159, § 111(b)(9)(B), substituted "Engineering" for "Technology".

§ 1886. Data collection and analysis

The National Science Foundation is authorized to design, establish, and maintain a data collection and analysis capability in the Foundation for the purpose of identifying and assessing the research facilities needs of universities. The needs of universities, by major field of science and engineering, for construction and modernization of research laboratories, including fixed equipment and major research equipment, shall be documented. University expenditures for the construction and modernization of research facilities, the sources of funds, and other appropriate data shall be collected and analyzed. The Foundation, in conjunction with other appropriate Federal agencies, shall conduct the necessary surveys every 2 years and report the results to the Congress. The first report shall be submitted to the Congress by September 1, 1986.

(Pub. L. 99-159, title I, § 108, Nov. 22, 1985, 99 Stat. 888.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act for Fiscal Year 1986, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1887. Indemnification of grantees, contractors, and subcontractors under ocean drilling program; approvals and certifications by Director

The Foundation is on and after November 25, 1985, authorized to indemnify grantees, contractors, and subcontractors associated with the ocean drilling program under the provisions of section 2354 of title 10, with all approvals and certifications required thereby made by the Director of the National Science Foundation.

(Pub. L. 99-160, title II, § 201, Nov. 25, 1985, 99 Stat. 922.)

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

Pub. L. 98-371, title II, § 201, July 18, 1984, 98 Stat. 1228.

CHAPTER 19B—WATER RESOURCES PLANNING

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

Sec.	
1962d-19.	Cooperation of Secretary of the Interior with State and local regulatory and law enforcement officials in enforcement of laws or ordinances in connection with Federal resource protection, etc., within Federal water resource development project; funding.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1962d-4 of this title; title 16 section 1275; title 22 section 2361; title 33 sections 1252, 1289; title 43 section 1511.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 1962d-18. Study of depletion of natural resources of regions of Colorado, Kansas, New Mexico, Oklahoma, Texas, and Nebraska utilizing Ogallala aquifer; plans; reports to Congress; authorization of appropriation

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d-19. Cooperation of Secretary of the Interior with State and local regulatory and law enforcement officials in enforcement of laws or ordinances in connection with Federal resource protection, etc., within Federal water resource development project; funding

The Secretary of the Interior, in connection with Federal resource protection and the Federal administration of the use and occupancy of lands and waters within a water resource development project under his jurisdiction, is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or political subdivision. Such cooperation may include the reimbursement of a State or its political subdivision for expenditures incurred in connection with such resource protection and administration. For purposes of complying with section 651 of title 2, the authorization provided under this section is subject to the availability of appropriations.

(Pub. L. 98-552, § 3, Oct. 30, 1984, 98 Stat. 2823.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

CHAPTER 20—ELECTIVE FRANCHISE

SUBCHAPTER I-F—VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED

Sec.	
1973ee.	Congressional declaration of purpose.
1973ee-1.	Selection of polling facilities.
	(a) Accessibility to all polling places as responsibility of each political subdivision.
	(b) Exception.
	(c) Report to Federal Election Commission.
1973ee-2.	Selection of registration facilities.
1973ee-3.	Registration and voting aids.
	(a) Printed instructions; telecommunications devices for the deaf.
	(b) Medical certification.
	(c) Notice of availability of aids.
1973ee-4.	Enforcement.
	(a) Action for declaratory or injunctive relief.
	(b) Prerequisite notice of noncompliance.
	(c) Attorney fees.
1973ee-5.	Relationship to Voting Rights Act of 1965.
1973ee-6.	Definitions.

SUBCHAPTER I—GENERALLY

§ 1971. Voting rights

SHORT TITLE

Pub. L. 98-435, § 1, Sept. 28, 1984, 98 Stat. 1678, provided that: "This Act [enacting subchapter I-F of this chapter] may be cited as the 'Voting Accessibility for the Elderly and Handicapped Act'."

Section 161 of Pub. L. 85-315 provided that: "This Act [enacting former chapter 20A of this title and section 1995 of this title and section 295-1 of former Title 5, Executive Departments and Government Officers and Employees, amending this section and sections 1343 and 1861 of Title 28, Judiciary and Judicial Procedure, and repealing section 1993 of this title] may be cited as the 'Civil Rights Act of 1957'."

VOTER REGISTRATION DRIVES

Pub. L. 98-473, title I, § 101(j), Oct. 12, 1984, 98 Stat. 1963, provided that: "It is the sense of the Congress that—

"(1) voter registration drives should be encouraged by governmental entities at all levels; and

"(2) voter registration drives conducted by State governments on a nonpartisan basis do not violate the provisions of the Intergovernmental Personnel Act (42 U.S.C. 4728, 4763)."

SUBCHAPTER I-A—ENFORCEMENT OF VOTING RIGHTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1973b, 1973aa-4, 1973ee-5 of this title; title 28 section 1869.

§ 1973b. Suspension of the use of tests or devices in determining eligibility to vote

(a) Action by State or political subdivision for declaratory judgment of no denial or abridgement; three-judge district court; appeal to Supreme Court; retention of jurisdiction by three-judge court

(1) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were

made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court determines that during the ten years preceding the filing of the action, and during the pendency of such action—

(A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section;

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

(C) no Federal examiners under subchapters I-A to I-C of this chapter have been assigned to such State or political subdivision;

(D) such State or political subdivision and all governmental units within its territory have complied with section 1973c of this title, including compliance with the requirement that no change covered by section 1973c of this title has been enforced without preclearance under section 1973c of this title, and have repealed all changes covered by section 1973c of this title to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 1973c of this title, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 1973c of this title, and no such submissions or declaratory judgment actions are pending; and

(F) such State or political subdivision and all governmental units within its territory—

(i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;

(ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under subchapters I-A to I-C of this chapter; and

(iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. Any aggrieved party may as of right intervene at any stage in such action.

(5) An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for ten years after judgment

and shall reopen the action upon motion of the Attorney General or any aggrieved person alleging that conduct has occurred which, had that conduct occurred during the ten-year periods referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection. The court, upon such reopening, shall vacate the declaratory judgment issued under this section if, after the issuance of such declaratory judgment, a final judgment against the State or subdivision with respect to which such declaratory judgment was issued, or against any governmental unit within that State or subdivision, determines that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision which sought a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision, or if, after the issuance of such declaratory judgment, a consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds.

(6) If, after two years from the date of the filing of a declaratory judgment under this subsection, no date has been set for a hearing in such action, and that delay has not been the result of an avoidable delay on the part of counsel for any party, the chief judge of the United States District Court for the District of Columbia may request the Judicial Council for the Circuit of the District of Columbia to provide the necessary judicial resources to expedite any action filed under this section. If such resources are unavailable within the circuit, the chief judge shall file a certificate of necessity in accordance with section 292(d) of title 28.

(7) The Congress shall reconsider the provisions of this section at the end of the fifteen-year period following the effective date of the amendments made by the Voting Rights Act Amendments of 1982.

(8) The provisions of this section shall expire at the end of the twenty-five-year period following the effective date of the amendments made by the Voting Rights Act Amendments of 1982.

(9) Nothing in this section shall prohibit the Attorney General from consenting to an entry of judgment if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of subsection (a)(1) of this section. Any aggrieved party may as of right intervene at any stage in such action.

[*See main edition for text of* (*b*) *to* (*e*)]

(Pub. L. 89-110, title I, § 4, Aug. 6, 1965, 79 Stat. 438, redesignated and amended Pub. L. 91-285, §§ 2-4, June 22, 1970, 84 Stat. 314, 315; Pub. L. 94-73, title I, § 101, title II, §§ 201-203, 206, Aug. 6, 1975, 89 Stat. 400-402; Pub. L. 97-205, § 2(a)-(c), June 29, 1982, 96 Stat. 131-133.)

REFERENCES IN TEXT

The Voting Rights Act Amendments of 1982, referred to in subsec. (a)(7) and (8), is Pub. L. 97-205, June 29, 1982, 96 Stat. 131. The amendments made by that Act are governed by one of three effective dates as follows:

(1) The substitution, in subsec. (a) of this section, of "nineteen years" for "seventeen years", the insertion, in subsec. (f)(4) of this section, of provisions relating to Alaskan Natives and American Indians if the predominate language is historically unwritten, and the amendment of sections 1973 and 1973aa-1a of this title are effective June 29, 1982.

(2) The enactment of section 1973aa-6 of this title is effective Jan. 1, 1984.

(3) The complete revision of subsec. (a) of this section by section 2(b) of Pub. L. 97-205 is effective on and after Aug. 5, 1984.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97-205, § 2(a), (b), substituted "nineteen years" for "seventeen years" in three places, effective June 29, 1982, and, effective on and after Aug. 5, 1985, completely revised subsec. (a). Prior to such revision, subsec. (a) consisted of 4 undesignated paragraphs reading as follows:

"To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of seventeen years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after August 6, 1965, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred any where in the territory of such plaintiff. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of tests or devices have occurred anywhere in the territory of such plaintiff.

"An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section.

"If the Attorney General determines that he has no reason to believe that any such test or device has been used during the seventeen years preceding the filing of an action under the first sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

"If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, he shall consent to the entry of such judgment."

EFFECTIVE DATE OF 1982 AMENDMENT

Section 2(b) of Pub. L. 97-205 provided in part that the amendment of subsec. (a) of this section made by section 2(b) of Pub. L. 97-205 is effective on and after Aug. 5, 1984.

SUBCHAPTER I-B—SUPPLEMENTAL PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1973b, 1973d, 1973e, 1973f, 1973g, 1973i, 1973j, 1973*l*, 1973n, 1973*o*, 1973p, 1973ee-5 of this title; title 28 section 1869.

§ 1973aa-6. Voting assistance for blind, disabled or illiterate persons

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1973ee-3 of this title.

SUBCHAPTER I-C—EIGHTEEN-YEAR-OLD VOTING AGE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1973b, 1973d, 1973e, 1973f, 1973g, 1973i, 1973j, 1973*l*, 1973n, 1973*o*, 1973p, 1973aa-4, 1973ee-5 of this title; title 28 section 1869.

SUBCHAPTER I-E—VOTING RIGHTS OF OVERSEAS CITIZENS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1973cc-14 of this title; title 22 section 4086; title 39 sections 2401, 3627.

§ 1973dd-1. Qualifications for registration and vote by absentee ballot

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1973dd-2, 1973dd-2a, 1973dd-2b, 1973dd-3 of this title; title 22 section 4086.

SUBCHAPTER I-F—VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED

§ 1973ee. Congressional declaration of purpose

It is the intention of Congress in enacting this subchapter to promote the fundamental right to vote by improving access for handicapped and elderly individuals to registration facilities and polling places for Federal elections.

(Pub. L. 98-435, § 2, Sept. 28, 1984, 98 Stat. 1678.)

EFFECTIVE DATE

Section 9 of Pub. L. 98-435 provided that: "This Act [enacting this subchapter] shall apply with respect to elections taking place after December 31, 1985."

SHORT TITLE

Section 1 of Pub. L. 98-435 provided that: "This Act [enacting this subchapter] may be cited as the 'Voting Accessibility for the Elderly and Handicapped Act'."

§ 1973ee-1. Selection of polling facilities

(a) Accessibility to all polling places as responsibility of each political subdivision

Within each State, except as provided in subsection (b) of this section, each political subdivision responsible for conducting elections shall assure that all polling places for Federal elections are accessible to handicapped and elderly voters.

(b) Exception

Subsection (a) of this section shall not apply to a polling place—

(1) in the case of an emergency, as determined by the chief election officer of the State; or

(2) if the chief election officer of the State—

(A) determines that all potential polling places have been surveyed and no such accessible place is available, nor is the political subdivision able to make one temporarily accessible, in the area involved; and

(B) assures that any handicapped or elderly voter assigned to an inaccessible polling place, upon advance request of such voter (pursuant to procedures established by the chief election officer of the State)—

(i) will be assigned to an accessible polling place, or

(ii) will be provided with an alternative means for casting a ballot on the day of the election.

(c) Report to Federal Election Commission

(1) Not later than December 31 of each even-numbered year, the chief election officer of each State shall report to the Federal Election Commission, in a manner to be determined by the Commission, the number of accessible and inaccessible polling places in such State on the date of the preceding general Federal election, and the reasons for any instance of inaccessibility.

(2) Not later than April 30 of each odd-numbered year, the Federal Election Commission

shall compile the information reported under paragraph (1) and shall transmit that information to the Congress.

(3) The provisions of this subsection shall only be effective for a period of 10 years beginning on September 28, 1984.

(Pub. L. 98-435, § 3, Sept. 28, 1984, 98 Stat. 1678.)

§ 1973ee-2. Selection of registration facilities

(a) Each State or political subdivision responsible for registration for Federal elections shall provide a reasonable number of accessible permanent registration facilities.

(b) Subsection (a) of this section does not apply to any State that has in effect a system that provides an opportunity for each potential voter to register by mail or at the residence of such voter.

(Pub. L. 98-435, § 4, Sept. 28, 1984, 98 Stat. 1679.)

§ 1973ee-3. Registration and voting aids

(a) Printed instructions; telecommunications devices for the deaf

Each State shall make available registration and voting aids for Federal elections for handicapped and elderly individuals, including—

(1) instructions, printed in large type, conspicuously displayed at each permanent registration facility and each polling place; and

(2) information by telecommunications devices for the deaf.

(b) Medical certification

No notarization or medical certification shall be required of a handicapped voter with respect to an absentee ballot or an application for such ballot, except that medical certification may be required when the certification establishes eligibility, under State law—

(1) to automatically receive an application or a ballot on a continuing basis; or

(2) to apply for an absentee ballot after the deadline has passed.

(c) Notice of availability of aids

The chief election officer of each State shall provide public notice, calculated to reach elderly and handicapped voters, of the availability of aids under this section, assistance under section 1973aa-6 of this title, and the procedures for voting by absentee ballot, not later than general public notice of registration and voting is provided.

(Pub. L. 98-435, § 5, Sept. 28, 1984, 98 Stat. 1679.)

§ 1973ee-4. Enforcement

(a) Action for declaratory or injunctive relief

If a State or political subdivision does not comply with this subchapter, the United States Attorney General or a person who is personally aggrieved by the noncompliance may bring an action for declaratory or injunctive relief in the appropriate district court.

(b) Prerequisite notice of noncompliance

An action may be brought under this section only if the plaintiff notifies the chief election officer of the State of the noncompliance and a period of 45 days has elapsed since the date of notification.

(c) Attorney fees

Notwithstanding any other provision of law, no award of attorney fees may be made with respect to an action under this section, except in any action brought to enforce the original judgment of the court.

(Pub. L. 98-435, § 6, Sept. 28, 1984, 98 Stat. 1679.)

§ 1973ee-5. Relationship to Voting Rights Act of 1965

This subchapter shall not be construed to impair any right guaranteed by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(Pub. L. 98-435, § 7, Sept. 28, 1984, 98 Stat. 1679.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in text, is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I-A (§ 1973 et seq.), I-B (§ 1973aa et seq.), and I-C (§ 1973bb et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1973 of this title and Tables.

§ 1973ee-6. Definitions

As used in this subchapter, the term—

(1) "accessible" means accessible to handicapped and elderly individuals for the purpose of voting or registration, as determined under guidelines established by the chief election officer of the State involved;

(2) "elderly" means 65 years of age or older;

(3) "Federal election" means a general, special, primary, or runoff election for the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) "handicapped" means having a temporary or permanent physical disability; and

(5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possesssion of the United States.

(Pub. L. 98-435, § 8, Sept. 28, 1984, 98 Stat. 1679.)

CHAPTER 20A—CIVIL RIGHTS COMMISSION

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- (i) Rules and regulations; transfer of files, records and balances of appropriations.

1975e. Authorization of appropriations.
1975f. Termination.

CODIFICATION

A prior chapter 20A, which provided for the establishment of a Commission on Civil Rights in the executive branch, was comprised of part I (§§ 101-106) of Pub. L. 85-315, Sept. 9, 1957, 71 Stat. 634, and was omitted from the Code in view of the termination of the Commission 60 days after the submission of the Commission's final report which was due not later than Sept. 30, 1983.

§ 1975. Commission on Civil Rights

(a) Establishment

There is established a Commission on Civil Rights (hereafter in this chapter referred to as the "Commission").

(b) Composition; membership; appointment; terms of office

(1) The Commission shall be composed of eight members. Not more than four of the members shall at any one time be of the same political party. Members of the Commission shall be appointed as follows:

(A) four members of the Commission shall be appointed by the President;

(B) two members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the Majority Leader and the Minority Leader, and of the members appointed not more than one shall be appointed from the same political party; and

(C) two members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the Majority Leader and the Minority Leader, and of the members appointed not more than one shall be appointed from the same political party.

(2) The term of office of each member of the Commission shall be six years; except that (A) members first taking office shall serve as designated by the President, subject to the provisions of paragraph (3), for terms of three years, and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed.

(3) The President shall designate terms of members first appointed under paragraph (2) so that two members appointed under clauses (B) and (C) of paragraph (1) and two members appointed under clause (A) of paragraph (1) are designated for terms of three years and two members appointed under clauses (B) and (C) of paragraph (1) and two members appointed under clause (A) of paragraph (1) are designated for terms of six years. No more than two persons of the same political party shall be designated for three year terms.

(c) Chairman and Vice Chairman

The President shall designate a Chairman and a Vice Chairman from among the Commission's members with the concurrence of a majority of the Commission's members. The Vice Chairman shall act in the place and stead of the Chairman in the absence of the Chairman.

(d) Removal of members

The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

(e) Vacancies

Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliation as the original appointment was made.

(f) Quorum

Five members of the Commission shall constitute a quorum.

(Pub. L. 98-183, § 2, Nov. 30, 1983, 97 Stat. 1301.)

PRIOR PROVISIONS

A prior section 1975, Pub. L. 85-315, pt. I, § 101, Sept. 9, 1957, 71 Stat. 634, related to establishment, membership, etc., of Commission on Civil Rights. See Codification note set out preceding this section.

SHORT TITLE

Section 1 of Pub. L. 98-183 provided: "That this Act [enacting this chapter] may be cited as the 'United States Commission on Civil Rights Act of 1983'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1975d of this title.

§ 1975a. Rules of procedure of the Commission hearings

(a) Publication in Federal Register of notice of date, place, and subject; time for publication; announcement of subject

At least thirty days prior to the commencement of any hearing, the Commission shall cause to be published in the Federal Register notice of the date on which such hearing is to commence, the place at which it is to be held and the subject of the hearing. The Chairman, or one designated by him to act as Chairman at a hearing of the Commission, shall announce in an opening statement the subject of the hearing.

(b) Copies to witnesses

A copy of the Commission's rules shall be made available to any witness before the Commission, and a witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the Commission's rules at the time of service of the subpena.

(c) Rights of witnesses

Any person compelled to appear in person before the Commission shall be accorded the right to be accompanied and advised by counsel, who shall have the right to subject his client to reasonable examination, and to make objections on the record and to argue briefly the basis for such objections. The Commission shall proceed with reasonable dispatch to conclude any hearing in which it is engaged. Due regard shall be had for the convenience and necessity of witnesses.

(d) Conduct during hearings

The Chairman or Acting Chairman may punish breaches of order and decorum by censure and exclusion from the hearings.

(e) Defamatory, degrading, or incriminating evidence; use of evidence; refutation and answer; report

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony. In the event the Commission determines to release or use such evidence or testimony in such manner as to reveal publicly the identity of the person defamed, degraded, or incriminated, such evidence or testimony, prior to such public release or use, shall be given at a public session, and the Commission shall afford such person an opportunity to appear as a voluntary witness or to file a sworn statement in his behalf and to submit brief and pertinent sworn statements of others. The Commission shall receive and dispose of requests from such person to subpena additional witnesses. If a report of the Commission tends to defame, degrade or incriminate any person, then the report shall be delivered to such person thirty days before the report shall be made public in order that such person may make a timely answer to the report. Each person so defamed, degraded or incriminated in such report may file with the Commission a verified answer to the report not later than twenty days after service of the report upon him. Upon a showing of good cause, the Commission may grant the person an extension of time within which to file such answer. Each answer shall plainly and concisely state the facts and law constituting the person's reply or defense to the charges or allegations contained in the report. Such answer shall be published as an appendix to the report. The right to answer within these time limitations and to have the answer annexed to the Commission report shall be limited only by the Commission's power to except from the answer such matter as it determines has been inserted scandalously, prejudiciously or unnecessarily.

(f) Additional witnesses

Except as provided in this section and section 1975d(f) of this title, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

(g) Evidence or testimony in executive session

No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) Statements by witnesses for inclusion in record

In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission shall determine the pertinency of testimony and evidence adduced at its hearings.

(i) Copies of data or evidence; transcripts

Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that a witness in a hearing held in executive session may for good cause be limited to inspection of the official transcript of his testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof. An accurate transcript shall be made of the testimony of all witnesses at all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof.

(j) Witness fees and mileage

A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) Geographical limitations on subpenas

The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.

(*l*) Matters to be published in Federal Register; failure to publish

The Commission shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organizations including the established places at which, and methods whereby, the public may secure information or make requests; (2) statements of the general course and method by which its functions are channeled and determined; and (3) rules adopted as authorized by law. No person shall in any manner be subject to or required to resort to rules, organization, or procedure not so published.

(m) Applicability of administrative procedure and freedom of information requirements

The provisions of subchapter II of chapter 5 of title 5, relating to administrative procedure and freedom of information, shall, to the extent not inconsistent with this section, apply to the Commission established under this chapter.

(Pub. L. 98-183, § 3, Nov. 30, 1983, 97 Stat. 1302.)

PRIOR PROVISIONS

A prior section 1975a, Pub. L. 85-315, pt. I, § 102, Sept. 9, 1957, 71 Stat. 634; Pub. L. 88-352, title V, § 501, July 2, 1964, 78 Stat. 249; Pub. L. 91-521, § 4, Nov. 25, 1970, 84 Stat. 1357; Pub. L. 92-496, § 1, Oct. 14, 1972, 86 Stat. 813, established rules of procedure for the Commission. See Codification note set out preceding section 1975 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1975d of this title.

§ 1975b. Compensation of members of the Commission

(a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5, prorated on a daily basis for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5703 of title 5.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with subchapter I of chapter 57 of title 5.

(Pub. L. 98-183, § 4, Nov. 30, 1983, 97 Stat. 1304.)

PRIOR PROVISIONS

A prior section 1975b, Pub. L. 85-315, pt. I, § 103, Sept. 9, 1957, 71 Stat. 635; Pub. L. 88-352, title V, §§ 502, 503, July 2, 1964, 78 Stat. 250, 251; Pub. L. 91-521, § 1, Nov. 25, 1970, 84 Stat. 1356; Pub. L. 92-496, § 2, Oct. 14, 1972, 86 Stat. 813; Pub. L. 95-444, § 2, Oct. 10, 1978, 92 Stat. 1067, related to compensation of members of the Commission. See Codification note set out preceding section 1975 of this title.

§ 1975c. Duties of the Commission

(a) Investigatory, etc., duties

The Commission shall—

(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, sex, age, handicap, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

(2) study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice;

(3) appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or the administration of justice;

(4) serve as national clearinghouse for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, and transportation, or in the administration of justice; and

(5) investigate allegations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of the Presidential electors, Members of the United States Senate, or the House of Repre-

sentatives, as a result of any patterns or practice of fraud or discrimination in the conduct of such election.

(b) Limitations on investigatory duties

Nothing in this chapter or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club or any religious organization.

(c) Reporting requirements

The Commission shall submit reports to the Congress and the President at such times as the Commission, the Congress or the President shall deem desirable.

(d) "Handicap" defined

As used in this section, the term "handicap" means, with respect to an individual, a circumstance that would make that individual a handicapped individual as defined in the second sentence of section 706(6)[1] of title 29.

(e) Information respecting abortion

Nothing in this chapter or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to appraise, or to study and collect information about, laws and policies of the Federal Government, or any other governmental authority in the United States, with respect to abortion.

(f) Equal protection of the laws for Americans who are members of eastern- and southern-European ethnic groups; study and report to Congress

The Commission shall appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution involving Americans who are members of eastern- and southern-European ethnic groups and shall report its findings to the Congress. Such reports shall include an analysis of the adverse consequences of affirmative action programs encouraged by the Federal Government upon the equal opportunity rights of these Americans.

(Pub. L. 98-183, § 5, Nov. 30, 1983, 97 Stat. 1304.)

References in Text

Section 706(6) of title 29, referred to in subsec. (d), was redesignated section 706(7) and amended by Pub. L. 95-602, title I, § 122(6), (8), Nov. 6, 1978, 92 Stat. 2984, 2985. Provisions formerly contained in the second sentence of section 706(6) are covered by the first sentence of section 706(7)(B).

Prior Provisions

A prior section 1975c, Pub. L. 85-315, pt. I, § 104, Sept. 9, 1957, 71 Stat. 635; Pub. L. 86-383, title IV, § 401, Sept. 28, 1959, 73 Stat. 724; Pub. L. 87-264, title IV, § 401, Sept. 21, 1961, 75 Stat. 559; Pub. L. 88-152, § 2, Oct. 17, 1963, 77 Stat. 271; Pub. L. 88-352, title V, § 504, July 2, 1964, 78 Stat. 251; Pub. L. 90-198, § 1, Dec. 14, 1967, 81 Stat. 582; Pub. L. 92-496, §§ 3, 4, Oct. 14, 1972, 86 Stat. 813, 814; Pub. L. 95-444, § 3, Oct. 10, 1978, 92 Stat. 1067; Pub. L. 96-81, § 2, Oct. 6, 1979, 93 Stat. 642, related to duties of the Commission. See Codification note set out preceding section 1975 of this title.

§ 1975d. Powers of the Commission

(a) Staff director; appointment, transfer, etc., of employees; rights and benefits

(1) There shall be a full-time staff director for the Commission who shall be appointed by the President with the concurrence of a majority of the Commission.

(2)(A) Effective November 29, 1983, or on the date of enactment of this Act [November 30, 1983], whichever occurs first, all employees (other than the staff director and the members of the Commission) of the Commission on Civil Rights are transferred to the Commission established by section 1975(a) of this title.

(B) Upon application of any individual (other than the staff director or a member of the Commission) who was an employee of the Commission on Civil Rights established by the Civil Rights Act of 1957 on September 30, 1983, the Commission shall appoint such individual to a position the duties and responsibilities of which and the rate of pay for which, are the same as the duties, responsibilities and rate of pay of the position held by such employee on September 30, 1983.

(C)(i) Notwithstanding any other provision of law, employees transferred to the Commission under subparagraph (A) shall retain all rights and benefits to which they were entitled or for which they were eligible immediately prior to their transfer to the Commission.

(ii) Notwithstanding any other provision of law, the Commission shall be bound by those provisions of title 5 to which the Commission on Civil Rights, established by the Civil Rights Act of 1957, was bound.

(3) Within the limitation of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 3109 of title 5, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5.

(b) Services of voluntary or uncompensated personnel

The Commission shall not accept or utilize services of voluntary or uncompensated personnel, and the term "whoever" as used in subsection (g) of section 1975a of this title shall be construed to mean a person whose services are compensated by the United States.

(c) Organization of advisory committees within each State; consultations

The Commission may constitute such advisory committees within States as it deems advisable, but the Commission shall constitute at least one advisory committee within each State composed of citizens of that State. The Commission may consult with governors, attorneys general, and other representatives of State and local governments and private organizations, as it deems advisable.

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[1] See References in Text note below.

(d) Members of Commission and advisory committees exempt from certain criminal provisions

Members of the Commission, and members of advisory committees constituted pursuant to subsection (c) of this section, shall be exempt from the operation of sections 203, 205, 207, 208, and 209 of title 18.

(e) Cooperation of Federal agencies

All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(f) Hearings; subpenas; approval for hearings or appointment of subcommittees to hold hearings

The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this chapter, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 1975a(j) and (k) of this title, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman. The holding of hearings by the Commission, or the appointment of a subcommittee to hold hearings pursuant to this subparagraph, must be approved by a majority of the Commission, or by a majority of the members present at a meeting at which at least a quorum of five members is present.

(g) Contumacy or refusal to obey subpena

In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce pertinent, relevant and nonprivileged evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(h) Administration of oaths or taking statements of witnesses

Without limiting the application of any other provision of this chapter, each member of the Commission shall have the power and authority to administer oaths or take statements of witnesses under affirmation.

(i) Rules and regulations; transfer of files, records and balances of appropriations

(1) The Commission shall have the power to make such rules and regulations as are necessary to carry out the purposes of this chapter.

(2) To the extent not inconsistent with the provisions of this chapter, the Commission established by section 1975(a) of this title shall be bound by all rules issued by the Civil Rights Commission established by the Civil Rights Act of 1957 which were in effect on September 30, 1983, until modified by the Commission in accordance with applicable law.

(3) The Commission shall make arrangements for the transfer of all files, records, and balances of appropriations of the Commission on Civil Rights as established by the Civil Rights Act of 1957 to the Commission established by this chapter.

(Pub. L. 98-183, § 6, Nov. 30, 1983, 97 Stat. 1305.)

References in Text

The Civil Rights Act of 1957, referred to in subsecs. (a)(2)(B), (C)(ii) and (i)(2), (3), is Pub. L. 85-315, Sept. 9, 1957, 71 Stat. 634, as amended, which was formerly classified principally to this chapter. For further details, see Codification note set out preceding section 1975 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

The civil service laws, referred to in subsec. (a)(3), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsec. (a)(3), are classified generally to chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

This chapter, referred to in subsec. (f), was in the original "this resolution" which, as the probable intent of Congress, was translated as reading "this Act".

Prior Provisions

A prior section 1975d, Pub. L. 85-315, pt. I, § 105, Sept. 9, 1957, 71 Stat. 636; Pub. L. 86-449, title IV, § 401, May 6, 1960, 74 Stat. 89; Pub. L. 88-352, title V, §§ 505-507, July 2, 1964, 78 Stat. 251, 252; Pub. L. 91-521, § 2, Nov. 25, 1970, 84 Stat. 1356; Pub. L. 92-496, § 5, Oct. 14, 1972, 86 Stat. 814; Pub. L. 95-444, §§ 4-6, Oct. 10, 1978, 92 Stat. 1067, 1068, related to the powers of the Commission. See Codification note set out preceding section 1975 of this title.

Termination of Advisory Committees

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in sections 1975a, 6106 of this title.

§ 1975e. Authorization of appropriations

There are authorized to be appropriated $12,180,000 for the fiscal year 1984, and such sums as may be necessary for each succeeding fiscal year ending prior to October 1, 1989.

(Pub. L. 98-183, § 7, Nov. 30, 1983, 97 Stat. 1307.)

Prior Provisions

A prior section 1975e, Pub. L. 85-315, pt. I, § 106, Sept. 9, 1957, 71 Stat. 636; Pub. L. 90-198, § 2, Dec. 14, 1967, 81 Stat. 582; Pub. L. 91-521, § 3, Nov. 25, 1970, 84 Stat. 1356; Pub. L. 92-64, Aug. 4, 1971, 85 Stat. 166; Pub. L. 92-496, § 6, Oct. 14, 1972, 86 Stat. 814; Pub. L. 94-292, § 2, May 27, 1976, 90 Stat. 524; Pub. L. 95-132, § 2, Oct. 13, 1977, 91 Stat. 1157; Pub. L. 95-444, § 7, Oct. 10, 1978, 92 Stat. 1068; Pub. L. 96-81, § 3, Oct. 6, 1979, 93 Stat. 642; Pub. L. 96-447, § 2, Oct. 13, 1980, 94 Stat. 1894, related to authorization of appropriations for this chapter. See Codification note set out preceding section 1975 of this title.

§ 1975f. Termination

The provisions of this chapter shall terminate six years after November 30, 1983.

(Pub. L. 98-183, § 8, Nov. 30, 1983, 97 Stat. 1307.)

§§ 1975g to 1980. Reserved

CHAPTER 21—CIVIL RIGHTS

SUBCHAPTER I—GENERALLY

§ 1996. Protection and preservation of traditional religions of Native Americans

Section Referred to in Other Sections

This section is referred to in title 16 sections 470ii, 543f.

SUBCHAPTER II—PUBLIC ACCOMMODATIONS

§ 2000a. Prohibition against discrimination or segregation in places of public accommodation

Act Referred to in Other Sections

The Civil Rights Act of 1964 [subchapters II to IX of this chapter] is referred to in sections 1437*o*, 1490m, 5304, 5306, 5307, 6727 of this title; title 20 sections 1221, 1221-3; title 31 section 6716.

SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 300w-7, 300x-7, 300y-9, 708, 1988, 2000d-6, 2000h, 5057, 5309, 5891, 6709, 6870, 8625, 9906, 10406 of this title; title 15 sections 719*o*, 775, 3151; title 20 sections 1231e, 1232i, 1717, 3231, 4052; title 23 sections 117, 324; title 29 sections 794a, 1577; title 40 section 476; title 43 section 1863; title 49 section 306; title 49 App. sections 1604, 1615, 2208, 2219.

§ 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Section Referred to in Other Sections

This section is referred to in sections 2000d-2, 2000d-5, 5057, 9821, 9849, 10406 of this title; title 39 section 410.

§ 2000d-2. Judicial review; administrative procedure provisions

Section Referred to in Other Sections

This section is referred to in sections 2930c, 2971c, 2985g, 5057, 9821, 9849, 10406 of this title; title 39 section 410.

CHAPTER 22—INDIAN HOSPITALS AND HEALTH FACILITIES

SUBCHAPTER I—MAINTENANCE AND OPERATION

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 300aa-12, 2005 of this title; title 16 section 1164; title 25 sections 450g, 903a; title 50 App. section 456.

SUBCHAPTER II—CONSTRUCTION OF HEALTH FACILITIES AND COMMUNITY HOSPITALS

Subchapter Referred to in Other Sections

This subchapter is referred to in section 300aa-12 of this title; title 25 section 861c.

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SUBCHAPTER XIII—GENERAL AUTHORITY OF COMMISSION

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SUBCHAPTER I—GENERAL PROVISIONS

§ 2014. Definitions

Section Referred to in Other Sections

This section is referred to in sections 2021, 2021b, 2022, 2077, 2113, 2114, 2139, 2153b, 2201, 2291, 10101 of this title; title 18 section 1030.

§ 2021. Cooperation with States

Section Referred to in Other Sections

This section is referred to in sections 263e, 2021b, 2021f, 2022, 7911, 7918, 7925, 7941, 10171 of this title; title 29 section 653.

§ 2021b. Definitions

For purposes of sections 2021b to 2021j of this title:

(1) Agreement State

The term "agreement State" means a State that—

(A) has entered into an agreement with the Nuclear Regulatory Commission under section 2021 of this title; and

(B) has authority to regulate the disposal of low-level radioactive waste under such agreement.

(2) Allocation

The term "allocation" means the assignment of a specific amount of low-level radioactive waste disposal capacity to a commercial nuclear power reactor for which access is required to be provided by sited States subject to the conditions specified under sections 2021b to 2021j of this title.

(3) Commercial nuclear power reactor

The term "commercial nuclear power reactor" means any unit of a civilian light-water moderated utilization facility required to be licensed under section 2133 or 2134(b) of this title.

(4) Compact

The term "compact" means a compact entered into by two or more States pursuant to sections 2021b to 2021j of this title.

(5) Compact commission

The term "compact commission" means the regional commission, committee, or board established in a compact to administer such compact.

(6) Compact region

The term "compact region" means the area consisting of all States that are members of a compact.

(7) Disposal

The term "disposal" means the permanent isolation of low-level radioactive waste pursuant to the requirements established by the Nuclear Regulatory Commission under applicable laws, or by an agreement State if such isolation occurs in such agreement State.

(8) Generate

The term "generate", when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(9) Low-level radioactive waste

The term "low-level radioactive waste" means radioactive material that—

(A) is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in section 2014(e)(2) of this title); and

(B) the Nuclear Regulatory Commission, consistent with existing law and in accordance with paragraph (A), classifies as low-level radioactive waste.

(10) Non-sited compact region

The term "non-sited compact region" means any compact region that is not a sited compact region.

(11) Regional disposal facility

The term "regional disposal facility" means a non-Federal low-level radioactive waste disposal facility in operation on January 1, 1985, or subsequently established and operated under a compact.

(12) Secretary

The term "Secretary" means the Secretary of Energy.

(13) Sited compact region

The term "sited compact region" means a compact region in which there is located one of the regional disposal facilities at Barnwell, in the State of South Carolina; Richland, in the State of Washington; or Beatty, in the State of Nevada.

(14) State

The term "State" means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 96-573, § 2, as added Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1842.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

PRIOR PROVISIONS

A prior section 2021b, Pub. L. 96-573, § 2, Dec. 22, 1980, 94 Stat. 3347, which related to definitions respecting low-level radioactive waste policy as used in former sections 2021b to 2021d of this title, was repealed by Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1842.

SHORT TITLE OF 1986 AMENDMENT

Section 101 of title I of Pub. L. 99-240 provided that: "This Title [enacting sections 2021b to 2021j of this title, repealing former sections 2021b to 2021d of this title, and enacting and repealing a provision set out as a note under this section] may be cited as the 'Low-Level Radioactive Waste Policy Amendments Act of 1985'."

Section 1 of Pub. L. 96-573, as added by Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1842, provided that: "This Act [enacting sections 2021b to 2021j of this title] may be cited as the 'Low-Level Radioactive Waste Policy Act'."

A prior section 1 of Pub. L. 96-573 which provided that Pub. L. 96-573 [enacting former sections 2021b to 2021d of this title] could be cited as the "Low-Level Radioactive Waste Policy Act" was repealed by Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1842.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021d, 2021e, 2021f, 2021g of this title.

§ 2021c. Responsibilities for disposal of low-level radioactive waste

(a)(1) Each State shall be responsible for providing, either by itself or in cooperation with other States, for the disposal of—

(A) low-level radioactive waste generated within the State (other than by the Federal Government) that consists of or contains class A, B, or C radioactive waste as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983;

(B) low-level radioactive waste described in subparagraph (A) that is generated by the Federal Government except such waste that is—

(i) owned or generated by the Department of Energy;

(ii) owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy; or

(iii) owned or generated as a result of any research, development, testing, or production of any atomic weapon; and

(C) low-level radioactive waste described in subparagraphs (A) and (B) that is generated outside of the State and accepted for disposal in accordance with sections [1] 2021e or 2021f of this title.

(2) No regional disposal facility may be required to accept for disposal any material—

(A) that is not low-level radioactive waste as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983, or

(B) identified under the Formerly Utilized Sites Remedial Action Program.

Nothing in this paragraph shall be deemed to prohibit a State, subject to the provisions of its compact, or a compact region from accepting for disposal any material identified in subparagraph (A) or (B).

(b)(1) The Federal Government shall be responsible for the disposal of—

(A) low-level radioactive waste owned or generated by the Department of Energy;

(B) low-level radioactive waste owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy;

(C) low-level radioactive waste owned or generated by the Federal Government as a result of any research, development, testing, or production of any atomic weapon; and

(D) any other low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983.

(2) All radioactive waste designated a Federal responsibility pursuant to subparagraph (b)(1)(D) that results from activities licensed by the Nuclear Regulatory Commission under this chapter, shall be disposed of in a facility licensed by the Nuclear Regulatory Commission that the Commission determines is adequate to protect the public health and safety.

(3) Not later than 12 months after January 15, 1986, the Secretary shall submit to the Congress a comprehensive report setting forth the recommendations of the Secretary for ensuring the safe disposal of all radioactive waste designated a Federal responsibility pursuant to subparagraph (b)(1)(D). Such report shall include—

(A) an identification of the radioactive waste involved, including the source of such waste, and the volume, concentration, and other relevant characteristics of such waste;

(B) an identification of the Federal and non-Federal options for disposal of such radioactive waste;

(C) a description of the actions proposed to ensure the safe disposal of such radioactive waste;

(D) a description of the projected costs of undertaking such actions;

(E) an identification of the options for ensuring that the beneficiaries of the activities resulting in the generation of such radioactive wastes bear all reasonable costs of disposing of such wastes; and

(F) an identification of any statutory authority required for disposal of such waste.

(4) The Secretary may not dispose of any radioactive waste designated a Federal responsibility pursuant to paragraph (b)(1)(D) that be-

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[1] So in original. Probably should be "section".

comes a Federal responsibility for the first time pursuant to such paragraph until ninety days after the report prepared pursuant to paragraph (3) has been submitted to the Congress.

(Pub. L. 96-573, § 3, as added Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1843.)

REFERENCES IN TEXT

January 15, 1986, referred to in subsec. (b)(3), was in the original "the date of enactment of this Act" and was translated as meaning the date of enactment of Pub. L. 99-240 as the probable intent of Congress.

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

PRIOR PROVISIONS

A prior section 2021c, Pub. L. 96-573, § 3, Dec. 22, 1980, 94 Stat. 3347, which related to the applicability of low-level radioactive waste compacts, was repealed by Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1842. See section 2021d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021b, 2021d, 2021e, 2021f, 2021g of this title.

§ 2021d. Regional compacts for disposal of low-level radioactive waste

(a) In general

(1) Federal policy

It is the policy of the Federal Government that the responsibilities of the States under section 2021c of this title for the disposal of low-level radioactive waste can be most safely and effectively managed on a regional basis.

(2) Interstate compacts

To carry out the policy set forth in paragraph (1), the States may enter into such compacts as may be necessary to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste.

(b) Applicability to Federal activities

(1) In general

(A) Activities of the Secretary

Except as provided in subparagraph (B), no compact or action taken under a compact shall be applicable to the transportation, management, or disposal of any low-level radioactive waste designated in section 2021c(a)(1)(B)(i)-(iii) of this title.

(B) Federal low-level radioactive waste disposed of at non-Federal facilities

Low-level radioactive waste owned or generated by the Federal Government that is disposed of at a regional disposal facility or non-Federal disposal facility within a State that is not a member of a compact shall be subject to the same conditions, regulations, requirements, fees, taxes, and surcharges imposed by the compact commission, and by the State in which such facility is located, in the same manner and to the same extent as any low-level radioactive waste not generated by the Federal Government.

(2) Federal low-level radioactive waste disposal facilities

Any low-level radioactive waste disposal facility established or operated exclusively for the disposal of low-level radioactive waste owned or generated by the Federal Government shall not be subject to any compact or any action taken under a compact.

(3) Effect of compacts on Federal law

Nothing contained in sections 2021b to 2021j of this title or any compact may be construed to confer any new authority on any compact commission or State—

(A) to regulate the packaging, generation, treatment, storage, disposal, or transportation of low-level radioactive waste in a manner incompatible with the regulations of the Nuclear Regulatory Commission or inconsistent with the regulations of the Department of Transportation;

(B) to regulate health, safety, or environmental hazards from source material, byproduct material, or special nuclear material;

(C) to inspect the facilities of licensees of the Nuclear Regulatory Commission;

(D) to inspect security areas or operations at the site of the generation of any low-level radioactive waste by the Federal Government, or to inspect classified information related to such areas or operations; or

(E) to require indemnification pursuant to the provisions of chapter 171 of title 28 (commonly referred to as the Federal Tort Claims Act), or section 2210 of this title, whichever is applicable.

(4) Federal authority

Except as expressly provided in sections 2021b to 2021j of this title, nothing contained in sections 2021b to 2021j of this title or any compact may be construed to limit the applicability of any Federal law or to diminish or otherwise impair the jurisdiction of any Federal agency, or to alter, amend, or otherwise affect any Federal law governing the judicial review of any action taken pursuant to any compact.

(5) State authority preserved

Except as expressly provided in sections 2021b to 2021j of this title, nothing contained in sections 2021b to 2021j of this title expands, diminishes, or otherwise affects State law.

(c) Restricted use of regional disposal facilities

Any authority in a compact to restrict the use of the regional disposal facilities under the compact to the disposal of low-level radioactive waste generated within the compact region shall not take effect before each of the following occurs:

(1) January 1, 1986; and

(2) the Congress by law consents to the compact.

(d) Congressional review

Each compact shall provide that every 5 years after the compact has taken effect the Congress may by law withdraw its consent.

(Pub. L. 96-573, § 4, as added Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1845.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (b)(3)(E), is classified generally to section 1346(b) and chapter 171 (§ 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

PRIOR PROVISIONS

A prior section 2021d, Pub. L. 96-573, § 4, Dec. 22, 1980, 94 Stat. 3348, which related to the policy of the Federal Government concerning low-level radioactive waste disposal, implementation of that policy, and a report to Congress and the States to assist in carrying out the policy, was repealed by Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1842.

OMNIBUS LOW-LEVEL RADIOACTIVE WASTE INTERSTATE COMPACT CONSENT ACT

Pub. L. 99-240, title II, Jan. 15, 1986, 99 Stat. 1859, provided that:

"SEC. 201. SHORT TITLE.

"This Title may be cited as the 'Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act'.

"SUBTITLE A—GENERAL PROVISIONS

"SEC. 211. CONGRESSIONAL FINDING.

"The Congress hereby finds that each of the compacts set forth in subtitle B is in furtherance of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021b-2021j].

"SEC. 212. CONDITIONS OF CONSENT TO COMPACTS.

"The consent of the Congress to each of the compacts set forth in subtitle B—

"(1) shall become effective on the date of the enactment of this Act [Jan. 15, 1986];

"(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act, as amended [42 U.S.C. 2021b-2021j]; and

"(3) is granted only for so long as the regional commission, committee, or board established in the compact complies with all of the provisions of such Act.

"SEC. 213. CONGRESSIONAL REVIEW.

"The Congress may alter, amend, or repeal this Act with respect to any compact set forth in subtitle B after the expiration of the 10-year period following the date of the enactment of this Act [Jan. 15, 1986], and at such intervals thereafter as may be provided in such compact.

"SUBTITLE B—CONGRESSIONAL CONSENT TO COMPACTS

"SEC. 221. NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT.

"The consent of Congress is hereby given to the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming to enter into the Northwest Interstate Compact on Low-level Radioactive Waste Management, and to each and every part and article thereof. Such compact reads substantially as follows:

[Text of compact appears at 99 Stat. 1860.]

"SEC. 222. CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT.

"The consent of Congress is hereby given to the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, and Oklahoma to enter into the Central Interstate Low-Level Radioactive Waste Compact, and to each and every part and article thereof. Such compact reads substantially as follows:

[Text of compact appears at 99 Stat. 1863.]

"SEC. 223. SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT.

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress is hereby given to the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia to enter into the Southeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows:

[Text of compact appears at 99 Stat. 1871.]

"SEC. 224. CENTRAL MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT.

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress hereby is given to the States of Illinois and Kentucky to enter into the Central Midwest Interstate Low-Level Radioactive Waste Compact. Such compact is substantially as follows:

[Text of compact appears at 99 Stat. 1880.]

"SEC. 225. MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT.

"The consent of Congress is hereby given to the States of Iowa, Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin to enter into the Midwest Interstate Compact on Low-level Radioactive Waste Management. Such compact is as follows:

[Text of compact appears at 99 Stat. 1892.]

"SEC. 226. ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT.

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress hereby is given to the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming to enter into the Rocky Mountain Interstate Low-Level Radioactive Waste Compact. Such compact is substantially as follows:

[Text of compact appears at 99 Stat. 1902.]

"SEC. 227. NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT.

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act [42 U.S.C. 2021d(a)(2)], the consent of the Congress is hereby given to the States of Connecticut, New Jersey, Delaware, and Maryland to enter into the Northeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows:

[Text of compact appears at 99 Stat. 1910.]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021b, 2021e, 2021f, 2021g of this title.

§ 2021e. Limited availability of certain regional disposal facilities during transition and licensing periods

(a) Availability of disposal capacity

(1) Pressurized water and boiling water reactors

During the seven-year period beginning January 1, 1986 and ending December 31, 1992, subject to the provisions of subsections (b) through (g) of this section, each State in which there is located a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section shall make disposal capacity available for low-level radioactive waste generated by pressurized water and boiling water commercial nuclear power reactors in accordance with the allocations established in subsection (c) of this section.

(2) Other sources of low-level radioactive waste

During the seven-year period beginning January 1, 1986 and ending December 31, 1992, subject to the provisions of subsections (b) through (g) of this section, each State in which there is located a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section shall make disposal capacity available for low-level radioactive waste generated by any source not referred to in paragraph (1).

(3) Allocation of disposal capacity

(A) During the seven-year period beginning January 1, 1986 and ending December 31, 1992, low-level radioactive waste generated within a sited compact region shall be accorded priority under this section in the allocation of available disposal capacity at a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section and located in the sited compact region in which such waste is generated.

(B) Any State in which a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section is located may, subject to the provisions of its compact, prohibit the disposal at such facility of low-level radioactive waste generated outside of the compact region if the disposal of such waste in any given calendar year, together with all other low-level radioactive waste disposed of at such facility within that same calendar year, would result in that facility disposing of a total annual volume of low-level radioactive waste in excess of 100 per centum of the average annual volume for such facility designated in subsection (b) of this section: *Provided, however,* That in the event that all three States in which regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) of this section act to prohibit the disposal of low-level radioactive waste pursuant to this subparagraph, each such State shall, in accordance with any applicable procedures of its compact, permit, as necessary, the disposal of additional quantities of such waste in increments of 10 per centum of the average annual volume for each such facility designated in subsection (b) of this section.

(C) Nothing in this paragraph shall require any disposal facility or State referred to in paragraphs (1) through (3) of subsection (b) of this section to accept for disposal low-level radioactive waste in excess of the total amounts designated in subsection (b) of this section.

(4) Cessation of operation of low-level radioactive waste disposal facility

No provision of this section shall be construed to obligate any State referred to in paragraphs (1) through (3) of subsection (b) of this section to accept low-level radioactive waste from any source in the event that the regional disposal facility located in such State ceases operations.

(b) Limitations

The availability of disposal capacity for low-level radioactive waste from any source shall be subject to the following limitations:

(1) Barnwell, South Carolina

The State of South Carolina, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Barnwell, South Carolina to a total of 8,400,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 1,200,000 cubic feet of low-level radioactive waste).

(2) Richland, Washington

The State of Washington, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Richland, Washington to a total of 9,800,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 1,400,000 cubic feet of low-level radioactive waste).

(3) Beatty, Nevada

The State of Nevada, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Beatty, Nevada to a total of 1,400,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 200,000 cubic feet of low-level radioactive waste).

(c) Commercial nuclear power reactor allocations

(1) Amount

Subject to the provisions of subsections (a) through (g) of this section each commercial nuclear power reactor shall upon request receive an allocation of low-level radioactive waste disposal capacity (in cubic feet) at the facilities referred to in subsection (b) of this section during the 4-year transition period beginning January 1, 1986, and ending December 31, 1989, and during the 3-year licensing period beginning January 1, 1990, and ending December 31, 1992, in an amount calculated by multiplying the appropriate number from the following table by the number of months remaining in the applicable period as determined under paragraph (2).

Reactor Type	4-year Transition Period		3-year Licensing Period	
	In Sited Region	All Other Locations	In Sited Region	All Other Locations
PWR ..	1027	871	934	685
BWR ..	2300	1951	2091	1533

(2) Method of calculation

For purposes of calculating the aggregate amount of disposal capacity available to a commercial nuclear power reactor under this subsection, the number of months shall be computed beginning with the first month of the applicable period, or the sixteenth month after receipt of a full power operating license, whichever occurs later.

(3) Unused allocations

Any unused allocation under paragraph (1) received by a reactor during the transition period or the licensing period may be used at any time after such reactor receives its full power license or after the beginning of the pertinent period, whichever is later, but not in any event after December 31, 1992, or after commencement of operation of a regional disposal facility in the compact region or State in which such reactor is located, whichever occurs first.

(4) Transferability

Any commercial nuclear power reactor in a State or compact region that is in compliance with the requirements of subsection (e) of this section may assign any disposal capacity allocated to it under this subsection to any other person in each State or compact region. Such assignment may be for valuable consideration and shall be in writing, copies of which shall be filed at the affected compact commissions and States, along with the assignor's unconditional written waiver of the disposal capacity being assigned.

(5) Unusual volumes

(A) The Secretary may, upon petition by the owner or operator of any commercial nuclear power reactor, allocate to such reactor disposal capacity in excess of the amount calculated under paragraph (1) if the Secretary finds and states in writing his reasons for so finding that making additional capacity available for such reactor through this paragraph is required to permit unusual or unexpected operating, maintenance, repair or safety activities.

(B) The Secretary may not make allocations pursuant to subparagraph (A) that would result in the acceptance for disposal of more than 800,000 cubic feet of low-level radioactive waste or would result in the total of the allocations made pursuant to this subsection exceeding 11,900,000 cubic feet over the entire seven-year interim access period.

(6) Limitation

During the seven-year interim access period referred to in subsection (a) of this section, the disposal facilities referred to in subsection (b) of this section shall not be required to accept more than 11,900,000 cubic feet of low-level radioactive waste generated by commercial nuclear power reactors.

(d) Use of surcharge funds for milestone incentives; consequences of failure to meet disposal deadline

(1) Surcharges

The disposal of any low-level radioactive waste under this section (other than low-level radioactive waste generated in a sited compact region) may be charged a surcharge by the State in which the applicable regional disposal facility is located, in addition to the fees and surcharges generally applicable for disposal of low-level radioactive waste in the regional disposal facility involved. Except as provided in subsection (e)(2) of this section, such surcharges shall not exceed—

(A) in 1986 and 1987, $10 per cubic foot of low-level radioactive waste;

(B) in 1988 and 1989, $20 per cubic foot of low-level radioactive waste; and

(C) in 1990, 1991, and 1992, $40 per cubic foot of low-level radioactive waste.

(2) Milestone incentives

(A) Escrow account

Twenty-five per centum of all surcharge fees received by a State pursuant to paragraph (1) during the seven-year period referred to in subsection (a) of this section shall be transferred on a monthly basis to an escrow account held by the Secretary. The Secretary shall deposit all funds received in a special escrow account. The funds so deposited shall not be the property of the United States. The Secretary shall act as trustee for such funds and shall invest them in interest-bearing United States Government Securities with the highest available yield. Such funds shall be held by the Secretary until—

(i) paid or repaid in accordance with subparagraph (B) or (C); or

(ii) paid to the State collecting such fees in accordance with subparagraph (F).

(B) Payments

(i) JULY 1, 1986.—The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning on January 15, 1986, and ending June 30, 1986, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(A) of this section is met by the State in which such waste originated.

(ii) JANUARY 1, 1988.—The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning July 1, 1986 and ending December 31, 1987, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(B) of this section is met by the State in which such waste originated (or its compact region, where applicable).

(iii) JANUARY 1, 1990.—The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1988 and ending December 31, 1989, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(C) of this section is met by the State in which such waste originated (or its compact region, where applicable).

(iv) The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1990 and ending December 31, 1992, and transferred to the Secretary under subparagrah [2] (A), shall be paid by the Secretary in accordance with subparagraph (D) if, by January 1, 1993, the State in which such waste originated (or its compact region, where applicable) is able to provide for the disposal of all low-level radioactive waste generated within such State or compact region.

(C) Failure to meet January 1, 1993 deadline

If, by January 1, 1993, a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State or compact region—

(i) each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, shall be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1993 as the generator or owner notifies the State that the waste is available for shipment; or

(ii) if such State elects not to take title to, take possession of, and assume liability for such waste, pursuant to clause (i), twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1990 and ending December 31, 1992 shall be repaid, with interest, to each generator from whom such surcharge was collected. Repayments made pursuant to this clause shall be made on a monthly basis, with the first such repayment beginning on February 1, 1993, in an amount equal to one thirty-sixth of the total amount required to be repaid pursuant to this clause, and shall continue until the State (or, where applicable, compact region) in which such low-level radioactive waste is generated is able to provide for the disposal of all such waste generated within such State or compact region or until January 1, 1996, whichever is earlier.

If a State in which low-level radioactive waste is generated elects to take title to, take possession of, and assume liability for such waste pursuant to clause (i), such State shall be paid such amounts as are designated in subparagraph (B)(iv). If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated provides for the disposal of such waste at any time after January 1, 1993 and prior to January 1, 1996, such State (or, where applicable, compact region) shall be paid in accordance with subparagraph (D) a lump sum amount equal to twenty-five per centum of any amount collected by a State under paragraph (1): *Provided, however,* That such payment shall be adjusted to reflect the remaining number of months between January 1, 1993 and January 1, 1996 for which such State (or, where applicable, compact region) provides for the disposal of such waste. If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State or compact region by January 1, 1996, each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1996, as the generator or owner notifies the State that the waste is available for shipment.

(D) Recipients of payments

The payments described in subparagraphs (B) and (C) shall be paid within thirty days after the applicable date—

(i) if the State in which such waste originated is not a member of a compact region, to such State;

(ii) if the State in which such waste originated is a member of the compact region, to the compact commission serving such State.

(E) Uses of payments

(i) Limitations

Any amount paid under subparagraphs (B) or (C) may only be used to—

(I) establish low-level radioactive waste disposal facilities;

(II) mitigate the impact of low-level radioactive waste disposal facilities on the host State;

(III) regulate low-level radioactive waste disposal facilities; or

(IV) ensure the decommissioning, closure, and care during the period of institutional control of low-level radioactive waste disposal facilities.

(ii) Reports

(I) Recipient

Any State or compact commission receiving a payment under subparagraphs

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[2] So in original. Probably should be "subparagraph".

(B) or (C) shall, on December 31 of each year in which any such funds are expended, submit a report to the Department of Energy itemizing any such expenditures.

(II) Department of Energy

Not later than six months after receiving the reports under subclause (I), the Secretary shall submit to the Congress a summary of all such reports that shall include an assessment of the compliance of each such State or compact commission with the requirements of clause (i).

(F) Payment to States

Any amount collected by a State under paragraph (1) that is placed in escrow under subparagraph (A) and not paid to a State or compact commission under subparagraphs (B) and (C) or not repaid to a generator under subparagraph (C) shall be paid from such escrow account to such State collecting such payment under paragraph (1). Such payment shall be made not later than 30 days after a determination of ineligibility for a refund is made.

(G) Penalty surcharges

No rebate shall be made under this subsection of any surcharge or penalty surcharge paid during a period of noncompliance with subsection (e)(1) of this section.

(e) Requirements for access to regional disposal facilities

(1) Requirements for non-sited compact regions and non-member States

Each non-sited compact region, or State that is not a member of a compact region that does not have an operating disposal facility, shall comply with the following requirements:

(A) By July 1, 1986, each such non-member State shall ratify compact legislation or, by the enactment of legislation or the certification of the Governor, indicate its intent to develop a site for the location of a low-level radioactive waste disposal facility within such State.

(B) By January 1, 1988

(i) each non-sited compact region shall identify the State in which its low-level radioactive waste disposal facility is to be located, or shall have selected the developer for such facility and the site to be developed, and each compact region or the State in which its low-level radioactive waste disposal facility is to be located shall develop a siting plan for such facility providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application and shall delegate authority to implement such plan;

(ii) each non-member State shall develop a siting plan providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application for a low-level radioactive waste disposal facility and shall delegate authority to implement such plan; and

(iii) The siting plan required pursuant to this paragraph shall include a description of the optimum way to attain operation of the low-level radioactive waste disposal facility involved, within the time period specified in sections 2021b to 2021j of this title. Such plan shall include a description of the objectives and a sequence of deadlines for all entities required to take action to implement such plan, including, to the extent practicable, an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning facility operation. Such plan shall also identify, to the extent practicable, the process for (1) screening for broad siting areas; (2) identifying and evaluating specific candidate sites; and (3) characterizing the preferred site(s), completing all necessary environmental assessments, and preparing a license application for submission to the Nuclear Regulatory Commission or an Agreement State.

(C) By January 1, 1990

(i) a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member State; or

(ii) the Governor (or, for any State without a Governor, the chief executive officer) of any State that is not a member of a compact region in compliance with clause (i), or has not complied with such clause by its own actions, shall provide a written certification to the Nuclear Regulatory Commission, that such State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within such State and requiring disposal after December 31, 1992, and include a description of the actions that will be taken to ensure that such capacity exists.

(D) By January 1, 1992, a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member State.

(E) The Nuclear Regulatory Commission shall transmit any certification received under subparagraph (C) to the Congress and publish any such certification in the Federal Register.

(F) Any State may, subject to all applicable provisions, if any, of any applicable compact, enter into an agreement with the compact commission of a region in which a regional disposal facility is located to provide for the disposal of all low-level radioactive waste generated within such State, and, by virtue of such agreement, may, with the approval of the State in which the regional disposal facility is located, be deemed to be in compliance with subparagraphs (A), (B), (C), and (D).

(2) Penalties for failure to comply

(A) By July 1, 1986

If any State fails to comply with subparagraph (1)(A)—

(i) any generator of low-level radioactive waste within such region or non-member State shall, for the period beginning July 1, 1986, and ending December 31, 1986, be charged 2 times the surcharge otherwise applicable under subsection (d) of this section; and

(ii) on or after January 1, 1987, any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) of this section.

(B) By January 1, 1988

If any non-sited compact region or non-member State fails to comply with paragraph (1)(B)—

(i) any generator of low-level radioactive waste within such region or non-member State shall—

(I) for the period beginning January 1, 1988, and ending June 30, 1988, be charged 2 times the surcharge otherwise applicable under subsection (d) of this section; and

(II) for the period beginning July 1, 1988, and ending December 31, 1988, be charged 4 times the surcharge otherwise applicable under subsection (d) of this section; and

(ii) on or after January 1, 1989, any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) of this section.

(C) By January 1, 1990

If any non-sited compact region or non-member State fails to comply with paragraph (1)(C), any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) of this section.

(D) By January 1, 1992

If any non-sited compact region or non-member *State fails to comply with* paragraph (1)(D), any generator of low-level radioactive waste within such region or non-member State shall, for the period beginning January 1, 1992 and ending upon the filing of the application described in paragraph (1)(D), be charged 3 times the surcharge otherwise applicable under subsection (d) of this section.

(3) Denial of access

No denial or suspension of access to a regional disposal facility under paragraph (2) may be based on the source, class, or type of low-level radioactive waste.

(4) Restoration of suspended access; penalties for failure to comply

Any access to a regional disposal facility that is suspended under paragraph (2) shall be restored after the non-sited compact region or non-member State involved complies with such requirement. Any payment of surcharge penalties pursuant to paragraph (2) for failure to comply with the requirements of this subsection shall be terminated after the non-sited compact region or non-member State involved complies with such requirements.

(f) Monitoring of compliance and denial of access to non-Federal facilities for noncompliance; information requirements of certain States; proprietary information

(1) Administration

Each State and compact commission in which a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section is located shall have authority—

(A) to monitor compliance with the limitations, allocations, and requirements established in this section; and

(B) to deny access to any non-Federal low-level radioactive waste disposal facilities within its borders to any low-level radioactive waste that—

(i) is in excess of the limitations or allocations established in this section; or

(ii) is not required to be accepted due to the failure of a compact region or State to comply with the requirements of subsection (e)(1) of this section.

(2) Availability of information during interim access period

(A) The States of South Carolina, Washington, and Nevada may require information from disposal facility operators, generators, intermediate handlers, and the Department of Energy that is reasonably necessary to monitor the availability of disposal capacity, the use and assignment of allocations and the applicability of surcharges.

(B) The States of South Carolina, Washington, and Nevada may, after written notice followed by a period of at least 30 days, deny access to disposal capacity to any generator or intermediate handler who fails to provide information under subparagraph (A).

(C) PROPRIETARY INFORMATION

(i) Trade secrets, proprietary and other confidential information shall be made available to a State under this subsection upon request only if such State—

(I) consents in writing to restrict the dissemination of the information to those who are directly involved in monitoring under subparagraph (A) and who have a need to know;

(II) accepts liability for wrongful disclosure; and

(III) demonstrates that such information is essential to such monitoring.

(ii) The United States shall not be liable for the wrongful disclosure by any individual or State of any information provided to such individual or State under this subsection.

(iii) Whenever any individual or State has obtained possession of information under this subsection, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any department or agency thereof and the State shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information, or other confidential information under sections 2021b to 2021j of this title may be required to disclose such information under State law.

(g) Nondiscrimination

Except as provided in subsections (b) through (e) of this section, low-level radioactive waste disposed of under this section shall be subject without discrimination to all applicable legal requirements of the compact region and State in which the disposal facility is located as if such low-level radioactive waste were generated within such compact region.

(Pub. L. 96–573, § 5, as added Pub. L. 99–240, title I, § 102, Jan. 15, 1986, 99 Stat. 1846.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021b, 2021c, 2021d, 2021f, 2021g of this title.

§ 2021f. Emergency access

(a) In general

The Nuclear Regulatory Commission may grant emergency access to any regional disposal facility or non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste, if necessary to eliminate an immediate and serious threat to the public health and safety or the common defense and security. The procedure for granting emergency access shall be as provided in this section.

(b) Request for emergency access

Any generator of low-level radioactive waste, or any Governor (or, for any State without a Governor, the chief executive officer of the State) on behalf of any generator or generators located in his or her State, may request that the Nuclear Regulatory Commission grant emergency access to a regional disposal facility or a non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste. Any such request shall contain any information and certifications the Nuclear Regulatory Commission may require.

(c) Determination of Nuclear Regulatory Commission

(1) Required determination

Not later than 45 days after receiving a request under subsection (b) of this section, the Nuclear Regulatory Commission shall determine whether—

(A) emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security; and

(B) the threat cannot be mitigated by any alternative consistent with the public health and safety, including storage of low-level radioactive waste at the site of generation or in a storage facility obtaining access to a disposal facility by voluntary agreement, purchasing disposal capacity available for assignment pursuant to section 2021e(c) of this title or ceasing activities that generate low-level radioactive waste.

(2) Required notification

If the Nuclear Regulatory Commission makes the determinations required in paragraph (1) in the affirmative, it shall designate an appropriate non-Federal disposal facility or facilities, and notify the Governor (or chief executive officer) of the State in which such facility is located and the appropriate compact commission that emergency access is required. Such notification shall specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration, not exceeding 180 days, necessary to alleviate the immediate threat to public health and safety or the common defense and security. The Nuclear Regulatory Commission shall also notify the Governor (or chief executive officer) of the State in which the low-level radioactive waste requiring emergency access was generated that emergency access has been granted and that, pursuant to subsection (e) of this section, no extension of emergency access may be granted absent diligent State action during the period of the initial grant.

(d) Temporary emergency access

Upon determining that emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security, the Nuclear Regulatory Commission may at its discretion grant temporary emergency access, pending its determination whether the threat could be mitigated by any alternative consistent with the public health and safety. In granting access under this subsection, the Nuclear Regulatory Commission shall provide the same notification and information required under subsection (c) of this section. Absent a determination that no alternative consistent with the public health and safety would mitigate the threat, access granted under this subsection shall expire 45 days after the granting of temporary emergency access under this subsection.

(e) Extension of emergency access

The Nuclear Regulatory Commission may grant one extension of emergency access beyond the period provided in subsection (c) of this section, if it determines that emergency access continues to be necessary because of an immediate and serious threat to the public health and safety or the common defense and security that cannot be mitigated by any alternative consistent with the public health and safety, and that the generator of low-level radioactive waste granted emergency access and the State in which such low-level radioactive waste was generated have diligently though unsuccessfully acted during the period of the initial grant to eliminate the need for emergency access. Any extension granted under this subsection shall be for the minimum volume and duration the Nuclear Regulatory Commission finds necessary to eliminate the immediate threat to public health and safety or the common defense and security, and shall not in any event exceed 180 days.

(f) Reciprocal access

Any compact region or State not a member of a compact that provides emergency access to non-Federal disposal facilities within its borders shall be entitled to reciprocal access to any subsequently operating non-Federal disposal facility that serves the State or compact region in which low-level radioactive waste granted emergency access was generated. The compact commission or State having authority to approve importation of low-level radioactive waste to the disposal facility to which emergency access was granted shall designate for reciprocal access an equal volume of low-level radioactive waste having similar characteristics to that provided emergency access.

(g) Approval by compact commission

Any grant of access under this section shall be submitted to the compact commission for the region in which the designated disposal facility is located for such approval as may be required under the terms of its compact. Any such compact commission shall act to approve emergency access not later than 15 days after receiving notification from the Nuclear Regulatory Commission, or reciprocal access not later than 15 days after receiving notification from the appropriate authority under subsection (f) of this section.

(h) Limitations

No State shall be required to provide emergency or reciprocal access to any regional disposal facility within its borders for low-level radioactive waste not meeting criteria established by the license or license agreement of such facility, or in excess of the approved capacity of such facility, or to delay the closing of any such facility pursuant to plans established before receiving a request for emergency or reciprocal access. No State shall, during any 12-month period, be required to provide emergency or reciprocal access to any regional disposal facility within its borders for more than 20 percent of the total volume of low-level radioactive waste accepted for disposal at such facility during the previous calendar year.

(i) Volume reduction and surcharges

Any low-level radioactive waste delivered for disposal under this section shall be reduced in volume to the maximum extent practicable and shall be subject to surcharges established in sections 2021b to 2021j of this title.

(j) Deduction from allocation

Any volume of low-level radioactive waste granted emergency or reciprocal access under this section, if generated by any commercial nuclear power reactor, shall be deducted from the low-level radioactive waste volume allocable under section 2021e(c) of this title.

(k) Agreement States

Any agreement under section 2021 of this title shall not be applicable to the determinations of the Nuclear Regulatory Commission under this section.

(Pub. L. 96-573, § 6, as added Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1855.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021b, 2021c, 2021d, 2021e, 2021g of this title.

§ 2021g. Responsibilities of Department of Energy

(a) Financial and technical assistance

The Secretary shall, to the extent provided in appropriations Act, provide to those compact regions, host States, and nonmember States detemined [3] by the Secretary to require assistance for purposes of carrying out sections 2021b to 2021j of this title—

(1) continuing technical assistance to assist them in fulfilling their responsibilities under sections 2021b to 2021j of this title. Such technical assistance shall include, but not be limited to, technical guidelines for site selection, alternative technologies for low-level radioactive waste disposal, volume reduction options, management techniques to reduce low-level waste generation, transportation practices for shipment of low-level wastes, health and safety considerations in the storage, shipment and disposal of low-level radioactive wastes, and establishment of a computerized data-base to monitor the management of low-level radioactive wastes; and

(2) through the end of fiscal year 1993, financial assistance to assist them in fulfilling their responsibilities under sections 2021b to 2021j of this title.

(b) Reports

The Secretary shall prepare and submit to the Congress on an annual basis a report which (1) summarizes the progress of low-level waste disposal siting and licensing activities within each compact region, (2) reviews the available volume reduction technologies, their applications, effectiveness, and costs on a per unit volume basis, (3) reviews interim storage facility requirements, costs, and usage, (4) summarizes transportation requirements for such wastes on an inter- and intra-regional basis, (5) summarizes the data on the total amount of low-level waste shipped for disposal on a yearly basis, the proportion of such wastes subjected to volume reduction, the average volume reduction attained, and the proportion of wastes stored on an interim basis, and (6) projects the interim storage and final disposal volume requirements anticipated for the following year, on a regional basis.

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[3] So in original. Probably should be "determined".

(Pub. L. 96-573, § 7, as added Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1858.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021b, 2021d, 2021e, 2021f of this title.

§ 2021h. Alternative disposal methods

(a) Not later than 12 months after January 15, 1986, the Nuclear Regulatory Commission shall, in consultation with the States and other interested persons, identify methods for the disposal of low-level radioactive waste other than shallow land burial, and establish and publish technical guidance regarding licensing of facilities that use such methods.

(b) Not later than 24 months after January 15, 1986, the Commission shall, in consultation with the States and other interested persons, identify and publish all relevant technical information regarding the methods identified pursuant to subsection (a) of this section that a State or compact must provide to the Commission in order to pursue such methods, together with the technical requirements that such facilities must meet, in the judgment of the Commission, if pursued as an alternative to shallow land burial. Such technical information and requirements shall include, but need not be limited to, site suitability, site design, facility operation, disposal site closure, and environmental monitoring, as necessary to meet the performance objectives established by the Commission for a licensed low-level radioactive waste disposal facility. The Commission shall specify and publish such requirements in a manner and form deemed appropriate by the Commission.

(Pub. L. 96-573, § 8, as added Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1858.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021b, 2021d, 2021e, 2021f, 2021g of this title.

§ 2021i. Licensing review and approval

In order to ensure the timely development of new low-level radioactive waste disposal facilities, the Nuclear Regulatory Commission or, as appropriate, agreement States, shall consider an application for a disposal facility license in accordance with the laws applicable to such application, except that the Commission and the agreement state[4] shall—

(1) not later than 12 months after January 15, 1986, establish procedures and develop the technical capability for processing applications for such licenses;

(2) to the extent practicable, complete all activities associated with the review and processing of any application for such a license (except for public hearings) no later than 15 months after the date of receipt of such application; and

(3) to the extent practicable, consolidate all required technical and environmental reviews and public hearings.

(Pub. L. 96-573, § 9, as added Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1859.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021b, 2021d, 2021e, 2021f, 2021g of this title.

§ 2021j. Radioactive waste below regulatory concern

(a) Not later than 6 months after January 15, 1986, the Commission shall establish standards and procedures, pursuant to existing authority, and develop the technical capability for considering and acting upon petitions to exempt specific radioactive waste streams from regulation by the Commission due to the presence of radionuclides in such waste streams in sufficiently low concentrations or quantities as to be below regulatory concern.

(b) The standards and procedures established by the Commission pursuant to subsection (a) of this section shall set forth all information required to be submitted to the Commission by licensees in support of such petitions, including, but not limited to—

(1) a detailed description of the waste materials, including their origin, chemical composition, physical state, volume, and mass; and

(2) the concentration or contamination levels, half-lives, and identities of the radionuclides present.

Such standards and procedures shall provide that, upon receipt of a petition to exempt a specific radioactive waste stream from regulation by the Commission, the Commission shall determine in an expeditious manner whether the concentration or quantity of radionuclides present in such waste stream requires regulation by the Commission in order to protect the public health and safety. Where the Commission determines that regulation of a radioactive waste stream is not necessary to protect the public health and safety, the Commission shall take such steps as may be necessary, in an expeditious manner, to exempt the disposal of such radioactive waste from regulation by the Commission.

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[4] So in original. Probably should be "State".

(Pub. L. 96-573, § 10, as added Pub. L. 99-240, title I, § 102, Jan. 15, 1986, 99 Stat. 1859.)

Codification

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

Section Referred to in Other Sections

This section is referred to in sections 2021b, 2021d, 2021e, 2021f, 2021g of this title.

SUBCHAPTER IX—ATOMIC ENERGY LICENSES

§ 2133. Commercial licenses

Section Referred to in Other Sections

This section is referred to in sections 2014, 2019, 2020, 2061, 2073, 2076, 2077, 2093, 2021b, 2131, 2132, 2135, 2136, 2138, 2153, 2154, 2165, 2183, 2201, 2209, 2210, 2232, 2239, 2242, 2273, 2282, 2283, 10101, 10222 of this title.

§ 2134. Medical, industrial, and commercial licenses

Section Referred to in Other Sections

This section is referred to in sections 2014, 2061, 2073, 2074, 2076, 2077, 2093, 2021b, 2131, 2132, 2133, 2136, 2138, 2153, 2154, 2165, 2183, 2201, 2209, 2210, 2232, 2239, 2242, 2273, 2282, 2283, 10101, 10222 of this title.

SUBCHAPTER X—INTERNATIONAL ACTIVITIES

§ 2153. Cooperation with other nations

No cooperation with any nation, group of nations or regional defense organization pursuant to sections 2073, 2074(a), 2077, 2094, 2112, 2121, 2133, 2134, or 2164 of this title shall be undertaken until—

(a) Terms, conditions, duration, nature, scope, and other requirements of proposed agreements for cooperation; Presidential exemptions; negotiations; Nuclear Proliferation Assessment Statement

the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

[*See main edition for text of* (*1*) *to* (*9*)]

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title) from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security. Except in the case of those agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy and in consultation with the Director of the Arms Control and Disarmament Agency ("the Director"); and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy, the Nuclear Regulatory Commission, and the Director, who shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement (A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this chapter, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B) regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. In the case of those agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to section 2121(c) or 2164(b) of this title which are to be implemented by the Department of Defense, by the Secretary of Defense;

(b) Presidential approval and authorization for execution of proposed agreements for cooperation

the President has submitted text of the proposed agreement for cooperation, together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 2159(g) of this title) concerning the consistency of the terms of the proposed agreement with all the requirements of this chapter, and the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

[*See main edition for text of* (*c*)]

(d) Congressional action

the proposed agreement for cooperation (if arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, or if entailing implementation of section 2073, 2074(a), 2133, or 2134 of this title in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided,* That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Director of the Arms Control and Disarmament Agency, when required by subsection (a) of this section, has been submitted to the Congress: *Provided further,* That an agreement for cooperation exempted by the President pursuant to subsection (a) of this section from any requirement contained in that subsection shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement. During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 2159(i) of this title.

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title) to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, the Arms Control and Disarmament Agency, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after March 10, 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection (a)(2) of this section, such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to section 2157(b)(3) of this title for purposes of the Commission's consideration of applications and requests under section 2155(a)(2) of this title and there shall be no congressional review pursuant to section 2157 of this title of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

(As amended July 12, 1985, Pub. L. 99-64, title III, § 301(a), (b), 99 Stat. 159, 160.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-64, § 301(a)(1), in provisions following par. (9) inserted "(A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this chapter, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B)" after "Assessment Statement".

Subsec. (b). Pub. L. 99-64, § 301(a)(2), inserted "the President has submitted text of the proposed agreement for cooperation, together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 2159(g) of this title) concerning the consistency of the terms of the proposed agreement with all the requirements of this chapter, and".

Subsec. (d). Pub. L. 99-64, § 301(a)(3), (b), substituted "adopts, and there is enacted, a joint resolution" for "adopts a concurrent resolution", added a further proviso directing that an agreement for cooperation exempted by the President pursuant to subsection (a) of this section from any requirement contained in that subsection shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement, added sentence directing that during the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved, and substituted "section 2159(i) of this title" for "section 2159 of this title for the consideration of Presidential submissions".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 301(d) of Pub. L. 99-64 provided that: "The amendments made by this section [amending sections 2153 and 2159 of this title] shall apply to any agreement for cooperation which is entered into after the date of the enactment of this Act [July 12, 1985]."

§ 2155. Export licensing procedures

EXECUTIVE ORDER NO. 12409

Ex. Ord. No. 12409, Mar. 7, 1983, 48 F.R. 9829, extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1984. See notes below.

EXECUTIVE ORDER NO. 12463

Ex. Ord. No. 12463, Feb. 23, 1984, 49 F.R. 7097, extended the period of nuclear cooperation with the European Atomic Energy Community to Mar. 10, 1985. See notes below.

EX. ORD. NO. 12506. NUCLEAR COOPERATION WITH EUROPEAN ATOMIC ENERGY COMMUNITY

Ex. Ord. No. 12506, Mar. 4, 1985, 50 F.R. 8991, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to Section 126a(2) of such Act and extended by Executive Orders No. 12193, 12295, 12351, 12409 and 12463 [see notes above], failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of the United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1986.

RONALD REAGAN.

§ 2159. Congressional review procedures

(a) Committee consideration of Presidential submissions; reports

Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President required by section 2155(a)(2), 2155(b)(2), 2157(b), 2158, 2160(a)(3), or 2160(f)(1)(A) of this title, the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection (f) of this section, stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided*, That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission. If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection (f) of this section, which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

[*See main edition for text of (b) to (f)*]

(g) Continuity of Congressional sessions; computation of time

(1) Except as provided in paragraph (2), for the purposes of this section—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(2) For purposes of this section insofar as it applies to section 2153 of this title—

(A) continuity of session is broken only by an adjournment of Congress sine die at the end of a Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days are excluded in the computation of any period of time in which Congress is in continuous session.

[*See main edition for text of (h)*]

(i) Joint resolutions

(1) For the purposes of this subsection, the term "joint resolution" means a joint resolution, the matter after the resolving clause of which is as follows: "That the Congress (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on .", with the date of the transmission of the proposed agreement for cooperation inserted in the blank, and the affirmative or negative phrase within the parenthetical appropriately selected.

(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under section 2153(d) of this title, a joint resolution with respect to such agreement for cooperation shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement for cooperation is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(3) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee or committees, and all joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the Committee on Armed Services.

(4) If the committee of either House to which a joint resolution has been referred has not reported it at the end of 45 days after its introduction, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter; except that, in the case of a joint resolution which has been referred to more than one committee, if before the end of that 45-day period one such committee has reported the joint resolution, any other committee to which the joint resolution was referred shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(5) A joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this subsection, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this subsection which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(6) In the case of a joint resolution described in paragraph (1), if prior to the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same matter from the other House, then—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

(As amended July 12, 1985, Pub. L. 99-64, title III, § 301(c), 99 Stat. 160.)

References in Text

Section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (i)(5), is section 601(b)(4) of Pub. L. 94-329, June 30, 1976, 90 Stat. 729, which made provision for expedited procedures in the Senate, and is not classified to the Code.

Amendments

1985—Subsec. (a). Pub. L. 99-64, § 301(c)(1), struck out "2153(d)," after "submission of the President required by section", struck out ", and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate," after "Committee on Foreign Affairs of the House of Representatives", and struck out in proviso "and if, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the other relevant committee of that House has reported such a resolution, such committee shall be deemed discharged from further consideration of that resolution" after "consideration of such submission".

Subsec. (g). Pub. L. 99-64, § 301(c)(2), designated existing provisions of subsec. (g) as par. (1) and, in par. (1) as so designated, substituted "Except as provided in paragraph (2), for" for "For", redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (i). Pub. L. 99-64, § 301(c)(2)(B), added subsec. (i).

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-64 applicable to any agreement for cooperation entered into after July 12, 1985, see section 301(d) of Pub. L. 99-64, set out as a note under section 2153 of this title.

SUBCHAPTER XII—PATENTS AND INVENTIONS

§ 2182. Inventions conceived during Commission contracts; ownership; waiver; hearings

[*See main edition for text of first and second pars.*]

If the Commission files such a direction with the Commissioner of Patents and Trademarks, and if the applicant's statement claims, and the applicant still believes, that the invention or discovery was not made or conceived in the course of or under any contract, subcontract or arrangement entered into with or for the benefit of the Commission entitling the Commission to the title to the application or the patent the applicant may, within 30 days after notification of the filing of such a direction, request a hearing before the Board of Patent Appeals and Interferences. The Board shall have the power to hear and determine whether the Commission was entitled to the direction filed with the Commissioner of Patents and Trademarks. The Board shall follow the rules and procedures established for interference cases and an appeal may be taken by either the applicant or the Commission from the final order of the Board to the United States Court of Appeals for the Federal Circuit in accordance with the procedures governing the appeals from the Board of Patent Appeals and Interferences.

[*See main edition for text of fourth par.*]

(As amended Nov. 8, 1984, Pub. L. 98-622, title II, § 205(b), 98 Stat. 3388.)

Amendments

1984—Pub. L. 98-622, in third par., substituted "the Board of Patent Appeals and Interferences" for "a Board of Patent Interferences" and "the Board of Patent Interferences".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-622, effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622 set out as a note under section 7 of Title 35, Patents.

SUBCHAPTER XIII—GENERAL AUTHORITY OF COMMISSION

§ 2210. Indemnification and limitation of liability

[*See main edition for text of* (a) *to* (k)]

(*l*) Indemnification agreements in connection with nuclear ship Savannah

The Commission is authorized until August 1, 1977, to enter into an agreement of indemnification with any person engaged in the design, development, construction, operation, repair, and maintenance or use of the nuclear-powered ship authorized by section 1206 of title 46, Appendix, and designated the "nuclear ship Savannah." In any such agreement of indemnification the Commission may require such person to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising from a nuclear incident in connection with such design, development, construction, operation, repair, maintenance or use and shall indemnity the person indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000 excluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with each nuclear incident: *Provided,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000.

[*See main edition for text of* (*m*) *to* (*p*); *credits*]

CODIFICATION

Subsec. (*l*) is set out in this supplement to reflect the transfer of section 1206 of title 46, referred to in text, to title 46, Appendix.

SHORT TITLE

This section is popularly known as the Price-Anderson Act and also as the Atomic Energy Damages Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2014, 2021d, 2073, 2296, 9601 of this title.

§ 2212. Contractor liability for injury or loss of property arising out of atomic weapons testing programs

(a) Federal remedies applicable; exclusiveness of remedies; Federal employee status; procedure, limitations, and exceptions applicable

(1) The remedy against the United States provided by sections 1346(b) and 2672 of title 28, or by the Act of March 9, 1920 [46 App. U.S.C. 741-752 and 781-790], as appropriate, for injury, loss of property, personal injury, or death shall apply to any civil action for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States.

(2) The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining civil liability arising from any act or omission of the contractor without regard to when the act or omission occurred. The employees of a contractor referred to in paragraph (1) shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, for the purposes of any such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

(b) Delivery of process to Attorney General; removal of cases from State courts; certification of contractor status

A contractor against whom a civil action or proceeding described in subsection (a) of this section is brought shall promptly deliver all processes served upon that contractor to the Attorney General of the United States. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (a) of this section, a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.

(c) Actions covered; administrative claims: limitations

The provisions of this section shall apply to any action now pending or hereafter commenced which is an action within the provisions of subsection (a) of this section. Notwithstanding section 2401(b) of title 28, if a civil action or proceeding pending on October 19, 1984, is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of that title, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim, and any claim or subsequent civil action or proceeding shall thereafter be subject to the provisions of section 2401(b) of title 28.

(d) "Contractor" defined

For purposes of this section, the term "contractor" includes a contractor or cost reimbursement subcontractor of any tier participating in the conduct of the United States atomic weapons testing program for the Department of Energy (or its predecessor agencies, including the Manhattan Engineer District, the Atomic Energy Commission, and the Energy Research and Development Administration). Such term also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or any of its predecessor agencies).

(Pub. L. 98-525, title XVI, § 1631, Oct. 19, 1984, 98 Stat. 2646.)

REFERENCES IN TEXT

The Act of March 9, 1920, referred to in subsec. (a)(1), is act Mar. 9, 1920, ch. 95, 41 Stat. 525, as amended, popularly known as the Suits in Admiralty Act, which is classified generally to chapter 20 (§ 741 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 741 of Title 46, Appendix, and Tables.

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1985, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

CHAPTER 24—DISPOSAL OF ATOMIC ENERGY COMMUNITIES

SUBCHAPTER VIII—LOCAL ASSISTANCE

§ 2391. Assistance to governmental entities

COMMUNITY ASSISTANCE PAYMENTS

Pub. L. 99-145, title XV, § 1532, Nov. 8, 1985, 99 Stat. 773, provided that, with certain limitations, the Secretary of Energy may obligate funds during fiscal year 1986 to provide a final financial settlement with Anderson County and Roane County, Tennessee, and the City of Oak Ridge, Tennessee, and terminate all annual assistance payments to those entities and to make advance payment of payments in lieu of property taxes for fiscal years 1986 through 1996, and that the Secretary shall report to Congress by Feb. 1, 1986, the Secretary's recommendations concerning financial assistance payments to local governmental entities.

CHAPTER 25—FEDERAL FLOOD INSURANCE

§ 2414. Issuance of notes by Director of the Federal Emergency Management Agency; terms and conditions

(a) to (d) Repealed. Pub. L. 90-448, title XIII, § 1303(c), Aug. 1, 1968, 82 Stat. 573

(e) Issuance of notes by Director of the Federal Emergency Management Agency; form, terms and conditions; purchase and sale by Secretary of the Treasury; public debt transactions

The Director of the Federal Emergency Management Agency is authorized to issue to the Secretary of the Treasury from time to time and have outstanding at any one time, in an amount not exceeding $500,000,000 (or such greater amount as may be approved by the President) notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Director of the Federal Emergency Management Agency with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued under this subsection and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such notes and obligations.

The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(Aug. 7, 1956, ch. 1025, § 15, 70 Stat. 1083; Sept. 9, 1965, Pub. L. 89-174, § 5(a), 79 Stat. 669; Aug. 1, 1968, Pub. L. 90-448, title XIII, § 1303, 82 Stat. 573; Nov. 30, 1983, Pub. L. 98-181, title IV, § 451(f), 97 Stat. 1229; Oct. 17, 1984, Pub. L. 98-479, title II, § 203(g), 98 Stat. 2230.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-479 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as amended", and "such chapter" for "such Act, as amended,".

1983—Subsec. (e). Pub. L. 98-181 substituted "Director of the Federal Emergency Management Agency" for "Secretary of Housing and Urban Development" in two places.

CHAPTER 26—NATIONAL SPACE PROGRAM

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
2459b. Misuse of agency name and initials; authority of Attorney General to enjoin.
2464a. Payloads launched on Titan II launch vehicles; cost effectiveness as against space shuttle launches.
2465. Commercialization of expendable launch vehicle technologies, facilities and equipment; Congressional review.
2466. Shuttle pricing policy; Congressional findings and declaration of purpose.
2466a. Goals.
2466b. "Administrator" and "additive cost" defined.
2466c. Duties of Administrator.
  (a) Establishment and implementation of reimbursement recovery system; base price.
  (b) Reports to Congressional committees.
  (c) Reduction of base price.
  (d) Lower-priced or no-cost flights for users involved in research, etc., with Space Administration.
  (e) Customer incentives.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 41 section 403.

SUBCHAPTER I—GENERAL PROVISIONS

§ 2451. Congressional declaration of policy and purpose

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Commercial use of space

The Congress declares that the general welfare of the United States requires that the National Aeronautics and Space Administration (as established by subchapter II of this chapter) seek and encourage, to the maximum extent possible, the fullest commercial use of space.

(d) Objectives of aeronautical and space activities

The aeronautical and space activities of the United States shall be conducted so as to contribute materially to one or more of the following objectives:

(1) The expansion of human knowledge of the Earth and of phenomena in the atmosphere and space;

(2) The improvement of the usefulness, performance, speed, safety, and efficiency of aeronautical and space vehicles;

(3) The development and operation of vehicles capable of carrying instruments, equip-

ment, supplies, and living organisms through space;

(4) The establishment of long-range studies of the potential benefits to be gained from, the opportunities for, and the problems involved in the utilization of aeronautical and space activities for peaceful and scientific purposes;

(5) The preservation of the role of the United States as a leader in aeronautical and space science and technology and in the application thereof to the conduct of peaceful activities within and outside the atmosphere;

(6) The making available to agencies directly concerned with national defense of discoveries that have military value or significance, and the furnishing by such agencies, to the civilian agency established to direct and control nonmilitary aeronautical and space activities, of information as to discoveries which have value or significance to that agency;

(7) Cooperation by the United States with other nations and groups of nations in work done pursuant to this chapter and in the peaceful application of the results thereof; and

(8) The most effective utilization of the scientific and engineering resources of the United States, with close cooperation among all interested agencies of the United States in order to avoid unnecessary duplication of effort, facilities, and equipment.

(e) Ground propulsion systems research and development

The Congress declares that the general welfare of the United States requires that the unique competence in scientific and engineering systems of the National Aeronautics and Space Administration also be directed toward ground propulsion systems research and development. Such development shall be conducted so as to contribute to the objectives of developing energy and petroleum-conserving ground propulsion systems, and of minimizing the environmental degradation caused by such systems.

(f) Development of advanced automobile propulsion systems

The Congress declares that the general welfare of the United States requires that the unique competence in scientific and engineering systems of the National Aeronautics and Space Administration also be directed toward the development of advanced automobile propulsion systems. Such development shall be conducted so as to contribute to the achievement of the purposes set forth in section 2701(b) of title 15.

(g) Bioengineering research, development, and demonstration programs

The Congress declares that the general welfare of the United States requires that the unique competence of the National Aeronautics and Space Administration in science and engineering systems be directed to assisting in bioengineering research, development, and demonstration programs designed to alleviate and minimize the effects of disability.

(h) Purpose of chapter

It is the purpose of this chapter to carry out and effectuate the policies declared in subsections (a), (b), (c), (d), (e), (f), and (g) of this section.

(As amended Pub. L. 98-361, title I, § 110, July 16, 1984, 98 Stat. 426.)

References in Text

This chapter, referred to in subsec. (h), was in the original "this Act", meaning Pub. L. 85-568, July 29, 1958, 72 Stat. 426, as amended. For complete classification of this Act to the Code, see Short Title note below and Tables.

Amendments

1984—Subsec. (c). Pub. L. 98-361, § 110(a)(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 98-361, § 110(a)(2), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 98-361, § 110(b), added "of the Earth".

Subsecs. (e) to (g). Pub. L. 98-361, § 110(a)(2), redesignated former subsecs. (d) to (f) as (e) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 98-361, § 110(a)(2), redesignated former subsec. (g) as (h).

Pub. L. 98-361, § 110(a)(1), added reference to subsec. (g) of this section.

Feasibility Study on Flight Opportunities for Diverse Segment of American Public

Pub. L. 99-170, title I, § 111, Dec. 5, 1985, 99 Stat. 1016, provided that: "The Administrator shall initiate an immediate feasibility study to ensure flight opportunities for a diverse segment of the American public, including a physically disabled American."

National Commission on Space

Title II (§§ 201-204) of Pub. L. 98-361, as amended by Pub. L. 99-170, title I, § 109, Dec. 5, 1985, 99 Stat. 1016, provided that:

"Purpose

"Sec. 201. It is the purpose of this title to establish a National Commission on Space that will assist the United States—

"(1) to define the long-range needs of the Nation that may be fulfilled through the peaceful uses of outer space;

"(2) to maintain the Nation's preeminence in space science, technology, and applications;

"(3) to promote the peaceful exploration and utilization of the space environment; and

"(4) to articulate goals and develop options for the future direction of the Nation's civilian space program.

"Findings

"Sec. 202. The Congress finds and declares that—

"(1) the National Aeronautics and Space Administration, the lead civilian space agency, as established in the National Aeronautics and Space Act of 1958, as amended, has conducted a space program that has been an unparalleled success, providing significant economic, social, scientific, and national security benefits, and helping to maintain international stability and good will;

"(2) the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 et seq.), has provided the policy framework for achieving this success, and continues to be a sound statutory basis for national efforts in space;

"(3) the United States is entering a new era of international competition and cooperation in space, and therefore this Nation must strengthen the commitment of its public and private technical, financial, and institutional resources, so that the United States will not lose its leadership position during this decade;

"(4) while there continues to be a crucial Government role in space science, advanced research and development, provision of public goods and services and coordination of national and international efforts, advances in applications of space technology have raised many issues regarding public and private sector roles and relationships in technology development, applications, and marketing;

"(5) the private sector will continue to evolve as a major participant in the utilization of the space environment;

"(6) the Nation is committed to a permanently manned space station in low Earth orbit, and future national efforts in space will benefit from the presence of such a station;

"(7) the separation of the civilian and military space programs is essential to ensure the continued health and vitality of both; and

"(8) the identification of long range goals and policy options for the United States civilian space program through a high level, representational public forum will assist the President and Congress in formulating future policies for the United States civilian space program.

"NATIONAL COMMISSION ON SPACE

"SEC. 203. (a)(1) The President shall within ninety days of the enactment of this Act [July 16, 1984] establish a National Commission on Space (hereinafter in this title referred to as the 'Commission'), which shall be composed of 15 members appointed by the President. The members appointed under this subsection shall be selected from among individuals from Federal, State, and local governments, industry, business, labor, academia, and the general population who, by reason of their background, education training, or experience, possess expertise in scientific and technological pursuits, as well as the use and implications of the use of such pursuits. Of the fifteen members appointed, not more than three members may be employees of the Federal Government. The President shall designate one of the members of the Commission appointed under this subsection to serve as Chairman, and one of the members to serve as Vice Chairman. The Vice Chairman shall perform the functions of the Chairman in the Chairman's absence.

"(2) Members appointed by the President under paragraph (1) of this subsection may be paid at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect under section 5332 of title 5, United States Code, for grade GS-18 of the General Schedule for each day, including traveltime, during which such members are engaged in the actual performance of the duties of the Commission. While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed under section 5703 of title 5, United States Code. Individuals who are not officers or employees of the United States and who are members of the Commission shall not be considered officers or employees of the United States by reason of receiving payments under this paragraph.

"(b)(1) The President shall appoint one individual from each of the following Federal departments and agencies to serve as ex officio, advisory, non-voting members of the Commission (if such department or agency does not already have a member appointed to the Commission pursuant to subsection (a)(1)):

"(A) National Aeronautics and Space Administration.

"(B) Department of State.

"(C) Department of Defense.

"(D) Department of Transportation.

"(E) Department of Commerce.

"(F) Department of Agriculture.

"(G) Department of the Interior.

"(H) National Science Foundation.

"(I) Office of Science and Technology Policy.

"(2) The President of the Senate shall appoint two advisory members of the Commission from among the Members of the Senate and the Speaker of the House of Representatives shall appoint two advisory members of the Commission from among the Members of the House of Representatives. Such members shall not participate, except in an advisory capacity, in the formulation of the findings and recommendations of the Commission.

"(3) Members of the Commission appointed under this subsection shall not be entitled to receive compensation for service relating to the performance of the duties of the Commission, but shall be entitled to reimbursement for travel expenses incurred while in the actual performance of the duties of the Commission.

"(c) The Commission shall appoint and fix the compensation of such personnel as it deems advisable. The Chairman of the Commission shall be responsible for—

"(1) the assignment of duties and responsibilities among such personnel and their continuing supervision; and

"(2) the use and expenditures of funds available to the Commission.

In carrying out the provisions of this subsection, the Chairman shall act in accordance with the general policies of the Commission.

"(d) To the extent permitted by law, the Commission may secure directly from any executive department, agency, or independent instrumentality of the Federal Government any information it deems necessary to carry out its functions under this Act [see Tables for classification]. Each such department, agency, and instrumentality shall cooperate with the Commission and, to the extent permitted by law and upon request of the Chairman of the Commission, furnish such information to the Commission.

"(e) The Commission may hold hearings, receive public comment and testimony, initiate surveys, and undertake other appropriate activities to gather the information necessary to carry out its activities under section 204 of this title.

"(f) The Commission shall cease to exist sixty days after it has submitted the plan required by section 204(c) of this title.

"FUNCTIONS OF THE COMMISSION

"SEC. 204. (a) The Commission shall study existing and proposed space activities and formulate an agenda for the United States civilian space program. The Commission shall identify long range goals, opportunities, and policy options for United States civilian space activity for the next twenty years. In carrying out this responsibility, the Commission shall take into consideration—

"(1) the commitment by the Nation to a permanently manned space station in low Earth orbit;

"(2) present and future scientific, economic, social, environmental, and foreign policy needs of the United States, and methods by which space science, technology, and applications initiatives might address those needs;

"(3) the adequacy of the Nation's public and private capability in fulfilling the needs identified in paragraph (2);

"(4) how a cooperative interchange between Federal agencies on research and technology development programs can benefit the civilian space program;

"(5) opportunities for, and constraints on, the use of outer space toward the achievement of Federal program objectives or national needs;

"(6) current and emerging issues and concerns that may arise through the utilization of space research, technology development, and applications;

"(7) the Commission shall analyze the findings of the reviews specified in paragraphs (1) through (6) of this subsection, and develop options and recommendations for a long range national civilian space policy plan.

"(b) Options and recommendations submitted in accordance with subsection (a)(7) of this section shall include, to the extent appropriate, an estimate of costs and time schedules, institutional requirements, and statutory modifications necessary for implementation of such options and recommendations.

"(c) Within 18 months after the date of the establishment of the Commission, the Commission shall submit to the President and to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives, a long range plan for United States civilian space activity incorporating the results of the studies conducted under this section, together with recommendations for such legislation as the Commission determines to be appropriate."

Executive Order No. 12490

Ex. Ord. No. 12490, Oct. 12, 1984, 49 F.R. 40393, related to the establishment, functions, administration, and termination of the National Commission on Space.

§ 2452 Definitions

As used in this chapter—

(1) the term "aeronautical and space activities" means (A) research into, and the solution of, problems of flight within and outside the earth's atmosphere, (B) the development, construction, testing, and operation for research purposes of aeronautical and space vehicles, (C) the operation of a space transportation system including the Space Shuttle, upper stages, space platforms, and related equipment, and (D) such other activities as may be required for the exploration of space; and

[*See main edition for text of* (2)]

(As amended Pub. L. 98-52, title I, § 108, July 15, 1983, 97 Stat. 285.)

Amendments

1983—Par. (1)(C), (D). Pub. L. 98-52 added cl. (C) and redesignated former cl. (C) as (D).

§ 2457. Property rights in inventions

[*See main edition for text of* (a) *to* (c)]

(d) Issuance of patent to applicant; request by Administrator; notice; hearing; determination; review

Upon any application as to which any such statement has been transmitted to the Administrator, the Commissioner may, if the invention is patentable, issue a patent to the applicant unless the Administrator, within ninety days after receipt of such application and statement, requests that such patent be issued to him on behalf of the United States. If, within such time, the Administrator files such a request with the Commissioner, the Commissioner shall transmit notice thereof to the applicant, and shall issue such patent to the Administrator unless the applicant within thirty days after receipt of such notice requests a hearing before the Board of Patent Appeals and Interferences on the question whether the Administrator is entitled under this section to receive such patent. The Board may hear and determine, in accordance with rules and procedures established for interference cases, the question so presented, and its determination shall be subject to appeal by the applicant or by the Administrator to the United States Court of Appeals for the Federal Circuit in accordance with procedures governing appeals from decisions of the Board of Patent Appeals and Interferences in other proceedings.

(e) False representations; request for transfer of title to patent; notice; hearing; determination; review

Whenever any patent has been issued to any applicant in conformity with subsection (d) of this section, and the Administrator thereafter has reason to believe that the statement filed by the applicant in connection therewith contained any false representation of any material fact, the Administrator within five years after the date of issuance of such patent may file with the Commissioner a request for the transfer to the Administrator of title to such patent on the records of the Commissioner. Notice of any such request shall be transmitted by the Commissioner to the owner of record of such patent, and title to such patent shall be so transferred to the Administrator unless within thirty days after receipt of such notice such owner of record requests a hearing before the Board of Patent Appeals and Interferences on the question whether any such false representation was contained in such statement. Such question shall be heard and determined, and determination thereof shall be subject to review, in the manner prescribed by subsection (d) of this section for questions arising thereunder. No request made by the Administrator under this subsection for the transfer of title to any patent, and no prosecution for the violation of any criminal statute, shall be barred by any failure of the Administrator to make a request under subsection (d) of this section for the issuance of such patent to him, or by any notice previously given by the Administrator stating that he had no objection to the issuance of such patent to the applicant therefor.

[*See main edition for text of* (*f*) *to* (*l*)]

(As amended Pub. L. 98-622, title II, § 205(c), Nov. 8, 1984, 98 Stat. 3388.)

Amendments

1984—Subsec. (d). Pub. L. 98-622, § 205(c)(1), substituted "the Board of Patent Appeals and Interferences" for "a Board of Patent Interferences" and "the Board of Patent Interferences".

Subsec. (e). Pub. L. 98-622, § 205(c)(2), substituted "the Board of Patent Appeals and Interferences" for "a Board of Patent Interferences".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622 set out as a note under section 7 of Title 35, Patents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2458, 2459b of this title; title 35 section 210.

§ 2459. Appropriations

GEOGRAPHICAL DISTRIBUTION OF RESEARCH FUNDS

Provisions stating the sense of the Congress that it is in the national interest that consideration be given to geographical distribution of Federal research funds whenever feasible, and that the National Aeronautics and Space Administration should explore ways and means of distributing its research and development funds whenever feasible were contained in the following appropriation authorization acts:

Pub. L. 99-170, title I, § 105, Dec. 5, 1985, 99 Stat. 1015.

Pub. L. 98-361, title I, § 105, July 16, 1984, 98 Stat. 425.

Pub. L. 98-52, title I, § 105, July 15, 1983, 97 Stat. 284.

§ 2459a. Availability of certain appropriations without fiscal year limitation

When so specified and to the extent provided in an appropriation Act [for the National Aeronautics and Space Administration], (1) any amount appropriated for "Research and development", for "Space flight, control and data communications" or for "Construction of facilities" may remain available without fiscal year limitation, and (2) maintenance and operation of facilities and support services contracts may be entered into under the "Research and program management" appropriation for periods not in excess of 12 months beginning at any time during the fiscal year.

(Pub. L. 99-170, title I, § 101(f), Dec. 5, 1985, 99 Stat. 1014.)

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation authorization acts:

Pub. L. 98-361, title I, § 101(f), July 16, 1984, 98 Stat. 424.

Pub. L. 98-52, title I, § 101(e), July 15, 1983, 97 Stat. 282.

Pub. L. 97-324, title I, § 101(e), Oct. 15, 1982, 96 Stat. 1598.

§ 2459b. Misuse of agency name and initials; authority of Attorney General to enjoin

(a) No person (as defined by section 2457 of this title) may (1) knowingly use the words "National Aeronautics and Space Administration" or the letters "NASA", or any combination, variation, or colorable imitation of those words or letters either alone or in combination with other words or letters, as a firm or business name in a manner reasonably calculated to convey the impression that such firm or business has some connection with, endorsement of, or authorization from, the National Aeronautics and Space Administration which does not, in fact, exist; or (2) knowingly use those words or letters or any combination, variation, or colorable imitation thereof either alone or in combination with other words or letters in connection with any product or service being offered or made available to the public in a manner reasonably calculated to convey the impression that such product or service has the authorization, support, sponsorship, or endorsement of, or the development, use, or manufacture by or on behalf of the National Aeronautics and Space Administration which does not, in fact, exist.

(b) Whenever it appears to the Attorney General that any person is engaged in an act or practice which constitutes or will constitute conduct prohibited by subsection (a) of this section, the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice.

(Pub. L. 85-568, title III, § 310, as added Pub. L. 98-52, title I, § 107, July 15, 1983, 97 Stat. 284.)

§ 2464a. Payloads launched on Titan II launch vehicles; cost effectiveness as against space shuttle launches

The Secretary of Defense and the Administrator of the National Aeronautics and Space Administration will jointly determine which payloads will be launched on Titan II launch vehicles and certify by notice to the Congress that such launches are cost effective as compared to launches by the space shuttle and do not diminish the efficient and effective utilization of the space shuttle capability: *Provided*, That this section may be waived only upon certification by the Secretary of Defense that certain classified payloads must be launched on the Titan II launch vehicle as opposed to the space shuttle, for national security reasons.

(Pub. L. 99-190, § 101(b) [title VIII, § 8111], Dec. 19, 1985, 99 Stat. 1185, 1222.)

CODIFICATION

Section was enacted as part of the Department of Defense Appropriations Act, 1986, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

§ 2465. Commercialization of expendable launch vehicle technologies, facilities and equipment; Congressional review

Any decision or proposed policy by the President or the National Aeronautics and Space Administration to commercialize some or all of the existing expendable launch vehicle technologies and associated facilities and equipment shall be presented to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives for their review. No such decision or policy shall be implemented unless (A) a period of 30 days has passed after the receipt by each such committee of a full and complete statement of the decision or proposed policy and the facts and circumstances relied upon in support of such decision or proposed policy, or (B) each such committee before the expiration of such period has transmitted to the Administrator written notice to the effect that such committee has no objection to the decision or proposed policy.

(Pub. L. 98-52, title I, § 110, July 15, 1983, 97 Stat. 285.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, 1984, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

EX. ORD. NO. 12465. COORDINATION AND ENCOURAGEMENT OF COMMERCIAL EXPENDABLE LAUNCH VEHICLE ACTIVITIES

Ex. Ord. No. 12465, Feb. 24, 1984, 49 F.R. 7211, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to encourage, facilitate and coordinate the development of commercial expendable launch vehicle (ELV) operations by private United States enterprises, it is hereby ordered as follows:

SECTION 1. The Department of Transportation is designated as the lead agency within the Federal government for encouraging and facilitating commercial ELV activities by the United States private sector.

SEC. 2. *Responsibilities of Lead Agency.* The Secretary of Transportation shall, to the extent permitted by law and subject to the availability of appropriations, perform the following functions:

(a) act as a focal point within the Federal government for private sector space launch contacts related to commercial ELV operations;

(b) promote and encourage commercial ELV operations in the same manner that other private United States commercial enterprises are promoted by United States agencies;

(c) provide leadership in the establishment, within affected departments and agencies, of procedures that expedite the processing of private sector requests to obtain licenses necessary for commercial ELV launches and the establishment and operation of commercial launch ranges;

(d) consult with other affected agencies to promote consistent application of ELV licensing requirements for the private sector and assure fair and equitable treatment for all private sector applicants;

(e) serve as a single point of contact for collection and dissemination of documentation related to commercial ELV licensing applications;

(f) make recommendations to affected agencies and, as appropriate, to the President, concerning administrative measures to streamline Federal government procedures for licensing of commercial ELV activities;

(g) identify Federal statutes, treaties, regulations and policies which may have an adverse impact on ELV commercialization efforts and recommend appropriate changes to affected agencies and, as appropriate, to the President; and

(h) conduct appropriate planning regarding long-term effects of Federal activities related to ELV commercialization.

SEC. 3. An interagency group, chaired by the Secretary of Transportation and composed of representatives from the Department of State, the Department of Defense, the Department of Commerce, the Federal Communications Commission, and the National Aeronautics and Space Administration, is hereby established. This group shall meet at the call of the Chair and shall advise and assist the Department of Transportation in performing its responsibilities under this Order.

SEC. 4. *Responsibilities of Other Agencies.* All executive departments and agencies shall assist the Secretary of Transportation in carrying out this Order. To the extent permitted by law and in consultation with the Secretary of Transportation, they shall:

(a) provide the Secretary of Transportation with information concerning agency regulatory actions which may affect development of commercial ELV operations;

(b) review and revise their regulations and procedures to eliminate unnecessary regulatory obstacles to the development of commercial ELV operations and to ensure that those regulations and procedures found essential are administered as efficiently as possible; and

(c) establish timetables for the expeditious handling of and response to applications for licenses and approvals for commercial ELV activities.

SEC. 5. The powers granted to the Secretary of Transportation to encourage, facilitate and coordinate the overall ELV commercialization process shall not diminish or abrogate any statutory or operational authority exercised by any other Federal agency.

SEC. 6. Nothing contained in this Order or in any procedures promulgated hereunder shall confer any substantive or procedural right or privilege on any person or organization, enforceable against the United States, its agencies, its officers or any person.

SEC. 7. This Order shall be effective immediately.

RONALD REAGAN.

§ 2466. Shuttle pricing policy; Congressional findings and declaration of purpose

The Congress finds and declares that—

(1) the Space Transportation System is a vital element of the United States space program, contributing to the United States leadership in space research, technology, and development;

(2) the Space Transportation System is the primary space launch system for both United States national security and civil government missions;

(3) the Space Transportation System contributes to the expansion of United States private sector investment and involvement in space and therefore should serve commercial users;

(4) the availability of the Space Transportation System to foreign users for peaceful purposes is an important means of promoting international cooperative activities in the national interest and in maintaining access to space for activities which enhance the security and welfare of mankind;

(5) the United States is committed to maintaining world leadership in space transportation;

(6) making the Space Transportation System fully operational and cost effective in providing routine access to space will maximize the national economic benefits of the system; and

(7) national goals and the objectives for the Space Transportation System can be furthered by a stable and fair pricing policy for the Space Transportation System.

(Pub. L. 99-170, title II, § 201, Dec. 5, 1985, 99 Stat. 1017.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 1986, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

EFFECTIVE DATE

Section 205 of title II of Pub. L. 99-170 provided that: "This title [enacting sections 2466 to 2466c of this title] shall apply to flights of the Space Transportation System beginning on and after October 1, 1988."

Section Referred to in Other Sections

This section is referred to in sections 2466a, 2466b of this title.

§ 2466a. Goals

The purpose of sections 2466 to 2466c of this title is to set the reimbursement pricing policy for the Space Transportation System for commercial and foreign users which is consistent with the findings included in section 2466 of this title, encourages the full and effective use of space, and is designed to achieve the following goals—

(1) the preservation of the role of the United States as a leader in space research, technology, and development;

(2) the efficient and cost effective use of the Space Transportation System;

(3) the achievement of greatly increased commercial space activity; and

(4) the enhancement of the international competitive position of the United States.

(Pub. L. 99-170, title II, § 202, Dec. 5, 1985, 99 Stat. 1017.)

Codification

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 1986, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

Effective Date

Section applicable to flights of the Space Transportation System beginning on and after Oct. 1, 1988, see section 205 of Pub. L. 99-170, set out as a note under section 2466 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2466b, 2466c of this title.

§ 2466b. "Administrator" and "additive cost" defined

For purposes of sections 2466 to 2466c of this title, the term—

(1) "Administrator" means the Administrator of the National Aeronautics and Space Administration; and

(2) "additive cost" means the average direct and indirect costs to the National Aeronautics and Space Administration of providing additional flights of the Space Transportation System beyond the costs associated with those flights necessary to meet the space transportation needs of the United States Government.

(Pub. L. 99-170, title II, § 203, Dec. 5, 1985, 99 Stat. 1017.)

Codification

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 1986, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

Effective Date

Section applicable to flights of the Space Transportation System beginning on and after Oct. 1, 1988, see section 205 of Pub. L. 99-170, set out as a note under section 2466 of this title.

Section Referred to in Other Sections

This section is referred to in section 2466a of this title.

§ 2466c. Duties of Administrator

(a) Establishment and implementation of reimbursement recovery system; base price

The Administrator shall establish and implement a pricing system to recover reimbursement in accordance with the pricing policy under section 2466a of this title from each commercial or foreign user of the Space Transportation System, which except as provided in subsections (c), (d), and (e) of this section shall include a base price of not less than $74,000,000 for each flight of the Space Transportation System in 1982 dollars.

(b) Reports to Congressional committees

Each year the Administrator shall submit to the President of the Senate, the Speaker of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Science and Technology of the House of Representatives, a report, transmitted contemporaneously with the annual budget request of the President, which shall inform the Congress how the policy goals contained in section 2466a of this title are being furthered by the shuttle price for foreign and commercial users.

(c) Reduction of base price

(1) If at any time the Administrator finds that the policy goals contained in section 2466a of this title are not being achieved, the Administrator shall have authority to reduce the base price established in subsection (a) of this section after forty-five days following receipt by the President of the Senate, the Speaker of the House, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Science and Technology of the House of Representatives of a notice by the Administrator containing a description of the proposed reduction together with a full and complete statement of the facts and circumstances which necessitate such proposed reduction.

(2) In no case shall the minimum price established under subsection (c)(1) of this section be less than additive cost.

(d) Lower-priced or no-cost flights for users involved in research, etc., with Space Administration

The Administrator may set a price lower than the price determined under subsection (a) or (c) of this section, or provide no-cost flights, for any commercial or foreign user of the Space Transportation System who is involved in research, development or demonstration programs with the National Aeronautics and Space Administration.

(e) Customer incentives

Notwithstanding the provisions of subsection (a) of this section, the Administrator shall have the authority to offer reasonable customer incentives consistent with the policy goals in section 2466a of this title.

(Pub. L. 99-170, title II, § 204, Dec. 5, 1985, 99 Stat. 1017.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act of 1986, and not as part of the National Aeronautics and Space Act of 1958 which is classified principally to this chapter.

EFFECTIVE DATE

Section applicable to flights of the Space Transportation System beginning on and after Oct. 1, 1988, see section 205 of Pub. L. 99-170, set out as a note under section 2466 of this title.

FEASIBILITY OF PROVIDING SPACE SHUTTLE LAUNCH SERVICES ON BASIS OF ROYALTY RECOVERY OVER ECONOMIC LIFE OF COMMERCIAL PRODUCTS PROCESSED IN SPACE

Section 112 of Pub. L. 99-170 provided that: "The Administrator shall examine and report to the Congress on the feasibility of providing space shuttle launch services on a basis of royalty recovery over the economic life of commercial products produced or processed in space."

STUDY ON PROPOSED PRICING POLICY FOR CERTAIN SERVICES

Section 113 of Pub. L. 99-170 provided that: "The Administrator shall conduct a study and report to the Congress on a proposed pricing policy for certain services such as on-orbit service, repair or recovery of spacecraft."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2466a, 2466b of this title.

SUBCHAPTER II—COORDINATION OF AERONAUTICAL AND SPACE ACTIVITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2451, 5503, 5504 of this title.

§ 2477. Aerospace Safety Advisory Panel; membership; appointment; term; powers and duties of Panel; Chairman; compensation, travel and other necessary expenses; NASA membership restriction

There is hereby established an Aerospace Safety Advisory Panel consisting of a maximum of nine members who shall be appointed by the Administrator for terms of six years each. The Panel shall review safety studies and operations plans referred to it and shall make reports thereon, shall advise the Administrator with respect to the hazards of proposed or existing facilities and proposed operations and with respect to the adequacy of proposed or existing safety standards and shall perform such other duties as the Administrator may request. One member shall be designated by the Panel as its Chairman. Members of the Panel who are officers or employees of the Federal Government shall receive no compensation for their services as such, but shall be allowed necessary travel expenses (or in the alternative, mileage for use of privately owned vehicles and a per diem in lieu of subsistence not to exceed the rates and amounts prescribed in sections 5702, 5704 of title 5), and other necessary expenses incurred by them in the performance of duties vested in the Panel, without regard to the provisions of subchapter I, chapter 57 of title 5, the Standardized Government Travel Regulations, or section 5731 of title 5. Members of the Panel appointed from outside the Federal Government shall each receive compensation at a rate not to exceed the per diem rate equivalent to the rate for GS-18 for each day such member is engaged in the actual performance of duties vested in the Panel in addition to reimbursement for travel, subsistence, and other necessary expenses in accordance with the provisions of the foregoing sentence. Not more than four such members shall be chosen from among the officers and employees of the National Aeronautics and Space Administration.

(As amended Pub. L. 99-234, title I, § 107(f), Jan. 2, 1986, 99 Stat. 1759.)

AMENDMENTS

1986—Pub. L. 99-234 substituted "rates and amounts" for "rates".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-234 effective (1) on the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as a note under section 5701 of Title 5, Government Organization and Employees.

CHAPTER 34—ECONOMIC OPPORTUNITY PROGRAM

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter referred to in sections 3131, 3141, 6861, 8624, 9902, 9912 of this title; title 2 section 452; title 12 section 1766; title 38 section 2013.

SUBCHAPTER I—RESEARCH AND DEMONSTRATIONS

PART C—WORK-STUDY PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 20 sections 1061, 1069a, 1070e, 1070e-1, 1078, 1078-2, 1086, 1087-2, 1087hh, 1088, 1089, 1090, 1091, 1092, 1094, 1096, 1097, 1098, 1119d-3, 1143.

§ 2752. Allotments to States

COLLEGE WORK-STUDY ALLOTMENT FOR SPECIFIC FISCAL YEARS

For provision that, notwithstanding subsecs. (a), (b), (c), and (e) of this section, the Secretary shall apportion funds among the States so that each State's apportionment under the Work-Study Program bears the same ratio to the total amount appropriated under that program as that State's apportionment in fiscal year 1981 for that program bears to the total amount appropriated for fiscal year 1981 for that program, and that, with regard to the Work-Study Program, notwithstanding section 2756(a) of this title, from each jurisdiction's allotment of funds under that program, the Secretary shall allocate sums to institutions in that jurisdiction that did not receive an allocation in fiscal year 1979 (award year 1979-1980) under that program in a manner that will most effectively carry out the purposes of the Work-Study Program, see section 300 of Pub. L. 99-178, set out as a note under section 1070b-3 of Title 20, Education.

For similar provisions for fiscal year 1985, see section 300 of Pub. L. 98-619, set out as a note under section 1070b-3 of Title 20.

Pub. L. 98-8, title I, § 100, Mar. 24, 1983, 97 Stat. 27, provided that notwithstanding subsecs. (a), (b), (c), and (e) of this section and section 11 of Public Law 97-301, set out as a note below, the Secretary should allot the sums appropriated pursuant to 42 U.S.C. 2751(b) for fiscal year 1983 among the States so that each State's allotment bore the same ratio to the total amount appropriated as that State's allotment in fiscal year 1981 bore to the total amount appropriated pursuant to that section for fiscal year 1981.

SUBCHAPTER VIII—NATIVE AMERICAN PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2707, 3020d, 4953, 4973, 5055, 9912 of this title; title 29 section 795a.

§ 2991. Short title

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-558, title X, § 1001, Oct. 30, 1984, 98 Stat. 2905, provided that: "This title [amending sections 2991b, 2992b to 2992d of this title] may be cited as the 'Native American Programs Act Amendments of 1984'."

§ 2991b. Financial assistance for native American projects

(a) Authorization for financial assistance to public and nonprofit agencies; consultation with other Federal agencies to avoid duplication

The Secretary is authorized to provide financial assistance to public and nonprofit private agencies, including but not limited to, governing bodies of Indian tribes on Federal and State reservations, Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act, [43 U.S.C. 1601 et seq.], and such public and nonprofit private agencies serving Hawaiian Natives, and Indian organizations in urban or rural nonreservation areas, for projects pertaining to the purposes of this subchapter. In determining the projects to be assisted under this subchapter, the Secretary shall consult with other Federal agencies for the purpose of eliminating duplication or conflict among similar activities or projects and for the purpose of determining whether the findings resulting from those projects may be incorporated into one or more programs for which those agencies are responsible. Every determination made with respect to a request for financial assistance under this section shall be made without regard to whether the agency making such request serves, or the project to be assisted is for the benefit of, Indians who are not members of a federally recognized tribe. To the greatest extent practicable, the Secretary shall ensure that each project to be assisted under this subchapter is consistent with the priorities established by the agency which receives such assistance.

[*See main edition for text of* (b)]

(c) Assistance as addition to, and not substitution for, activities previously carried out without Federal assistance; waiver; nonreservation areas

(1) No project shall be approved for assistance under this subchapter unless the Secretary is satisfied that the activities to be carried out under such project will be in addition to, and not in substitution for, comparable activities previously carried out without Federal assistance, except that the Secretary may waive this requirement in any case in which the Secretary determines, in accordance with regulations establishing objective criteria, that application of the requirement would result in unnecessary hardship or otherwise be inconsistent with the purposes of this subchapter.

(2) No project may be disapproved for assistance under this subchapter solely because the agency requesting such assistance is an Indian organization in a nonreservation area or serves Indians in a nonreservation area.

(As amended Pub. L. 98-558, title X, § 1002, Oct. 30, 1984, 98 Stat. 2905.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-558, § 1002(a), added "Every determination made with respect to a request for financial assistance under this section shall be made without regard to whether the agency making such request serves, or the project to be assisted is for the benefit of, Indians who are not members of a federally recognized tribe. To the greatest extent practicable, the Secretary shall ensure that each project to be assisted under this subchapter is consistent with the priorities established by the agency which receives such assistance."

Subsec. (c)(1). Pub. L. 98-558, § 1002(b), designated existing provisions as par. (1) and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2991f, 2992b, 2992d of this title.

§ 2992b. Administration; delegation of authority

(a) General administration; prohibition of transfer; grant authority

(1) The general administration of the programs authorized by this chapter shall remain within the Department of Health and Human Services and, notwithstanding any authority under any other law, may not be transferred outside of such Department.

(2) The Secretary shall continue to administer grants under section 2991b of this title through the Administration for Native Americans. The Commissioner of such Administration may not delegate outside of the Administration the functions, powers, and duties of the Commissioner to carry out such section.

(b) Delegation of authority to agency heads; transfer of funds

(1) Except as provided in subsection (a)(2) of this section, the Secretary may delegate only to the heads of agencies within the Department of Health and Human Services any of the functions, powers, and duties of the Secretary under this subchapter and may authorize the redelegation only within such Department of such functions, powers, and duties by the heads of such agencies.

(2) Funds appropriated to carry out this subchapter, other than section 2991b of this title, may be transferred between such agencies if such funds are used for the purposes for which they are authorized and appropriated.

(c) Interagency funding agreements

Nothing in this section shall be construed to prohibit interagency funding agreements made between the Administration for Native Americans and other agencies of the Federal Government for the development and implementation of specific grants or projects.

(As amended Pub. L. 98-558, title X, § 1003, Oct. 30, 1984, 98 Stat. 2905.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-558, amended subsec. (a) generally, substituting provisions relating to general administration of programs, prohibitions of transfer of programs outside the Department and grant authority of the Secretary for former provisions which related to delegation by the Secretary to heads of other departments and agencies.

Subsec. (b). Pub. L. 98-558, amended subsec. (b) generally, substituting provisions relating to delegation of authority to heads of agencies within the Department and transfer of funds for former provisions which related to manner of exercising power, duties and functions.

Subsec. (c). Pub. L. 98-558, amended subsec. (c) generally, substituting provisions relating to interagency funding agreements for former provisions which related to transfer of funds between departments and agencies.

§ 2992c. Definitions

As used in this subchapter, the term—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) "Native Hawaiian" means any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778; and

(4) "Secretary" means the Secretary of Health and Human Services.

(As amended Pub. L. 98-558, title X, § 1004, Oct. 30, 1984, 98 Stat. 2906.)

AMENDMENTS

1984—Par. (4). Pub. L. 98-558 added par. (4).

§ 2992d. Authorization of appropriations

(a) There are authorized to be appropriated for the purpose of carrying out the provisions of this subchapter, such sums as may be necessary for fiscal years 1979 through 1986.

(b) Not less than 90 per centum of the funds made available to carry out the provisions of this subchapter for a fiscal year shall be expended to carry out section 2991b(a) of this title for such fiscal year.

(As amended Pub. L. 98-558, title X, § 1005, Oct. 30, 1984, 98 Stat. 2906.)

AMENDMENTS

1984—Pub. L. 98-558 designated existing provisions as subsec. (a), and in subsec. (a) as so designated, substituted "1986" for "1981", and added subsec. (b).

SUBCHAPTER X—LEGAL SERVICES CORPORATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3020d, 3027, 4953, 9912 of this title.

CHAPTER 35—PROGRAMS FOR OLDER AMERICANS

SUBCHAPTER IV—TRAINING, RESEARCH, AND DISCRETIONARY PROJECTS AND PROGRAMS

Sec.
3030aa. Statement of purpose.
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3058. Findings.
3058a. Purposes.
3058b. Older Americans personal health education and training program.
  (a) Establishment.
  (b) Grants and contracts; conditions for payment; regulations.
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3058c. Administration.
  (a) Use of services, equipment, personnel, and facilities of other agencies and instrumentalities.
  (b) Manner of payment.
  (c) Delegation of functions.
3058d. Authorization of appropriations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4913, 8004, 9904 of this title; title 7 sections 1431, 1431e; title 20 sections 1013, 1014.

SUBCHAPTER I—DECLARATION OF OBJECTIVES AND DEFINITIONS

§ 3001. Congressional declaration of objectives

The Congress hereby finds and declares that, in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society, the older people of our Nation are entitled to, and it is the joint and several duty and responsibility of the governments of the United States and of the several States and their political subdivisions to assist our older people to secure equal opportunity to the full and free enjoyment of the following objectives:

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Full restoration services for those who require institutional care, and a comprehensive array of community-based, long-term care services adequate to appropriately sustain older people in their communities and in their homes.

[*See main edition for text of* (*5*) *to* (*7*)]

(8) Efficient community services, including access to low-cost transportation, which provide a choice in supported living arrangements and social assistance in a coordinated manner and which are readily available when needed, with emphasis on maintaining a continuum of care for the vulnerable elderly.

(9) Immediate benefit from proven research knowledge which can sustain and improve health and happiness.

(10) Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives and full participation in the planning and operation of community-based services and programs provided for their benefit.

(As amended Pub. L. 98-459, title I, § 102, Oct. 9, 1984, 98 Stat. 1767.)

AMENDMENTS

1984—Par. (4). Pub. L. 98-459, § 102(a), inserted reference to a comprehensive array of community-based, long-term care services adequate to appropriately sustain older people in their communities and in their homes.

Par. (8). Pub. L. 98-459, § 102(b), inserted reference to emphasis on maintaining a continuum of care for the vulnerable elderly.

Par. (10). Pub. L. 98-459, § 102(c), inserted reference to full participation in the planning and operation of community-based services and programs provided for the benefit of older people.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 803 of Pub. L. 98-459 provided that:

"(a) Except as provided in subsection (b), this Act and the amendments made by this Act [enacting sections 3030aa, 3030bb, 3030jj, 3034, and 3037b of this title, amending sections 1762a, 3001, 3011 to 3013, 3015 to 3018, 3020b, 3021 to 3029, 3030a, 3030c, 3030d, 3031, 3032, 3035, 3035a to 3035e, 3037, 3037a, 3056, 3056a, 3056d to 3056f, 3057a, 3057c, and 3057g of this title and sections 623, 630, and 631 of Title 29, Labor, and enacting provisions set out as notes under sections 3001 and 3056 of this title and section 631 of Title 29, and amending provisions set out as a note under former section 3045 of this title] shall take effect on the date of the enactment of this Act [Oct. 9, 1984].

"(b)(1) The amendment made by section 206(a) [amending section 3017(b) of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 9, 1984].

"(2) The amendment made by section 206(d) [amending section 3017(g) of this title] shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act [Oct. 9, 1984].

"(3) The amendment made by section 411(b) [amending section 3037(b) of this title] shall not apply with respect to any grant or payment made before the date of the enactment of this Act [Oct. 9, 1984].

"(4) The amendment made by section 701 [enacting subchapter XI of this chapter] shall take effect on October 1, 1984."

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-459 provided that: "This Act [enacting sections 3030aa, 3030bb, 3030jj, 3034, 3037b, and 3058 to 3058d of this title, amending sections 1762a, 3001, 3011 to 3013, 3015 to 3018, 3020b, 3021 to 3029, 3030a, 3030c, 3030d, 3031, 3032, 3035, 3035a to 3035e, 3037, 3037a, 3056, 3056a, 3056d to 3056f, 3057a, 3057c, and 3057g of this title and sections 623, 630, and 631 of Title 29, Labor, and enacting provisions set out as notes under sections 3001, 3056, and 3058 of this title and section 631 of Title 29, and amending provisions set out as a note under former section 3045 of this title] may be cited as the 'Older Americans Act Amendments of 1984'."

For short title of subchapter XI of this chapter as the "Older Americans Personal Health Education and Training Act", see section 701 of Pub. L. 89-73, as added by section 701 of Pub. L. 98-459, set out as a Short Title note under section 3058 of this title.

SUBCHAPTER II—ADMINISTRATION ON AGING

§ 3011. Establishment of Administration; Commissioner on Aging

(a) There is established in the Office of the Secretary an Administration on Aging (hereinafter in this chapter referred to as the "Administration") which shall be headed by a Commissioner on Aging (hereinafter in this chapter referred to as the "Commissioner"). Except for subchapter IX of this chapter, the Administration shall be the agency for carrying out this chapter. In the performance of the functions of the Administration, the Commissioner shall be directly responsible to the Office of the Secretary. There shall be a direct reporting relationship between the Commissioner and the Office of the Secretary. The Secretary shall not approve or require any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner.

(b) The Commissioner shall be appointed by the President by and with the advice and consent of the Senate.

(As amended Pub. L. 98-459, title II, § 201, Oct. 9, 1984, 98 Stat. 1767.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-459, § 201, substituted "the agency" for "the principal agency" and "the functions of the Administration" for "his functions", added provision requiring the establishment of a direct reporting relationship between the Commissioner and the Office of the Secretary, and substituted "approve or require" for "approve". Notwithstanding directory language that "the functions of the Administration" be substituted for "his functions" in second sentence, and that provision requiring a direct reporting relationship between the Commissioner and the Office of the Secretary be inserted after second sentence, the amendment was executed by making the substitution in third sentence, and inserting such provision after third sentence, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3012. Administrative provisions

(a) Duties and functions of Administration

It shall be the duty and function of the Administration to—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) develop plans, conduct and arrange for research in the field of aging, and assist in the establishment and implementation of programs designed to meet the needs of older individuals for supportive services, including nutrition, hospitalization, education and training services (including preretirement training, and continuing education), low-cost transportation and housing, and health services;

[*See main edition for text of* (*6*) *to* (*8*)]

(9) stimulate more effective use of existing resources and available services for the aged and aging, including existing legislative protections with particular emphasis on the application of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.];

[*See main edition for text of* (*10*) *to* (*15*)]

(16) provide information and assistance to private organizations for the establishment and operation by them of programs and activities related to the purposes of this chapter;

(17) develop, in coordination with other agencies, a national plan for meeting the needs for trained personnel in the field of aging, and for training persons for carrying out programs related to the purposes of this chapter, and conduct and provide for the conducting of such training; and

(18) consult with national organizations representing minority individuals to develop and disseminate training packages and to provide technical assistance efforts designed to assist State and area agencies in providing services to older individuals with the greatest economic or social needs.

(b) Policy alternatives in long-term care

In order to strengthen the involvement of the Administration in the development of policy alternatives in long-term care and to insure that the development of community alternatives is given priority attention, the Commissioner shall—

(1) develop planning linkages with health systems agencies designated under section 300*l*-4 of this title and with utilization and quality control peer review organizations under title XI of the Social Security Act [42 U.S.C. 1301 et seq.];

[*See main edition for text of* (*2*) *and* (*3*)]

(c) Encouragement by Commissioner of program and activity by voluntary social services group

In executing the duties and functions of the Administration under this chapter and carrying out the programs and activities provided for by this chapter, the Commissioner, in consultation with the Director of the ACTION Agency, shall take all possible steps to encourage and permit voluntary groups active in supportive services, including youth organizations active at the high school or college levels, to participate and be involved individually or through representative groups in such programs or activities to the maximum extent feasible, through the performance of advisory or consultative functions, and in other appropriate ways.

(As amended Pub. L. 98-459, title II, § 202, Oct. 9, 1984, 98 Stat. 1768.)

REFERENCES IN TEXT

The Age Discrimination in Employment Act of 1967, referred to in subsec. (a)(9), (15), is Pub. L. 90-202, Dec. 15, 1967, 81 Stat. 602, as amended, which is classified generally to chapter 14 (§ 621 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 29 and Tables.

The Social Security Act, referred to in subsec. (b)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XI of that Act is classified generally to subchapter XI (§ 1301 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1984—Subsec. (a)(5). Pub. L. 98-459, § 202(a)(1), substituted "establishment and implementation of" for "establishment of and carry out".

Subsec. (a)(9). Pub. L. 98-459, § 202(a)(2), inserted ", including existing legislative protections with particular emphasis on the application of the Age Discrimination in Employment Act of 1967".

Subsec. (a)(18). Pub. L. 98-459, § 202(a)(3)-(5), added par. (18).

Subsec. (b)(1). Pub. L. 98-459, § 202(b), inserted "and with utilization and quality control peer review organizations under title XI of the Social Security Act".

Subsec. (c). Pub. L. 98-459, § 202(c), substituted "the duties and functions of the Administration" for "his duties and functions".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3013. Federal agency cooperation

[*See main edition for text of* (*a*)]

(b) For the purposes of subsection (a) of this section, programs related to the purposes of this chapter shall include—

(1) the Job Training Partnership Act [29 U.S.C. 1501 et seq.],

(2) title II of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 5001 et seq.],

(3) titles XVI, XVIII, XIX, and XX of the Social Security Act [42 U.S.C. 1381 et seq., 1395 et seq., 1396 et seq., 1397 et seq.],

(4) sections 1715v and 1715w of title 12,

(5) the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.],

(6) section 1701q of title 12,

(7) title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.],

(8) title I of Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] and the Adult Education Act [20 U.S.C. 1201 et seq.],

(9) sections 1602, 1607a, and 1612 of title 49, Appendix,

(10) the Public Health Service Act [42 U.S.C. 201 et seq.],

(11) the Low-Income Home Energy Assistance Act of 1981 [42 U.S.C. 8621 et seq.],

(12) part A of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6861 et seq.], relating to weatherization assistance for low income persons,

(13) the Community Services Block Grant Act [42 U.S.C. 9901 et seq.], and

(14) demographic statistics and analysis programs conducted by the Bureau of the Census under title 13.

(As amended Pub. L. 98-459, title II, § 203, Oct. 9, 1984, 98 Stat. 1768.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (b)(1), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b)(2), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Title II of the Domestic Volunteer Service Act of 1973 is classified generally to subchapter II (§ 5001 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4951 of this title and Tables.

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI, XVIII, XIX, and XX of the Social Security Act are classified generally to subchapters XVI (§ 1381 et seq.), XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b)(5), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (b)(7), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (b)(8), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title I of the Higher Education Act of 1965 is classified generally to subchapter I (§ 1001 et seq.) of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Adult Education Act, referred to in subsec. (b)(8), is title III of Pub. L. 89-750, Nov. 3, 1966, 80 Stat. 1216, as amended, which is classified principally to chapter 30 (§ 1201 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 20 and Tables.

Section 1607a of title 49, Appendix, referred to in subsec. (b)(9), was repealed by Pub. L. 95-599, title III, § 305(a), Nov. 6, 1978, 92 Stat. 2473.

The Public Health Service Act, referred to in subsec. (b)(10), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Low-Income Home Energy Assistance Act of 1981, referred to in subsec. (b)(11), is title XXVI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 893, as amended, which is classified generally to subchapter II (§ 8621 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see note set out under section 8621 of this title and Tables.

The Energy Conservation in Existing Buildings Act of 1976, referred to in subsec. (b)(12), is title IV of Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1150, as amended. Part A of the Energy Conservation in Existing Buildings Act of 1976 is classified generally to part A (§ 6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

The Community Services Block Grant Act, referred to in subsec. (b)(13), is subtitle B of title VI of Pub. L. 97-35, §§ 671 to 683, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§ 9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-459, § 203(a), substituted "Job Training Partnership Act" for "Comprehensive Employment and Training Act".

Subsec. (b)(3). Pub. L. 98-459, § 203(b), added reference to title XVI of the Social Security Act.

Subsec. (b)(8). Pub. L. 98-459, § 203(c), struck out "the community schools program under the Elementary and Secondary Education Act of 1965," before "title I" and the comma after "Higher Education Act of 1965".

Subsec. (b)(9). Pub. L. 98-459, § 203(d), struck out a reference to section 1604 of title 49, Appendix.

Subsec. (b)(10) to (14). Pub. L. 98-459, § 203(e), added pars. (10) to (14).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3015. Federal Council on the Aging

(a) Establishment; membership; term; representation of interests; qualification; previously appointed members

(1) There is established a Federal Council on the Aging to be composed of 15 members. Members shall serve for terms of three years without regard to the provisions of title 5. Members shall be appointed by each appointing authority so as to be representative of rural and urban older individuals, national organizations with an interest in aging, business, labor, minorities, and the general public. At least two of the members appointed by each appointing authority shall be older individuals. No full-time officer or employee of the Federal Government may be appointed as a member of the Council.

(2) Members appointed to the Federal Council on the Aging established by this section prior to October 9, 1984, who are serving on such date, shall continue to serve on the Federal Council established by paragraph (1) of this subsection until members are appointed in accordance with subsection (b)(1) of this section.

(b) Appointment of class 1, class 2, and class 3 members; vacancies; compensation and travel expenses

(1)(A) The members appointed in 1985 shall be referred to as class 1 members; the members appointed in 1986 shall be referred to as class 2 members; and the members appointed in 1987 shall be referred to as class 3 members.

(B)(i) Members of each class shall be appointed in the manner prescribed by this subparagraph.

(ii) Of the members of class 1, two shall be appointed by the President, two by the President pro tempore of the Senate upon the recommendation of the Majority Leader and the Minority Leader, and one by the Speaker of the House of Representatives upon the recommendation of the Majority Leader and the Minority Leader.

(iii) Of the members of class 2, two shall be appointed by the President, one by the President pro tempore of the Senate upon the recommendation of the Majority Leader and the Minority Leader, and two by the Speaker of the House of Representatives upon the recommendation of the Majority Leader and the Minority Leader.

(iv) Of the members of class 3, one shall be appointed by the President, two by the President pro tempore of the Senate upon the recommendation of the Majority Leader and the Minority Leader, and two by the Speaker of the House of Representatives upon the recommendation of the Majority Leader and the Minority Leader.

(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term. Members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office.

[*See main edition for text of (3) and (4)*]

(c) Chairperson; meetings

The President shall designate the Chairperson from among the members appointed to the Council. The Council shall meet at the call of the Chairperson at least quarterly.

(d) Duties of Federal Council on the Aging

The Council shall—

(1) advise and assist the President on matters relating to the special needs of older Americans;

(2) review and evaluate, on a continuing basis, Federal policies regarding the aging and programs and other activities affecting the aging conducted or assisted by all Federal departments and agencies for the purpose of appraising their value and their impact on the lives of older Americans;

(3) serve as a spokesman on behalf of older Americans by making recommendations to the President, to the Secretary, the Commissioner, and to the Congress with respect to Federal policies regarding the aging and federally conducted or assisted programs and other activities relating to or affecting them;

(4) inform the public about the problems and needs of the aging by collecting and disseminating information, conducting or commissioning studies and publishing the results thereof, and by issuing publications and reports; and

(5) provide public forums for discussing and publicizing the problems and needs of the aging and obtaining information relating thereto by conducting public hearings, and by conducting or sponsoring conferences, workshops, and other such meetings.

(e) Staff, information, and other assistance

The Council shall have staff personnel, appointed by the Chairperson, to assist it in carrying out its activities. The head of each Federal department and agency shall make available to the Council such information and other assistance as it may require to carry out its activities.

[*See main edition for text of (f)*]

(g) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this section $228,900 for fiscal year 1984 and $200,000 for each of the fiscal years 1985, 1986, and 1987.

(As amended Pub. L. 98–459, title II, § 204, Oct. 9, 1984, 98 Stat. 1769.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments, referred to in the subsec. (a)(1), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–459, § 204(a), redesignated existing provisions as par. (1), in par. (1) as so redesignated struck out reference to appointment by the President with the advice and consent of the Senate, added references to appointment by each appointing authority, substituted reference to rural and urban older individuals for reference to rural and urban older Americans, added reference to minorities, and reduced from five to two the number of members of the Council required to be older individuals, and added par. (2).

Subsec. (b)(1). Pub. L. 98–459, § 204(b), substituted provisions regarding the appointment of class 1, class 2, and class 3 members by the President, the President pro tempore of the Senate and the Speaker of the House of Representatives for provisions that of the members first appointed, five had to be appointed for a term of one year, five had to be appointed for a term of two years, and five had to be appointed for a term of three years, as designated by the President at the time of appointment.

Subsec. (b)(2). Pub. L. 98–459, § 204(c)(1), substituted "such member's predecessor" for "his predecessor".

Subsec. (c). Pub. L. 98–459, § 204(c)(2), substituted "Chairperson" for "Chairman" in two places.

Subsec. (d)(2). Pub. L. 98–459, § 204(c)(3), redesignated par. (3) as (2) and struck out former par. (2) which had required the Council to assist the Commissioner in making an appraisal of needs pursuant to the functions carried out by the Commissioner under section 3031 of this title.

Subsec. (d)(3) to (6). Pub. L. 98–459, § 204(c)(3), redesignated pars. (4) to (6) as (3) to (5), respectively.

Subsec. (e). Pub. L. 98–459, § 204(c)(4), substituted "Chairperson" for "Chairman".

Subsec. (g). Pub. L. 98-459, § 204(d), struck out provisions which had authorized the appropriation of $200,000 for fiscal year 1982 and $214,000 for fiscal year 1983, and added provisions authorizing appropriations of $200,000 for each of the fiscal years 1985, 1986, and 1987.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3016. Authority of Commissioner

[*See main edition for text of* (*a*)]

(b) Utilization of services and facilities of Federal and other public or nonprofit agencies; advance or reimbursement payments for such use

In administering the functions of the Administration under this chapter, the Commissioner may utilize the services and facilities of any agency of the Federal Government and of any other public or nonprofit agency or organization, in accordance with agreements between the Commissioner and the head thereof, and is authorized to pay therefor, in advance or by way of reimbursement, as may be provided in the agreement.

(c) Regulations; notice and comment

Not later than 120 days after October 9, 1984, the Secretary shall issue and publish in the Federal Register proposed regulations for the administration of this chapter. After allowing a reasonable period for public comment on such proposed rules and not later than 90 days after such publication, the Secretary shall issue, in final form, regulations for the administration of this chapter.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(As amended Pub. L. 98-459, title II, § 205, Oct. 9, 1984, 98 Stat. 1770.)

Amendments

1984—Subsec. (b). Pub. L. 98-459, § 205(a), substituted "the functions of the Administration" for "his functions".

Subsecs. (c), (d). Pub. L. 98-459, § 205(b), added subsec. (c) and redesignated former subsec. (c) as (d).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3017. Evaluation of programs

[*See main edition for text of* (*a*)]

(b) General standards

The Secretary may not make grants or contracts under subchapter IV of this chapter until the Secretary develops and publishes general standards to be used by the Secretary in evaluating the programs and projects assisted under such subchapter. Results of evaluations conducted pursuant to such standards shall be included in the reports required by section 3018 of this title.

(c) Opinions of program and project participants; comparison of effectiveness of related programs; consultation with organizations concerned with older individuals

In carrying out evaluations under this section, the Secretary shall, whenever possible, arrange to obtain the opinions of program and project participants about the strengths and weaknesses of the programs and projects, and conduct, where appropriate, evaluations which compare the effectiveness of related programs in achieving common objectives. In carrying out such evaluations, the Secretary shall consult with organizations concerned with older individuals, including those representing minority individuals.

(d) Annual summaries and analyses of evaluation; demonstration projects; transmittal to Congress; dissemination to Federal, State, and local agencies and private organizations; accessibility to public

The Secretary shall annually publish summaries and analyses of the results of evaluative research and evaluation of program and project impact and effectiveness, including, as appropriate, health and nutrition education demonstration projects conducted under section 3027(f) of this title, the full contents of which shall be transmitted to Congress, be disseminated to Federal, State, and local agencies and private organizations with an interest in aging, and be accessible to the public.

[*See main edition for text of* (*e*) *and* (*f*)]

(g) Funds

The Secretary is authorized to use such sums as may be required, but not to exceed one-tenth of 1 percent of the funds appropriated under this chapter for each fiscal year, or $300,000 whichever is lower, to conduct program and project evaluations (directly, or by grants or contracts) as required by this subchapter. In the case of allotments from such an appropriation, the amount available for such allotments (and the amount deemed appropriated therefor) shall be reduced accordingly.

(As amended Pub. L. 98-459, title II, § 206, Oct. 9, 1984, 98 Stat. 1770.)

Amendments

1984—Subsec. (b). Pub. L. 98-459, § 206(a), substituted "the Secretary develops and publishes general standards to be used by the Secretary in evaluating the programs and projects assisted under such subchapter" for "he has developed and published general standards to be used by him in evaluating the programs and projects assisted under such section or subchapter".

Subsec. (c). Pub. L. 98-459, § 206(b), added provision requiring the Secretary to consult with organizations concerned with older individuals, including those representing minority individuals, in carrying out evaluations under this section.

Subsec. (d). Pub. L. 98-459, § 206(c), added reference to health and nutrition education demonstration projects conducted under section 3027(f) of this title and added provision requiring dissemination of summaries and analyses required by this subsection to Federal, State, and local agencies and private organizations with an interest in aging.

Subsec. (g). Pub. L. 98-459, § 206, substituted "one-tenth of 1 percent" for "1 per centum", "under this chapter for each fiscal year" for "under this chapter", and "$300,000 whichever is lower" for "$1,000,000 whichever is greater".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 206(a) of Pub. L. 98-459 effective 60 days after Oct. 9, 1984, see section 803(b)(1) of Pub. L. 98-459, set out as a note under section 3001 of this title.

Amendment by section 206(b), (c) of Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

Amendment by section 206(d) of Pub. L. 98-459 effective the first day of the first fiscal year beginning after Oct. 9, 1984, see section 803(b)(2) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3018. Reports to Congress

(a) Not later than one hundred and twenty days after the close of each fiscal year, the Commissioner shall prepare and submit to the President and to the Congress a full and complete report on the activities carried out under this chapter. Such annual reports shall include statistical data reflecting services and activities provided individuals during the preceding fiscal year.

(b) Not later than 2 years after October 9, 1984, the Commissioner shall prepare and submit a report to the Congress on the extent to which the need for services for the prevention of the abuse of individuals is unmet, based on information gathered pursuant to section 3026(a)(6)(J) of this title.

(As amended Pub. L. 98-459, title II, § 207, Oct. 9, 1984, 98 Stat. 1770.)

AMENDMENTS

1984—Pub. L. 98-459 designated existing provisions as subsec. (a), substituted therein "submit to the President and to the Congress" for "submit to the President for transmittal to the Congress", and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3017, 3035b, 3037b of this title.

§ 3020b. Reduction of paperwork

In order to reduce unnecessary, duplicative, or disruptive demands for information, the Commissioner, in consultation with State agencies designated under section 3025(a)(1) of this title, and other appropriate agencies and organizations, shall continually review and evaluate all requests by the Administration on Aging for information under this chapter and take such action as may be necessary to reduce the paperwork required under this chapter. The Commissioner shall request only such information as the Commissioner deems essential to carry out the purposes and provisions of this chapter and, in gathering such information, shall make use of uniform service definitions to the extent that such definitions are available.

(As amended Pub. L. 98-459, title II, § 208, Oct. 9, 1984, 98 Stat. 1771.)

AMENDMENTS

1984—Pub. L. 98-459 added provision requiring the Commissioner, in gathering information, to make use of uniform service definitions to the extent that such definitions are available.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

SUBCHAPTER III—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

PART A—GENERAL PROVISIONS

§ 3021. Purpose; administration; assistance and cooperation of Federal agencies and departments

(a) It is the purpose of this subchapter to encourage and assist State and area agencies to concentrate resources in order to develop greater capacity and foster the development and implementation of comprehensive and coordinated service systems to serve older individuals by entering into new cooperative arrangements in each State with State and area agencies, and with the providers, including voluntary organizations, of supportive services, including nutrition services and multipurpose senior centers, for the planning, and for the provision of, supportive services, nutrition services, and multipurpose senior centers, in order to—

[*See main edition for text of (1) to (3); (b)*]

(As amended Pub. L. 98-459, title III, § 301, Oct. 9, 1984, 98 Stat. 1771.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-459, in provisions before par. (1), substituted "area agencies" for "local agencies" in two places, inserted "and implementation", inserted ", including voluntary organizations,", and struck out "for the provision of" after "planning".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3022. Definitions

For the purpose of this subchapter—

[*See main edition for text of (1)*]

(2) The term "information and referral source" means location where the State or any public or private agency or organization—

[*See main edition for text of (A)*]

(B) employs, where feasible, a specially trained staff to assess the needs and capacities of older individuals, to inform older individuals of the opportunities and services which are available, and to assist such individuals to take advantage of such opportunities and services.

[*See main edition for text of (3)*]

(4) The term "legal assistance" means legal advice and representation by an attorney (including, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney), and includes counseling or representation by a nonlawyer where permitted by law, to older individuals with economic or social needs.

[*See main edition for text of* (5)]

(6) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

[*See main edition for text of* (7) *to* (9)]

(10) The term "older individual" means any individual who is 60 years of age or older.

(11) The term "multipurpose senior center" means a community facility for the organization and provision of a broad spectrum of services, which shall include, but not be limited to, provision of health, social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals.

(12) The term "focal point" means a facility established to encourage the maximum collocation and coordination of services for older individuals.

(As amended Pub. L. 98-459, title III, § 302, Oct. 9, 1984, 98 Stat. 1771.)

AMENDMENTS

1984—Par. (2)(B). Pub. L. 98-459, § 302(1), substituted "employs, where feasible," for "employs", and inserted "to assess the needs and capacities of older individuals,".

Par. (4). Pub. L. 98-459, § 302(2), substituted "legal assistance" for "legal services".

Par. (6). Pub. L. 98-459, § 302(3), substituted ", and the Commonwealth of the Northern Mariana Islands" for "and the Northern Mariana Islands".

Pars. (10) to (12). Pub. L. 98-459, § 302(4), added pars. (10) to (12).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3023. Authorization of appropriations; uses of funds

(a) There are authorized to be appropriated $350,300,000 for fiscal year 1984, $325,700,000 for fiscal year 1985, $343,600,000 for fiscal year 1986, and $361,500,000 for fiscal year 1987, for the purpose of making grants under part B of this subchapter (relating to supportive services and senior centers).

(b)(1) There are authorized to be appropriated $365,300,000 for fiscal year 1984, $360,800,000 for fiscal year 1985, $376,500,000 for fiscal year 1986, and $395,000,000 for fiscal year 1987, for the purpose of making grants under subpart I of part C of this subchapter (relating to congregate nutrition services).

(2) There are authorized to be appropriated $68,700,000 for fiscal year 1984, $69,100,000 for fiscal year 1985, $72,000,000 for fiscal year 1986, and $75,600,000 for fiscal year 1987, for the purpose of making grants under subpart II of part C of this subchapter (relating to home delivered nutrition services).

(c) Grants made under parts B and C of this subchapter may be used for paying part of the cost of—

[*See main edition for text of* (1)]

(2) the development of comprehensive and coordinated systems for supportive services, congregate and home delivered nutrition services, the development and operation of multipurpose senior centers, and the delivery of legal assistance.

(As amended Pub. L. 98-459, title III, § 303, Oct. 9, 1984, 98 Stat. 1771.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-459, § 303(a), struck out provisions authorizing appropriations of $300,000,000 for fiscal year 1979, $360,000,000 for fiscal year 1980, $480,000,000 for fiscal year 1981, $306,000,000 for fiscal year 1982, and $327,400,000 for fiscal year 1983, and added provisions authorizing appropriations of $325,700,000 for fiscal year 1985, $343,600,000 for fiscal year 1986, and $361,500,000 for fiscal year 1987.

Subsec. (b)(1). Pub. L. 98-459, § 303(b)(1), struck out provisions authorizing appropriations of $350,000,000 for fiscal year 1979, $375,000,000 for fiscal year 1980, $400,000,000 for fiscal year 1981, $319,100,000 for fiscal year 1982, and $341,400,000 for fiscal year 1983, and added provisions authorizing appropriations of $360,800,000 for fiscal year 1985, $376,500,000 for fiscal year 1986, and $395,000,000 for fiscal year 1987.

Subsec. (b)(2). Pub. L. 98-459, § 303(b)(2), struck out provisions authorizing appropriations of $80,000,000 for fiscal year 1979, $100,000,000 for fiscal year 1980, $120,000,000 for fiscal year 1981, $60,000,000 for fiscal year 1982, and $64,200,000 for fiscal year 1983, and added provisions authorizing appropriations of $69,100,000 for fiscal year 1985, $72,000,000 for fiscal year 1986, and $75,600,000 for fiscal year 1987.

Subsec. (c)(2). Pub. L. 98-459, § 303(c), substituted "legal assistance" for "legal services".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3024. Allotment to States

(a) Formula for computation of amount

(1) Subject to paragraph (2), from the sums appropriated under section 3023 of this title for each fiscal year, each State shall be allotted an amount which bears the same ratio to such sums as the population aged 60 or older in such State bears to the population aged 60 or older in all States, except that (A) no State shall be allotted less than one-half of 1 percent of the sum appropriated for the fiscal year for which the determination is made; (B) Guam, the Virgin Islands, and the Trust Territory of the Pacific Islands, shall each be allotted not less than one-fourth of 1 percent of the sum appropriated for the fiscal year for which the determination is made; and (C) American Samoa and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than one-sixteenth of 1 percent of the sum appropriated

for the fiscal year for which the determination is made. For the purpose of the exception contained in clause (A) only, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(2) No State shall be allotted less than the total amount allotted to the State under paragraph (1) of this subsection and section 3028 of this title for fiscal year 1984.

(3) The number of individuals aged 60 or older in any State and in all States shall be determined by the Commissioner on the basis of the most recent satisfactory data available to the Commissioner.

(b) Unused funds

Whenever the Commissioner determines that any amount allotted to a State under part B or C for a fiscal year under this section will not be used by such State for carrying out the purpose for which the allotment was made, the Commissioner shall make such allotment available for carrying out such purpose to one or more other States to the extent the Commissioner determines that such other States will be able to use such additional amount for carrying out such purpose. Any amount made available to a State from an appropriation for a fiscal year in accordance with the preceding sentence shall, for purposes of this subchapter, be regarded as part of such State's allotment (as determined under subsection (a) of this section) for such year, but shall remain available until the end of the succeeding fiscal year.

(c) Withholding of funds; disbursement

If the Commissioner finds that any State has failed to qualify under the State plan requirements of section 3027 of this title, the Commissioner shall withhold the allotment of funds to such State referred to in subsection (a) of this section. The Commissioner shall disburse the funds so withheld directly to any public or private nonprofit institution or organization, agency, or political subdivision of such State submitting an approved plan under section 3027 of this title, which includes an agreement that any such payment shall be matched in the proportion determined under subsection (d)(1)(D) of this section for such State, by funds or in-kind resources from non-Federal sources.

(d) Costs of administration, ombudsman program, demonstration projects, supportive services, senior centers and nutrition services; payment and determination of non-Federal share

(1) From any State's allotment, after the application of section 3028(b) of this title[1] under this section for any fiscal year—

(A) such amount as the State agency determines, but not more than 8.5 percent thereof, shall be available for paying such percentage as the agency determines, but not more than 75 percent, of the cost of administration of area plans;

(B) such amount as the State agency determines to be adequate for conducting an effective ombudsman program under section 3027(a)(12) of this title shall be available for conducting such program;

(C) after September 30, 1986, such amount as the State agency determines to be adequate, but not more than 1 percent, for conducting effective demonstration projects in health and nutrition education under section 3027(f) of this title shall be available for conducting such projects; and

(D) the remainder of such allotment shall be available to such State only for paying such percentage as the State agency determines, but not more than 85 percent of the cost of supportive services, senior centers, and nutrition services under this subchapter provided in the State as part of a comprehensive and coordinated system in planning and service areas for which there is an area plan approved by the State agency.

(2) The non-Federal share shall be in cash or in kind. In determining the amount of the non-Federal share, the Commissioner may attribute fair market value to services and facilities contributed from non-Federal sources.

(As amended Pub. L. 98–459, title III, § 304, Oct. 9, 1984, 98 Stat. 1772.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–459, § 304(a)(1)–(5), substituted "Subject to paragraph (2), from" for "From", substituted "under section 3023 of this title" for "under parts B and C", substituted "Commonwealth of the Northern Mariana Islands" for "Northern Mariana Islands" in two places, substituted "and (C)" for "(C)", and struck out "; and (D) no State shall be allotted an amount less than the State received for fiscal year 1978".

Subsec. (a)(2), (3). Pub. L. 98–459, § 304(a)(6)–(8), added par. (2), redesignated former par. (2) as (3), and substituted therein "available to the Commissioner" for "available to him".

Subsec. (b). Pub. L. 98–459, § 304(b), substituted "the Commissioner shall make" for "he shall make" and "to the extent the Commissioner determines" for "to the extent he determines".

Subsec. (c). Pub. L. 98–459, § 304(c), substituted "subsection (d)(1)(D) of this section" for "subsection (d)(1)(B) of this section" and "or in-kind resources" for "for in-kind resources".

Subsec. (d)(1). Pub. L. 98–459, § 304(d), inserted ", after the application of section 3028(b) of this title" in provisions before par. (1), added subpar. (C), and redesignated former subpar. (C) as (D).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

§ 3025. Designation of State agencies

(a) Duties of designated agency

In order for a State to be eligible to participate in programs of grants to States from allotments under this subchapter—

(1) the State shall, in accordance with regulations of the Commissioner, designate a State agency as the sole State agency to—

[*See main edition for text of* (A) *to* (D)]

(E) divide the State into distinct planning and service areas (or in the case of a State specified in subsection (b)(5)(A) of this section, designate the entire State as a single planning and service area), in accordance with guidelines issued by the Commissioner, after considering the geographical distribution of individuals aged 60 and older in the State, the incidence of the need for supportive services, nutrition services, multipurpose senior centers, and legal services, the distribution of older individuals who have low incomes residing in such areas, the distribution of resources available to provide such services or centers, the boundaries of existing areas within the State which were drawn for the planning or administration of supportive services programs, the location of units of general purpose local government within the State, and any other relevant factors; and

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[1] So in original. Probably should be followed by a comma.

(2) the State agency designated under clause (1) shall—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) provide assurances that preference will be given to providing services to older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals, and include proposed methods of carrying out the preference in the State plan.

(b) Planning and service area designated; Indian reservations; redesignation; adjustment of State allotment; review by Commissioner; additional planning and service areas; right to first refusal to units of local government

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The chief executive officer of each State in which a planning and service area crosses State boundaries, or in which an interstate Indian reservation is located, may apply to the Commissioner to request redesignation as an interstate planning and service area comprising the entire metropolitan area or Indian reservation. If the Commissioner approves such an application, the Commissioner shall adjust the State allotments of the areas within the planning and service area in which the interstate planning and service area is established to reflect the number of older individuals within the area who will be served by an interstate planning and service area not within the State.

[*See main edition for text of* (*4*)]

(5)(A) A State which on or before October 1, 1980, had designated, with the approval of the Commissioner, a single planning and service area covering all of the older individuals in the State, in which the State agency was administering the area plan, may after that date designate one or more additional planning and service areas within the State to be administered by public or private nonprofit agencies or organizations as area agencies on aging, after considering the factors specified in subsection (a)(1)(E) of this section. The State agency shall continue to perform the functions of an area agency for any area of the State not included in a planning and service area for which an area agency has been designated.

(B) Whenever a State agency designates a new area agency on aging after October 9, 1984, the State agency shall give the right to first refusal to a unit of general purpose local government if (i) such unit can meet the requirements of subsection (c) of this section, and (ii) the boundaries of such a unit and the boundaries of the area are reasonably contiguous.

[*See main edition for text of* (*c*)]

(d) Publication for review and comment; contents; definitions

(1) The publication for review and comment required by clause (2)(C) of subsection (a) of this section shall include—

(A) a descriptive statement of the formula's assumptions and goals, and the application of the definitions of greatest economic or social need,

(B) a numerical statement of the actual funding formula to be used,

(C) a listing of the population, economic, and social data to be used for each planning and service area in the State, and

(D) a demonstration of the allocation of funds, pursuant to the funding formula, to each planning and service area in the State.

(2) For purposes of clause (2)(E) of subsection (a) of this section and paragraph (1) of this subsection, the term "greatest economic need" means the need resulting from an income level at or below the poverty threshold established by the Bureau of the Census, and the term "greatest social need" means the need caused by noneconomic factors which include physical and mental disabilities, language barriers, and cultural or social isolation including that caused by racial or ethnic status which restricts an individual's ability to perform normal daily tasks or which threatens his or her capacity to live independently.

(As amended Pub. L. 98–459, title III, § 305, Oct. 9, 1984, 98 Stat. 1773.)

AMENDMENTS

1984—Subsec. (a)(1)(E). Pub. L. 98–459, § 305(a)(1), substituted "subsection (b)(5)(A) of this section" for "subsection (b)(5) of this section".

Subsec. (a)(2)(E). Pub. L. 98–459, § 305(a)(2), inserted ", with particular attention to low-income minority individuals,".

Subsec. (b)(3). Pub. L. 98–459, § 305(b)(1), substituted "the Commissioner shall adjust" for "he shall adjust".

Subsec. (b)(5). Pub. L. 98–459, § 305(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d). Pub. L. 98–459, § 305(c), added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3020b, 3022, 3023, 3026, 3027, 3028, 3035b, 3035e, 3056a, 3058b, 5001, 5012 of this title.

§ 3026. Area plans

(a) Preparation and development by area agency; requirements

Each area agency on aging designated under section 3025(a)(2)(A) of this title shall, in order to be approved by the State agency, prepare and develop an area plan for a planning and service area for a two-, three-, or four-year period determined by the State agency, with such annual adjustments as may be necessary. Each such plan shall be based upon a uniform format for area plans within the State prepared in accordance with section 3027(a)(1) of this title. Each such plan shall—

(1) provide, through a comprehensive and coordinated system, for supportive services, nutrition services, and, where appropriate, for the establishment, maintenance, or construction of multipurpose senior centers, within the planning and service area covered by the plan, including determining the extent of need for supportive services, nutrition services, and multipurpose senior centers in such area (taking into consideration, among other things, the number of older individuals with low incomes residing in such area and the efforts of voluntary organizations in the community), evaluating the effectiveness of the use of resources in meeting such need, and entering into agreements with providers of supportive services, nutrition services, or multipurpose senior centers in such area, for the provision of such services or centers to meet such need;

(2) provide assurances that an adequate proportion of the amount allotted for part B to the planning and service area will be expended for the delivery of each of the following categories of services—

(A) services associated with access to services (transportation, outreach, and information and referral);

(B) in-home services (homemaker and home health aide, visiting and telephone reassurance, chore maintenance, and supportive services for families of elderly victims of Alzheimer's disease and other neurological and organic brain disorders of the Alzheimer's type); and

(C) legal assistance;

and specify annually in such plan, as submitted or as amended, in detail the amount of funds expended for each such category during the fiscal year most recently concluded;

(3) designate, where feasible, a focal point for comprehensive service delivery in each community, giving special consideration to designating multipurpose senior centers as such focal point;

[See main edition for text of (4)]

(5)(A) provide assurances that preference will be given to providing services to older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals, and include proposed methods of carrying out the preference in the area plan; and

[See main edition for text of (B)]

(6) provide that the area agency on aging will—

[See main edition for text of (A) to (E)]

(F) establish an advisory council consisting of older individuals (including minority individuals) who are participants or who are eligible to participate in programs assisted under this chapter, representatives of older individuals, local elected officials, and the general public, to advise continuously the area agency on all matters relating to the development of the area plan, the administration of the plan and operations conducted under the plan;

(G) develop and publish methods by which priority of services is determined, particularly with respect to the delivery of services under clause (2); and [2]

(H) establish effective and efficient procedures for coordination between the programs assisted under this subchapter and programs described in section 3013(b) of this title;

(I) conduct efforts to facilitate the coordination of community-based, long-term care services designed to retain individuals in their homes, thereby deferring unnecessary, costly institutionalization, and designed to emphasize the development of client-centered case management systems as a component of such services;

(J) identify the public and private nonprofit entities involved in the prevention, identification, and treatment of the abuse, neglect, and exploitation of older individuals, and based on such identification, determine the extent to which the need for appropriate services for such individuals is unmet; and

(K) facilitate the involvement of long-term care providers in the coordination of community-based [3] long-term care services and work to ensure community awareness of and involvement in addressing the needs of residents of long-term care facilities.

For purposes of clause (5)(A), the term "greatest economic need" means the need resulting from an income level at or below the poverty threshold established by the Bureau of the Census and the term "greatest social need" means the need caused by noneconomic factors which include physical and mental disabilities, language barriers, cultural or social isolation including that caused by racial or ethnic status which restricts an individual's ability to perform normal daily tasks or which threaten his or her capacity to live independently.

(b) Waiver of requirements; notice and hearing; opportunity to testify; record

(1) Each State, in approving area agency plans under this section, shall waive the requirement described in clause (2) of subsection (a) of this section for any category of services

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[2] So in original. The word "and" probably should not appear.

[3] So in original. Probably should be followed by a comma.

described in such clause if the area agency on aging demonstrates to the State agency that services being furnished for such category in the area are sufficient to meet the need for such services in such area.

(2)(A) Before an area agency on aging requests a waiver under paragraph (1) of this subsection, the area agency on aging shall conduct a timely public hearing in accordance with the provisions of this paragraph. The area agency on aging requesting a waiver shall notify all interested parties in the area of the public hearing and furnish the interested parties with an opportunity to testify.

(B) The area agency on aging shall prepare a record of the public hearing conducted pursuant to subparagraph (A) and shall furnish the record of the public hearing with the request for a waiver made to the State under paragraph (1).

[*See main edition for text of* (c)]

(As amended Pub. L. 98-459, title III, § 306, Oct. 9, 1984, 98 Stat. 1774.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-459, § 306(a)(5)(E), added provisions defining "greatest economic need" and "greatest social need" following par. (6).

Subsec. (a)(1). Pub. L. 98-459, § 306(a)(1), inserted "and the efforts of voluntary organizations in the community".

Subsec. (a)(2). Pub. L. 98-459, § 306(a)(2)(A), inserted "each of the following categories of services" in provisions preceding subpar. (A).

Pub. L. 98-459, § 306(a)(2)(D), substituted "and specify annually in such plan, as submitted or as amended, in detail the amount of funds expended for each such category during the fiscal year most recently concluded" for "and that some funds will be expended for each such category of services" in provisions following subpar. (C).

Subsec. (a)(2)(B). Pub. L. 98-459, § 306(a)(2)(B), substituted "chore maintenance, and supportive services for families of elderly victims of Alzheimer's disease and other neurological and organic brain disorders of the Alzheimer's type" for "and chore maintenance".

Subsec. (a)(2)(C). Pub. L. 98-459, § 306(a)(2)(C), substituted "legal assistance" for "legal services".

Subsec. (a)(3). Pub. L. 98-459, § 306(a)(3), substituted ", giving special consideration" for "to encourage the maximum collocation and coordination of services for older individuals, and give special consideration".

Subsec. (a)(5)(A). Pub. L. 98-459, § 306(a)(4), inserted ", with particular attention to low-income minority individuals,".

Subsec. (a)(6)(F). Pub. L. 98-459, § 306(a)(5)(A), (B), (D), redesignated subpar. (G) as (F), substituted therein "consisting of older individuals (including minority individuals)" for "consisting of older individuals", and struck out former subpar. (F) which had required the area agency on aging to enter, where possible, into arrangements with local educational agencies, institutions of higher education, and nonprofit private organizations, to use services provided for older individuals under the community schools program under the Elementary and Secondary Education Act of 1965.

Subsec. (a)(6)(G), (H). Pub. L. 98-459, § 306(a)(5)(D), redesignated subpars. (H) and (I) as (G) and (H), respectively. Former subpar. (G) redesignated (F).

Subsec. (a)(6)(I). Pub. L. 98-459, § 306(a)(5)(C)-(E), added subpar. (I). Former subpar. (I) redesignated (H).

Subsec. (a)(6)(J), (K). Pub. L. 98-459, § 306(a)(5)(E), added subpars. (J) and (K).

Subsec. (b). Pub. L. 98-459, § 306(b), designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3018, 3023, 3027 of this title.

§ 3027. State plans

(a) Criteria for eligibility; contents

Except as provided in section 3029(a) of this title, each State, in order to be eligible for grants from its allotment under this subchapter for any fiscal year, shall submit to the Commissioner a State plan for a two-, three-, or four-year period determined by the State agency, with such annual revisions as are necessary, which meets such criteria as the Commissioner may by regulation prescribe. Each such plan shall—

[*See main edition for text of* (*1*) *and* (*2*)]

(3)(A) provide that the State agency will evaluate the need for supportive services (including legal assistance), nutrition services, and multipurpose senior centers within the State and determine the extent to which existing public or private programs meet such need; and

[*See main edition for text of* (*B*); (*4*) *to* (*9*)]

(10) provide that no supportive services or nutrition services, will be directly provided by the State agency or an area agency on aging, except where, in the judgment of the State agency, provision of such services by the State agency or an area agency on aging is necessary to assure an adequate supply of such services, or where such services are directly related to such State or area agency on aging's administrative functions, or where such services of comparable quality can be provided more economically by such State or area agency on aging;

[*See main edition for text of* (*11*)]

(12) provide assurances that the State agency will—

(A) establish and operate, either directly or by contract or other arrangement with any public agency or other appropriate private nonprofit organization, other than an agency or organization which is responsible for licensing or certifying long-term care services in the State or which is an association (or an affiliate of such an association) of long-term care facilities (including any other residential facility for older individuals), a long-term care ombudsman program which provides an individual who will, on a full-time basis—

[*See main edition for text of* (*i*) *to* (*iii*)]

(iv) provide for training staff and volunteers and promote the development of citizen organizations to participate in the ombudsman program; and

[*See main edition for text of* (v), (*B*)]

(C) establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the agency of the State responsible for licensing or certifying long-term care facilities in the State and to the Commissioner on a regular basis;

(D) establish procedures to assure that any files maintained by the ombudsman program shall be disclosed only at the discretion of the ombudsman having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombudsman unless—

(i) such complainant or resident, or his legal representative, consents in writing to such disclosure; or

(ii) such disclosure is required by court order; and

(E) in planning and operating the ombudsman program, consider the views of area agencies on aging, older individuals, and provider agencies;

(13) provide with respect to nutrition services that—

[*See main edition for text of* (*A*)]

(B) primary consideration shall be given to the provision of meals in a congregate setting, except that each area agency (i) may award funds made available under this subchapter to organizations for the provision of home delivered meals to older individuals in accordance with the provisions of subpart II of part C, based upon a determination of need made by the recipient of a grant or contract entered into under this subchapter, without requiring that such organizations also provide meals to older individuals in a congregate setting; and (ii) shall, in awarding such funds, select such organizations in a manner which complies with the provisions of subclause (H);

(C)(i) each project will permit recipients of grants or contracts to solicit voluntary contributions for meals furnished in accordance with guidelines established by the Commissioner, taking into consideration the income ranges of eligible individuals in local communities and other sources of income of the recipients of a grant or contract; and

(ii) such voluntary contributions will be used to increase the number of meals served by the project involved, to facilitate access to such meals, and to provide other supportive services directly related to nutrition services;

[*See main edition for text of* (*D*) *to* (*I*), (*14*)]

(15) provide that with respect to legal assistance—

(A) the plan contains assurances that area agencies on aging will (i) enter into contracts with providers of legal assistance which can demonstrate the experience or capacity to deliver legal assistance; (ii) include in any such contract provisions to assure that any recipient of funds under division (i) will be subject to specific restrictions and regulations promulgated under the Legal Services Corporation Act [42 U.S.C. 2996 et seq.] (other than restrictions and regulations governing eligibility for legal assistance under such Act and governing membership of local governing boards) as determined appropriate by the Commissioner; and (iii) attempt to involve the private bar in legal assistance activities authorized under this subchapter, including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis;

(B) the plan contains assurances that no legal assistance will be furnished unless the grantee administers a program designed to provide legal assistance to older individuals with social or economic need and has agreed, if the grantee is not a Legal Services Corporation project grantee, to coordinate its services with existing Legal Services Corporation projects in the planning and service area in order to concentrate the use of funds provided under this subchapter on individuals with the greatest such need; and the area agency makes a finding, after assessment, pursuant to standards for service promulgated by the Commissioner, that any grantee selected is the entity best able to provide the particular services;

[*See main edition for text of* (*C*) *and* (*D*)]

(16) provide that whenever the State desires to provide for services for the prevention of abuse of older individuals—

(A) the plan contains assurances that any area agency on aging carrying out such services will conduct a program consistent with relevant State law and coordinated with existing State adult protective service activities for—

(i) public education to identify and prevent abuse of older individuals;

(ii) receipt of reports of abuse of older individuals;

(iii) active participation of older individuals participating in programs under this chapter through outreach, conferences, and referral of such individuals to other social service agencies or sources of assistance where appropriate and consented to by the parties to be referred; and

(iv) referral of complaints to law enforcement or public protective service agencies where appropriate;

(B) the State will not permit involuntary or coerced participation in the program of services described in this clause by alleged victims, abusers, or their households; and

(C) all information gathered in the course of receiving reports and making referrals shall remain confidential unless all parties to the complaint consent in writing to the release of such information, except that such information may be released to a law enforcement or public protective service agency;

(17) provide assurances that each State will provide inservice training opportunities for personnel of agencies and programs funded under this chapter;

(18) provide assurances that each State will assign personnel to provide State leadership in developing legal assistance programs for older individuals throughout the State;

(19) provide, with respect to education and training services, assurances that area agencies on aging may enter into grants and contracts with providers of education and training services which can demonstrate the experience or capacity to provide such services (except that such contract authority shall be effective for any fiscal year only to such extent, or in such amounts, as are provided in appropriations Acts);

(20) provide assurances that, if a substantial number of the older individuals residing in any planning and service area in the State are of limited English-speaking ability, then the State will require the area agency on aging for each such planning and service area—

(A) to utilize, in the delivery of outreach services under section 3026(a)(2)(A) of this title, the services of workers who are fluent in the language spoken by a predominant number of such older individuals who are of limited English-speaking ability; and

(B) to designate an individual employed by the area agency on aging, or available to such area agency on aging on a full-time basis, whose responsibilities will include—

(i) taking such action as may be appropriate to assure that counseling assistance is made available to such older individuals who are of limited English-speaking ability in order to assist such older individuals in participating in programs and receiving assistance under this chapter; and

(ii) providing guidance to individuals engaged in the delivery of supportive services under the area plan involved to enable such individuals to be aware of cultural sensitivities and to take into account effectively linguistic and cultural differences; and

(21) provide that the State agency, from funds allotted under section 3024(a) of this title for part B will use an amount equal to an amount not less than 1 percent of such allotment or $20,000, whichever is greater, for the purpose of carrying out the provisions of clause (12), except that (A) the requirement of this clause shall not apply in any fiscal year in which a State spends from State or local sources an amount equal to the amount required to be spent by this clause; and (B) the provisions of this clause shall not apply to American Samoa, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(b) Approval by Commissioner; waiver of requirements

(1) The Commissioner shall approve any State plan which the Commissioner finds fulfills the requirements of subsection (a) of this section.

[*See main edition for text of (2); (c)*]

(d) Discontinuance of payments; disbursement of withheld funds to agencies with approved plans; matching funds

Whenever the Commissioner, after reasonable notice and opportunity for a hearing to the State agency, finds that—

[*See main edition for text of (1) to (3)*]

the Commissioner shall notify such State agency that no further payments from its allotments under section 3024 of this title and section 3028 of this title will be made to the State (or, in the Commissioner's discretion, that further payments to the State will be limited to projects under or portions of the State plan not affected by such failure), until the Commissioner is satisfied that there will no longer be any failure to comply. Until the Commissioner is so satisfied, no further payments shall be made to such State from its allotments under section 3024 of this title and section 3028 of this title (or payments shall be limited to projects under or portions of the State plan not affected by such failure). The Commissioner shall, in accordance with regulations the Commissioner shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency or political subdivision of such State submitting an approved plan in accordance with the provisions of this section. Any such payment shall be matched in the proportions specified in section 3024 of this title.

(e) Appeal

(1) A State which is dissatisfied with a final action of the Commissioner under subsection (b), (c), or (d) of this section may appeal to the United States court of appeals for the circuit in which the State is located, by filing a petition with such court within 30 days after such final action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by the Commissioner for such purpose. The Commissioner thereupon shall file in the court the record of the proceedings on which the Commissioner's action is based, as provided in section 2112 of title 28.

(2) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Commissioner may modify or set aside the Commissioner's order. The findings of the Commissioner as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner shall, within 30 days, file in the court the record of those further proceedings. Such

new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Commissioner shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

[See main edition for text of (3)]

(f) Demonstration projects for health and nutrition education

(1) From amounts made available under section 3024(d)(1)(C) of this title after September 30, 1986, each State shall provide for the establishment of at least one demonstration project for health and nutrition education to be conducted by one or more area agencies on aging within the State based on the information and materials disseminated under section 3058b(d)(2) of this title.

(2) Each such project shall—

(A) be administered by the area agency for the purpose of improving the health and nutrition of older individuals served by the agency;

(B) be established and administered in consultation with an appropriate gerontology center;

(C) be designed to improve the health and nutrition of older individuals through increasing their physical fitness activities and improving the nutritional value of meals in their own daily living habits;

(D) if appropriate, be conducted in conjunction with schools of public health, schools of medicine, public health and social service agencies, private voluntary organizations, or other entities concerned with the health and well-being of older individuals; and

(E) be evaluated and the evaluation shall be submitted prior to October 1, 1987, together with such interim reports as the Commissioner may reasonably require.

(As amended Pub. L. 98-459, title III, § 307, Oct. 9, 1984, 98 Stat. 1775.)

AMENDMENTS

1984—Subsec. (a)(3)(A). Pub. L. 98-459, § 307(a)(1), substituted "legal assistance" for "legal services".

Subsec. (a)(10). Pub. L. 98-459, § 307(a)(2), substituted "supportive services or nutrition services" for "supportive services, including nutrition services", and inserted ", or where such services are directly related to such State or area agency on aging's administrative functions, or where such services of comparable quality can be provided more economically by such State or area agency on aging".

Subsec. (a)(12)(A). Pub. L. 98-459, § 307(a)(3)(A)-(C), substituted ", other than an agency or organization which is responsible" for "which is not responsible", "which is an association" for "which is not an association", and "which provides an individual who will, on a full-time basis—" for "which will—", in provision preceding cl. (i).

Subsec. (a)(12)(A)(iv). Pub. L. 98-459, § 307(a)(3)(D), substituted "training staff and volunteers" for "training volunteers".

Subsec. (a)(12)(E). Pub. L. 98-459, § 307(a)(3)(E)-(G), added subpar. (E).

Subsec. (a)(13)(B). Pub. L. 98-459, § 307(a)(4)(A), substituted "subclause (H)" for "subparagraph (H)".

Subsec. (a)(13)(C)(i). Pub. L. 98-459, § 307(a)(4)(B), substituted "solicit voluntary contributions" for "charge participating individuals".

Subsec. (a)(13)(C)(ii). Pub. L. 98-459, § 307(a)(4)(C), substituted "voluntary contributions" for "charges".

Subsec. (a)(15). Pub. L. 98-459, § 307(a)(5), substituted "legal assistance" for "legal services" in provision preceding subpar. (A).

Subsec. (a)(15)(A). Pub. L. 98-459, § 307(a)(5), substituted "legal assistance" for "legal services" wherever appearing.

Subsec. (a)(15)(B). Pub. L. 98-459, § 307(a)(6), in amending subpar. (B) generally, substituted provisions requiring assurances regarding the furnishing of legal assistance by grantees administering programs designed to provide legal assistance to older individuals with social or economic need for provisions requiring assurances regarding the furnishing of legal services by grantees who were either recipients of funds under the Legal Services Corporation Act or who administered programs designed to provide legal services to all older individuals with social or economic need.

Subsec. (a)(16) to (18). Pub. L. 98-459, § 307(a)(10), added pars. (16) to (18). Former pars. (16) to (18) redesignated (19) to (21), respectively.

Subsec. (a)(19), (20). Pub. L. 98-459, § 307(a)(9), redesignated former pars. (16) and (17) as (19) and (20), respectively.

Subsec. (a)(20)(B)(ii). Pub. L. 98-459, § 307(a)(7), substituted "; and" for the period at the end.

Subsec. (a)(21). Pub. L. 98-459, § 307(a)(9), redesignated former par. (18) as (21).

Subsec. (a)(21)(B). Pub. L. 98-459, § 307(a)(8), substituted "Commonwealth of the Northern Mariana Islands" for "Northern Mariana Islands".

Subsec. (b)(1). Pub. L. 98-459, § 307(b), substituted "the Commissioner finds" for "he finds".

Subsec. (d). Pub. L. 98-459, § 307(c), substituted "in the Commissioner's discretion" for "in his discretion", "until the Commissioner is satisfied" for "until he is satisfied", "Until the Commissioner is so satisfied" for "Until he is so satisfied", "the Commissioner shall prescribe" for "he shall prescribe", and "the provisions of this section" for "the provisions of section 307".

Subsec. (e)(1). Pub. L. 98-459, § 307(d)(1), substituted "designated by the Commissioner" for "designated by him" and "the Commissioner's action is based" for "he based his action".

Subsec. (e)(2). Pub. L. 98-459, § 307(d)(2), substituted "set aside the Commissioner's order" for "set aside his order".

Subsec. (f). Pub. L. 98-459, § 307(e), added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3017, 3022, 3024, 3025, 3026, 3028, 3029, 3030d, 3030e, 3030f, 3035c, 3057c, 3058b of this title.

§ 3028. Cost of administration of State plans

(a) Activities constituting administration; use of excess funds to supplement cost of administration of area plans; election to pay costs from sums received for the administration of area plans

(1) Amounts available to States under subsection (b)(1) of this section may be used to make grants to States for paying such percentages as each State agency determines, but not more than 75 percent, of the cost of the administration of its State plan, including the preparation

of the State plan, the evaluation of activities carried out under such plan, the collection of data and the carrying out of analyses related to the need for supportive services, nutrition services, and multipurpose senior centers within the State, and dissemination of information so obtained, the provision of short-term training to personnel of public or nonprofit private agencies and organizations engaged in the operation of programs authorized by this chapter, and the carrying out of demonstration projects of statewide significance relating to the initiation, expansion, or improvement of services assisted under this subchapter.

(2) Any sums available to a State under subsection (b)(1) of this section for part of the cost of the administration of its State plan which the State determines is not needed for such purpose may be used by the State to supplement the amount available under section 3024(d)(1)(A) of this title to cover part of the cost of the administration of area plans.

[*See main edition for text of* (3)]

(b) Formula for computation of allotment; application for additional funds; approval of application by Commissioner; limitation on amount of additional funds; transfer of funds

(1)(A) If for any fiscal year the aggregate amount appropriated under section 3023 of this title does not exceed $800,000,000, then—

(i) except as provided in clause (ii), the greater of 5 percent of the allotment to a State under section 3024(a)(1) of this title or $300,000; and

(ii) in the case of Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, the greater of 5 percent of such allotment or $75,000;

shall be available to such State to carry out the purposes of this section.

(2)(A) If for any fiscal year the aggregate amount appropriated under section 3023 of this title exceeds $800,000,000, then—

(i) except as provided in clause (ii), the greater of 5 percent of the allotment to a State under section 3024(a)(1) of this title or $500,000; and

(ii) in the case of Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, the greater of 5 percent of such allotment or $100,000;

shall be available to such State to carry out the purposes of this section.

(3)(A) If the aggregate amount appropriated under section 3023 of this title for a fiscal year does not exceed $800,000,000, then any State which desires to receive amounts, in addition to amounts allotted to such State under paragraph (1), to be used in the administration of its State plan in accordance with subsection (a) of this section may transmit an application to the Commissioner in accordance with this paragraph. Any such application shall be transmitted in such form, and according to such procedures, as the Commissioner may require, except that such application may not be made as part of, or as an amendment to, the State plan.

(B) The Commissioner may approve any application transmitted by a State under subparagraph (A) if the Commissioner determines, based upon a particularized showing of need, that—

(i) the State will be unable to fully and effectively administer its State plan and to carry out programs and projects authorized by this subchapter unless such additional amounts are made available by the Commissioner;

(ii) the State is making full and effective use of its allotment under paragraph (1) and of the personnel of the State agency and area agencies designated under section 3025(a)(2)(A) of this title in the administration of its State plan in accordance with subsection (a) of this section; and

(iii) the State agency and area agencies of such State designated under section 3025 of this title are carrying out, on a full-time basis, programs and activities which are in furtherance of the purposes of this chapter.

(C) The Commissioner may approve that portion of the amount requested by a State in its application under subparagraph (A) which he determines has been justified in such application.

(D) Amounts which any State may receive in any fiscal year under this paragraph may not exceed three-fourths of 1 percent of the sum of the amounts allotted under section 3024(a) of this title to such State to carry out the State plan for such fiscal year.

(E) No application by a State under subparagraph (A) shall be approved unless it contains assurances that no amounts received by the State under this paragraph will be used to hire any individual to fill a job opening created by the action of the State in laying off or terminating the employment of any regular employee not supported under this chapter in anticipation of filling the vacancy so created by hiring an employee to be supported through use of amounts received under this paragraph.

(4) Notwithstanding any other provision of this subchapter, with respect to funds received under section 3023(b)(1) and (2) of this title, a State may elect in its plan under section 3027(a)(13) regarding part C of this subchapter, to transfer a portion of the funds appropriated between subpart I and subpart II of part C, for use as the State considers appropriate to meet the needs of the area served. The Commissioner shall approve any such transfer unless the Commissioner determines that such transfer is not consistent with the purposes of this chapter.

(5)(A) Notwithstanding any other provisions of this subchapter and except as provided in subparagraph (B), with respect to funds received under subsection (a) and subsection (b) of section 3023 of this title, a State may elect to transfer not more than 20 per centum of the funds appropriated for any fiscal year between programs under part B and part C of this subchapter, for use as the State considers appropriate. The State shall notify the Commissioner of any such election.

(B) Of the funds received under section 3023 of this title, a State may elect to transfer under subparagraph (A)—

(i) not more than 27 percent of the funds appropriated for fiscal year 1985;

(ii) not more than 29 percent of the funds appropriated for fiscal year 1986; and

(iii) not more than 30 percent of the funds appropriated for fiscal year 1987.

(6) Redesignated (5)

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-459, title III, § 308, Oct. 9, 1984, 98 Stat. 1777.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-459, § 308(a)(1), substituted "Amounts available to States under subsection (b)(1) of this section" for "Amounts appropriated under section 3023 of this title".

Subsec. (a)(2). Pub. L. 98-459, § 308(a)(2), substituted "available to a State under subsection (b)(1) of this section" for "received by a State under this section".

Subsec. (b)(1). Pub. L. 98-459, § 308(b)(6), added par. (1). Former par. (1), which contained provisions, with respect to allotments to States for State planning, coordination, evaluation, and administration of State plans, that each State had to be allotted funds on the basis of its population aged 60 or older as compared to all States, and specifying minimum amounts for each State of no less than one-half of 1 percent of appropriations or $300,000, whichever was greater, and for territories of no less than one-fourth of 1 percent of appropriations or $75,000, whichever was greater, was struck out.

Subsec. (b)(2). Pub. L. 98-459, § 308(b)(6), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 98-459, § 308(b)(4), (5), redesignated former par. (2) as (3) and struck out former par. (3) which had provided that each State would be entitled to an allotment under this section for any fiscal year in an amount which is not less than the amount of the allotment to which such State was entitled under former par. (1) for the fiscal year ending June 30, 1975.

Subsec. (b)(3)(A). Pub. L. 98-459, § 308(b)(1), substituted "If the aggregate amount appropriated under section 3023 of this title for a fiscal year does not exceed $800,000,000, then any" for "Any".

Subsec. (b)(4). Pub. L. 98-459, § 308(b)(2), (4), (5), redesignated par. (5) as (4), and substituted therein "unless the Commissioner determines" for "unless he determines", and struck out former par. (4) which had provided that the number of individuals aged 60 or older in any State and in all States had to be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

Subsec. (b)(5), (6). Pub. L. 98-459, § 308(b)(3), (5), redesignated par. (6) as (5), inserted "(A)" after paragraph designation and "and except as provided in subparagraph (*B*)", and added subpar. (B). Former par. (5) redesignated (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3024, 3027, 3029 of this title.

§ 3029. Payments of grants or contracts

(a) Advances or reimbursement; installments; assistance in development of State plan

Payments of grants or contracts under this subchapter may be made (after necessary adjustments resulting from previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Commissioner may determine. From a State's allotment for a fiscal year which is available under section 3028 of this title the Commissioner may pay to a State which does not have a State plan approved under section 3027 of this title such amounts as the Commissioner deems appropriate for the purpose of assisting such State in developing a State plan.

(b) Matching funds; percentage limitation

[*See main edition for text of* (*1*)]

(2) Funds required to meet the non-Federal share required by section 3024(d)(1)(D) of this title, in amounts exceeding the non-Federal share required prior to fiscal year 1981, shall be met from State sources.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-459, title III, § 309, Oct. 9, 1984, 98 Stat. 1779.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-459, § 309(a), substituted "as the Commissioner deems appropriate" for "as he deems appropriate".

Subsec. (b)(2). Pub. L. 98-459, § 309(b), substituted "section 3024(d)(1)(D)" for "section 3024(d)(1)(B)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3030a. Availability of surplus commodities

(a) Donation of products; amount of assistance

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Subject to the authorization of appropriations specified in subsection (c) of this section, in donating commodities under this subsection, the Secretary of Agriculture shall maintain an annually programmed level of assistance of not less than 15 cents per meal during fiscal year 1976, 25 cents per meal during fiscal year 1977 and fiscal year 1978, and 30 cents per meal for each fiscal year thereafter. The amount specified in this paragraph shall be adjusted on an annual basis for each fiscal year after June 30, 1975, to reflect changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. Such adjustment shall be computed to the nearest one-fourth cent. Among the commodities delivered under this subsection, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates. The Secretary of Agriculture, in consultation with the Commissioner, is authorized to prescribe the terms and conditions respecting the donating of commodities under this subsection.

[*See main edition for text of* (*b*)]

(c) Authorization of appropriations; final reimbursement claims; reduction of cents-per-meal level

(1)(A) There are authorized to be appropriated $105,000,000 for fiscal year 1984, $120,800,000 for fiscal year 1985, $125,900,000 for fiscal year 1986, and $132,000,000 for fiscal year 1987, to carry out the provisions of this section (other than the provisions of subsection (a)(1) of this section) and such additional sums as may be necessary for each such fiscal year to maintain the level of reimbursement for the number of meals served under such provisions in fiscal year 1983.

(B) Effective on the first day of the first month beginning after October 9, 1984, no State may receive reimbursement under the provisions of this section unless the State submits final reimbursement claims for meals within 90 days after the last day of the quarter for which the reimbursement is claimed.

(2) In any fiscal year in which compliance with subsection (a)(4) of this section costs more than the amounts authorized under paragraph (1) of this subsection for that fiscal year the Secretary of Agriculture shall reduce the cents per meal level determined pursuant to subsection (a)(4) of this section for that fiscal year as necessary to meet the authorization of appropriations for that fiscal year.

(d) Redesignated (c)

(As amended Pub. L. 98–459, title III, § 310, Oct. 9, 1984, 98 Stat. 1779.)

Amendments

1984—Subsec. (a)(4). Pub. L. 98–459, § 310(a)(1), (2), substituted "subsection (c) of this section" for "subsection (d) of this section" and "Consumer Price Index for All Urban Consumers" for "Consumer Price Index".

Subsec. (c). Pub. L. 98–459, § 310(b)(1), which directed the amendment of this section by redesignating subsec. (d)(1) as (c)(1), was executed by redesignating subsec. (d) as (c) to reflect the probable intent of Congress.

Subsec. (c)(1). Pub. L. 98–459, § 310(b)(2), (3), inserted "(A)" after the paragraph designation, struck out therein provisions authorizing appropriations of $93,200,000 for fiscal year 1982 and $100,000,000 for fiscal year 1983, added provisions authorizing appropriations of $120,800,000 for fiscal year 1985, $125,900,000 for fiscal year 1986, and $132,000,000 for fiscal year 1987, substituted "fiscal year 1983" for "fiscal year 1981" at the end, and added subpar. (B).

Subsec. (c)(2). Pub. L. 98–459, § 310(b)(4), substituted "appropriations" for "appropriation".

Subsec. (d). Pub. L. 98–459, § 310(b)(1), redesignated subsec. (d) as (c). See 1984 Amendment note for subsec. (c) above.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

§ 3030c. Audit; request for information

(a) The Commissioner and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to a grant or contract received under this subchapter.

(b) State agencies and area agencies on aging shall not request information or data from providers which is not pertinent to services furnished pursuant to this chapter or a payment made for such services.

(As amended Pub. L. 98–459, title III, § 311, Oct. 9, 1984, 98 Stat. 1779.)

Amendments

1984—Pub. L. 98–459 designated existing provisions as subsec. (a) and added subsec. (b).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

Part B—Supportive Services

§ 3030d. Grants for supportive services

(a) The Commissioner shall carry out a program for making grants to States under State plans approved under section 3027 of this title for any of the following supportive services:

[*See main edition for text of (1) to (4)*]

(5) services designed to assist older individuals in avoiding institutionalization and to assist individuals in long-term care institutions who are able to return to their communities, including client assessment through case management and integration and coordination of community services such as preinstitution evaluation and screening and home health services, homemaker services, shopping services, escort services, reader services, and letter writing services, through resource development and management to assist such individuals to live independently in a home environment;

(6) services designed to provide legal assistance and other counseling services and assistance, including tax counseling and assistance, financial counseling, and counseling regarding appropriate health and life insurance coverage, to older individuals;

[*See main edition for text of (7)*]

(8) services designed to provide health screening to detect or prevent illnesses, or both, that occur most frequently in older individuals;

[*See main edition for text of (9) to (13)*]

(14) a program, to be known as "Senior Opportunities and Services", designed to identify and meet the needs of older, poor individuals 60 years of age or older in one or more of the following areas: (A) development and provision of new volunteer services; (B) effective referral to existing health, employment, housing, legal, consumer, transportation, and other services; (C) stimulation and creation of additional services and programs to remedy gaps and deficiencies in presently existing services and programs; and (D) such other services as the Commissioner may determine are necessary or especially appropriate to meet the needs of the older poor and to assure them greater self-sufficiency;

(15) services for the prevention of abuse of older individuals in accordance with clause (16) of section 3027(a) of this title;

(16) inservice training and State leadership for legal assistance activities;

(17) health and nutrition education services;

(18) services designed to enable mentally impaired older individuals to attain and maintain emotional well-being and independent living through a coordinated system of support services; or

(19) any other services,

if such services meet standards prescribed by the Commissioner and are necessary for the general welfare of older individuals.

(b)(1) The Commissioner shall carry out a program for making grants to States under State plans approved under section 3027 of this title for the acquisition, alteration, or renovation of existing facilities, including mobile units, and, where appropriate, construction of facilities to serve as multipurpose senior centers.

(2) Funds made available to a State under this part may be used for the purpose of assisting in the operation of multipurpose senior centers and meeting all or part of the costs of compensating professional and technical personnel required for the operation of multipurpose senior centers.

(As amended Pub. L. 98-459, title III, § 312, Oct. 9, 1984, 98 Stat. 1779.)

AMENDMENTS

1984—Subsec. (a)(5). Pub. L. 98-459, § 312(a)(1), in amending par. (5) generally, substituted "services designed to assist older individuals in avoiding institutionalization and to assist individuals in long-term care institutions who are able to return to their communities, including client assessment through case management and integration and coordination of community services such as" for "services designed to assist older individuals in avoiding institutionalization, including" and "and letter writing services, through resource development and management to assist such individuals to live" for "letter writing services, and other similar services designed to assist such individuals to continue living".

Subsec. (a)(6). Pub. L. 98-459, § 312(a)(2), substituted "legal assistance" for "legal services" and ", financial counseling, and counseling regarding appropriate health and life insurance coverage" for "and financial counseling".

Subsec. (a)(8). Pub. L. 98-459, § 312(a)(3), substituted "illnesses" for "illness".

Subsec. (a)(15) to (19). Pub. L. 98-459, § 312(a)(4)-(6), added pars. (15) to (18) and redesignated former par. (15) as (19).

Subsec. (b)(1). Pub. L. 98-459, § 312(b)(1), struck out provision that senior centers had to be community facilities for the organization and provision of a broad spectrum of services, including provision of health, social, nutritional, and educational services and provision of facilities for recreational activities for older individuals.

Subsec. (b)(2). Pub. L. 98-459, § 312(b)(2), struck out the comma after "may be used" and substituted "centers and meeting" for "centers, to meet".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3058b of this title.

SUBCHAPTER IV—TRAINING, RESEARCH, AND DISCRETIONARY PROJECTS AND PROGRAMS

§ 3030aa. Statement of purpose

It is the purpose of this subchapter to expand the Nation's knowledge and understanding of aging and the aging process, to design and test innovative ideas in programs and services for older individuals, and to help meet the needs for trained personnel in the field of aging through—

(1) placing a priority on the education and training of personnel to work with and on behalf of older individuals;

(2) research and development of effective practices in the field of aging;

(3) demonstration projects directly related to the field of aging; and

(4) dissemination of information on aging and the aging process acquired through such programs to public and private organizations or programs for older individuals.

(Pub. L. 89-73, title IV, § 401, as added Pub. L. 98-459, title IV, § 401, Oct. 9, 1984, 98 Stat. 1780.)

PRIOR PROVISIONS

A prior section 401 of Pub. L. 89-73, title IV, as added Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 45, and amended Pub. L. 95-478, title I, § 104(a)(1), Oct. 18, 1973, 92 Stat. 1537, which related to the Congressional statement of purpose in developing and implementing a national manpower policy for the field of aging and was classified to section 3031 of this title, was omitted in the general revision of this subchapter by Pub. L. 97-115.

Another prior section 401 of Pub. L. 89-73, title IV, July 14, 1965, 79 Stat. 224; Pub. L. 90-42, § 5(b), July 1, 1967, 81 Stat. 107; Pub. L. 91-69, § 7, Sept. 17, 1969, 83 Stat. 111, which related to description of activities and was classified to section 3031 of this title, was repealed by Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 45.

EFFECTIVE DATE

Section effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as an Effective Date of 1984 Amendment note under section 3001 of this title.

§ 3030bb. Administration

(a) In order to carry out the provisions of this subchapter effectively, the Commissioner shall administer this subchapter through the Administration on Aging.

(b) In carrying out the provisions of this subchapter, the Commissioner may request the technical assistance and cooperation of the Department of Education, the National Institutes of Health, and such other agencies and departments of the Federal Government as may be appropriate.

(Pub. L. 89-73, title IV, § 402, as added Pub. L. 98-459, title IV, § 401, Oct. 9, 1984, 98 Stat. 1781.)

PRIOR PROVISIONS

A prior section 402 of Pub. L. 89-73, title IV, as added Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 45, and amended Pub. L. 95-478, title I, § 104(a)(2), Oct. 18, 1978, 92 Stat. 1537, which related to the appraisal and assessment of the personnel needs of the field of aging and was classified to section 3032 of this title, was omitted in the general revision of this subchapter by Pub. L. 97-115.

Another prior section 402 of Pub. L. 89-73, title IV, July 14, 1965, 79 Stat. 224, which related to payments of grants, providing in: subsec. (a) for contribution by recipients; subsec. (b) adjustments, advances or reimbursement, installments and conditions; and subsec. (c) consultation of Secretary with State agency prior to making grants or contracts and was classified to section 3032 of this title, was repealed by Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 45.

EFFECTIVE DATE

Section effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as an Effective Date of 1984 Amendment note under section 3001 of this title.

PART A—EDUCATION AND TRAINING

§ 3030jj. Purpose

The purpose of this part is to improve the quality of service and to help meet critical shortages of adequately trained personnel for programs in the field of aging by—

(1) identifying both short- and long-range manpower needs in the field of aging;

(2) providing a broad range of educational and training opportunities to meet those needs;

(3) attracting a greater number of qualified personnel into the field of aging;

(4) helping to upgrade personnel training programs to make them more responsive to the need in the field of aging; and

(5) establishing and supporting multidisciplinary centers of gerontology and providing special emphasis that will improve, enhance, and expand existing training programs.

(Pub. L. 89-73, title IV, § 410, as added Pub. L. 98-459, title IV, § 402, Oct. 9, 1984, 98 Stat. 1781.)

EFFECTIVE DATE

Section effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as an Effective Date of 1984 Amendment note under section 3001 of this title.

§ 3031. Grants and contracts

(a) Purposes

The Commissioner shall make grants and enter into contracts to achieve the purpose of this part. The purposes for which such grants and contracts shall be made include the following:

(1) To provide comprehensive and coordinated nondegree education, training programs, and curricula at institutions of higher education and at other research, training, or educational organizations, for practitioners in the fields of nutrition, health care, supportive services, housing, and long-term care, including the expansion and enhancement of existing inservice education and training programs.

(2) To provide inservice training opportunities to the personnel of State offices, area agencies, senior centers, and nutrition programs to strengthen their capacity to remain responsive to the needs of older individuals.

(3) To provide courses on aging and the dissemination of information about aging to the public through institutions of higher education and other public and nonprofit private organizations and agencies.

(b) Educational activities; inservice training

To achieve the purpose of this subchapter, the Administration on Aging shall conduct both—

(1) long-term educational activities to prepare personnel for careers in the field of aging; and

(2) short-term inservice training and continuing education activities for State and area agency personnel, and other personnel, in the field of aging or preparing to enter the field of aging.

(c) Recruitment and training of personnel; Alzheimer's disease and related disorders

In making grants and contracts under this part, the Commissioner shall give special consideration to the recruitment and training of personnel, volunteers, and those individuals preparing for employment in that part of the field of aging which relates to providing custodial and skilled care for older individuals who suffer from Alzheimer's disease and other neurological and organic brain disorders of the Alzheimer's type and providing family respite services with respect to such individuals.

(d) Data on number of individuals to be trained and number of older individuals to be served

In making grants or contracts under this part, the Commissioner shall ensure that all projects and activities related to personnel training shall include specific data on the number of individuals to be trained and the number of older individuals to be served through such training activities by public and nonprofit agencies, State and area agencies on aging, institutions of higher education, and other organizations.

(As amended Pub. L. 98-459, title IV, § 403, Oct. 9, 1984, 98 Stat. 1781.)

AMENDMENTS

1984—Pub. L. 98-459 substituted provisions authorizing the Commissioner to make grants and enter into contracts to achieve the purposes of this part, and enumerating those purposes, with special consideration being given to recruitment and training of personnel for the care of patients suffering from Alzheimer's and related diseases, and requiring the inclusion in all projects and activities related to personnel training under this part of data on the number of individuals to be trained and the number of individuals to be served by such training for provisions which had authorized the Commissioner to make grants and enter into contracts to assist the Commissioner in recruiting persons to enter the field of aging, training volunteers and persons employed in or preparing for employment in the field of aging (including such stipends to persons participating in training programs as the Commissioner finds appropriate), technical assistance, and other activities related to such training.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3032. Multidisciplinary centers of gerontology and gerontology centers of special emphasis; establishment and support; requirements; data

(a) The Commissioner may make grants to public and private nonprofit agencies, organizations, and institutions for the purpose of establishing or supporting multidisciplinary centers of gerontology, and gerontology centers of special emphasis (including emphasis on nutrition, employment, health, income maintenance and supportive services). Such centers shall conduct research and policy analysis and function as a technical resource for the Commissioner, policymakers, service providers, and the Congress. Multidisciplinary centers of gerontology shall—

(1) recruit and train personnel;

(2) conduct basic and applied research directed toward the development of information related to aging;

(3) stimulate the incorporation of information on aging into the teaching of biological, behavioral, and social sciences at colleges and universities;

(4) help to develop training programs in the field of aging at schools of public health, education, and other appropriate schools within colleges and universities;

(5) serve as a repository of information and knowledge on aging; and

(6) provide consultation and information to public and voluntary organizations, including State and area agencies, which serve the needs of older individuals in planning and developing services provided under other provisions of this chapter.

(b) Centers supported under this section shall provide data to the Commissioner on the projects and activities for which funds are provided under this subchapter. Such data shall include the number of personnel trained, the number of older individuals served, the number of schools assisted, and other information that will facilitate achieving the purposes of this chapter.

(As amended Pub. L. 98-459, title IV, § 404, Oct. 9, 1984, 98 Stat. 1782.)

AMENDMENTS

1984—Pub. L. 98-459 designated existing provisions as subsec. (a) and added therein provisions relating to emphasis on nutrition, employment, health, income maintenance and supportive services and provisions requiring the centers to conduct research and policy analysis and function as a technical resource for the Commissioner, policymakers, service providers, and the Congress, and added pars. (1) to (6) and subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

PART B—RESEARCH, DEMONSTRATIONS, AND OTHER ACTIVITIES

§ 3034. Purpose

The purpose of this part is to improve the quality and efficiency of programs serving older individuals through research and development projects, and demonstration projects, designed to—

(1) develop and synthesize knowledge about aging from multidisciplinary perspectives;

(2) establish an information base of data and practical experience;

(3) examine effective models of planning and practice that will improve or enhance services provided under other provisions of this chapter;

(4) evaluate the efficacy, quality, efficiency, and accessibility of programs and services for older individuals; and

(5) develop, implement, and evaluate innovative planning and practice strategies to address the needs, concerns, and capabilities of older individuals.

(Pub. L. 89-73, title IV, § 420, as added Pub. L. 98-459, title IV, § 405, Oct. 9, 1984, 98 Stat. 1783.)

PRIOR PROVISIONS

A prior section 3034, Pub. L. 89-73, title IV, § 404, as added Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 46, and amended Pub. L. 94-135, title I, § 110, Nov. 28, 1975, 89 Stat. 718; Pub. L. 95-478, title I, § 104(a)(4), title V, § 503(c), Oct. 18, 1978, 92 Stat. 1538, 1559, which provided for grants for training programs for personnel in the field of aging, was omitted in the general revision of this subchapter by Pub. L. 97-115.

EFFECTIVE DATE

Section effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as an Effective Date of 1984 Amendment note under section 3001 of this title.

§ 3035. Research and development projects

(a) Authority to make grants or enter into contracts

The Commissioner may make grants to any public or nonprofit private agency, organization, or institution, and may enter into contracts with any agency, organization, institution, or individual to support research and development related to the purposes of this chapter, evaluation of the results of such research and development activities, and collection and dissemination of information concerning research findings, demonstration results, and other materials developed in connection with activities assisted under this subchapter, and conducting of conferences and other meetings for purposes of exchange of information and other activities related to the purposes of this subchapter. Appropriate provisions for the dissemination of resulting information shall be a requirement for all grants made under this section.

(b) Policy or practical application statement

Each research and development activity proposal for which funds are requested under subsection (a) of this section shall include a concise policy or practical application statement.

(c) Selection criteria

(1) The Commissioner shall select, to the extent practicable, for assistance under subsection (a) of this section research activities which will, not later than three years after October 9, 1984, collectively—

(A) contribute to the establishment and maintenance of a demographic data base which contains information on the population of older individuals generally and older individuals categorized by age, sex, race, geographical location, and such other factors as the Commissioner deems useful for the purpose of formulating public policy;

(B) identify the future needs of older individuals;

(C) identify the kinds and comprehensiveness of programs required to satisfy such needs; and

(D) identify the kinds and number of personnel required to carry out such programs.

(2) The Commissioner shall select, to the extent practicable, for assistance under subsection (a) of this section demonstration projects which test research results and implement innovative ways of satisfying the needs of, and delivering services to, older individuals.

(As amended Pub. L. 98-459, title IV, § 406, Oct. 9, 1984, 98 Stat. 1783.)

AMENDMENTS

1984—Pub. L. 98-459 designated existing provisions as subsec. (a) and added requirement that all grants made under this section include appropriate provisions for the dissemination of resulting information, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3035a. Demonstration projects

(a) Authority to make grants or enter into contracts for model projects.

The Commissioner may, after consultation with the State agency in the State involved, make grants to any public agency or nonprofit private organization or enter into contracts with any agency or organization within such State for paying part or all of the cost of developing or operating nationwide, statewide, regional, metropolitan area, county, city, or community model projects which will demonstrate methods to improve or expand supportive services or nutrition services or otherwise promote the well-being of older individuals. The Commissioner shall give special consideration to the funding of rural area agencies on aging to conduct model projects devoted to the special needs of the rural elderly. Such projects shall include alternative health care delivery systems, advocacy and outreach programs, and transportation services.

(b) Projects which are to be given special consideration

In making grants and contracts under this section, the Commissioner shall give special consideration to projects designed to—

(1) meet the supportive services needs of elderly victims of Alzheimers' disease and other neurological and organic brain disorders of the Alzheimers' type and their families, including—

(A) home health care for such victims;

(B) adult day health care for such victims; and

(C) homemaker aides, transportation, and in-home respite care for the families, particularly spouses, of such victims;

(2) meet the special health care needs of the elderly, including—

(A) the location of older individuals who are in need of mental health services;

(B) the provision of, or arrangement for the provision of, medical differential diagnoses of older individuals to distinguish between their need for mental health services and other medical care;

(C) the specification of the mental health needs of older individuals, and the mental health and support services required to meet such needs; and

(D) the provision of—

(i) the mental health and support services specified in subclause (C) in the communities; or

(ii) such services for older individuals in nursing homes and intermediate care facilities, and training of the employees of such homes and facilities in the provision of such services;

(3) assist in meeting the special housing needs of older individuals by—

(A) providing financial assistance to such individuals, who own their own homes, necessary to enable them (i) to make the repairs or renovations to their homes, which are necessary for them to meet minimum standards, and (ii) to install security devices, and to make structural modifications or alterations, designed to prevent unlawful entry; and

(B) studying and demonstrating methods of adapting existing housing, or construction of new housing, to meet the needs of older individuals suffering from physical disabilities;

(4) provide education and training to older individuals designed to enable them to lead more productive lives by broadening the educational, occupational, cultural, or social awareness of such older individuals;

(5) provide preretirement education information and relevant services (including the training of personnel to carry out such programs and the conduct of research with respect to the development and operation of such programs) to individuals planning retirement;

(6) meet the special needs of, and improve the delivery of services to, older individuals

who are not receiving adequate services under other provisions of this chapter, with emphasis on the needs of low-income, minority, Indian, and limited English-speaking individuals and the rural elderly;

(7) develop or improve methods of coordinating all available supportive services for the homebound elderly, blind, and disabled by establishing demonstration projects in ten States, in accordance with subsection (c) of this section; and

(8) improve transportation systems for the rural elderly.

[*See main edition for text of* (*c*)]

(d) Development of grants and contracts in consultation with gerontology centers; dissemination of project results

(1) Whenever appropriate, grants made and contracts entered into under this section shall be developed in consultation with an appropriate gerontology center.

(2) Grants made and contracts entered into under this section shall include provisions for the appropriate dissemination of project results.

(As amended Pub. L. 98–459, title IV, § 407, Oct. 9, 1984, 98 Stat. 1784.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–459, § 407(a), inserted a period after "devoted to the special needs of the rural elderly".

Subsec. (b)(1). Pub. L. 98–459, § 407(b)(2), added par. (1). Former par. (1) redesignated (2).

Subsec. (b)(2). Pub. L. 98–459, § 407(b)(1), redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (b)(2)(D)(i). Pub. L. 98–459, § 407(b)(3), substituted "subclause (C)" for "clause (C)".

Subsec. (b)(3) to (8). Pub. L. 98–459, § 407(b)(1), redesignated former pars. (2) to (7) as (3) to (8), respectively.

Subsec. (d). Pub. L. 98–459, § 407(c), added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

§ 3035b. Special projects in comprehensive long-term care

[*See main edition for text of* (*a*)]

(b) Applicants to whom preference shall be given

[*See main edition for text of* (*1*) *and* (*2*)]

(3)(A) Agencies and organizations assisted under this section shall establish procedures for evaluating the program assisted under this section, with respect to the benefits accruing to persons receiving assistance, the feasibility of the administrative model used for comprehensive coordination of services including coordination with other local programs, and the comparative costs and quality of services provided, and shall submit such evaluation to the Commissioner on a periodic basis.

(B) Grants made and contracts entered into under this section shall include provisions for the appropriate dissemination of information regarding the development of such services.

[*See main edition for text of* (*c*) *and* (*d*)]

(As amended Pub. L. 98–459, title IV, § 408, Oct. 9, 1984, 98 Stat. 1784.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98–459 designated existing provisions as subpar. (A) and added subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

§ 3035c. Special demonstration and support projects for legal assistance for older individuals

(a) Authority to make grants or enter into contracts

The Commissioner shall make grants and enter into contracts, in order to—

(1) provide a national legal assistance support system (operated by one or more grantees or contractors) of activities to State and area agencies on aging for providing, developing, or supporting legal assistance for older individuals, including—

(A) case consultations;

(B) training;

(C) provision of substantive legal advice and assistance; and

(D) assistance in the design, implementation, and administration of legal assistance delivery systems to local providers of legal assistance for older individuals; and

(2) support demonstration projects to expand or improve the delivery of legal assistance to older individuals with social or economic needs.

(b) Requisite assurances

Any grants or contracts made under subsection (a)(2) of this section shall contain assurances that the requirements of section 3027(a)(15) of this title are met.

(c) Grants or contracts with national nonprofit legal assistance organizations

To carry out subsection (a)(1) of this section, the Commissioner shall make grants to or enter into contracts with national nonprofit legal assistance organizations experienced in providing support, on a nationwide basis, to local legal assistance providers.

(As amended Pub. L. 98–459, title IV, § 409, Oct. 9, 1984, 98 Stat. 1784.)

AMENDMENTS

1984—Pub. L. 98–459 amended section generally. Prior to amendment, section read as follows:

"(a) The Commissioner shall make grants to, and enter into contracts with, public and private nonprofit agencies or organizations in order to—

"(1) provide support activities to State and area agencies on aging providing, developing, or supporting legal services to older individuals; and

"(2) support demonstration projects to expand or improve the delivery of legal services to older individuals with social or economic need.

"(b) Any grants or contracts entered into under subsection (a)(2) of this section shall contain assurances that the requirements of section 3027(a)(15) of this title are met."

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3035d. National impact activities

(a) Authority to make grants or enter into contracts

The Commissioner may carry out directly or through grants or contracts—

[*See main edition for text of* (*1*), (*2*); (*b*)]

(As amended Pub. L. 98-459, title IV, § 410(a), Oct. 9, 1984, 98 Stat. 1785.)

Amendments

1984—Subsec. (a). Pub. L. 98-459 added subsec. (a) designation.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3035e. Utility and home heating cost demonstration projects

The Secretary may, after consultation with the appropriate State agency designated under section 3025(a)(1) of this title, make grants to pay for part or all of the costs of developing model projects which show promise of relieving older individuals of the excessive burdens of high utility service and home heating costs. Any such project shall give special consideration to projects under which a business concern is engaged in providing home heating oil or utility services to low-income older individuals at a cost which is substantially lower than providing home heating oil or utility services to other individuals.

(As amended Pub. L. 98-459, title IV, § 410(b), Oct. 9, 1984, 98 Stat. 1785.)

Amendments

1984—Pub. L. 98-459, substituted "a business concern is engaged" for "a business concern engaged".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

PART C—GENERAL PROVISIONS

§ 3037. Authorization of appropriations

(a) There are authorized to be appropriated to carry out the provisions of this subchapter $26,600,000 for fiscal year 1984, $28,200,000 for fiscal year 1985, $29,800,000 for fiscal year 1986, and $31,400,000 for fiscal year 1987.

(b) No funds appropriated under this subchapter—

(1) may be transferred to any office or other authority of the Federal Government which is not directly responsible to the Commissioner;

(2) may be used for any program or activity which is not specifically authorized by this subchapter; or

(3) may be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter.

(As amended Pub. L. 98-459, title IV, § 411, Oct. 9, 1984, 98 Stat. 1785.)

Amendments

1984—Subsec. (a). Pub. L. 98-459, § 411(a), struck out provisions authorizing appropriations in the amount of $23,200,000 for fiscal year 1982 and $24,800,000 for fiscal year 1983 and added provisions authorizing appropriations of $28,200,000 for fiscal year 1985, $29,800,000 for fiscal year 1986, and $31,400,000 for fiscal year 1987.

Subsec. (b)(3). Pub. L. 98-459, § 411(b), added par. (3).

Effective Date of 1984 Amendment

Amendment by section 411(a) of Pub. L. 98-459 effective Oct. 9, 1984, and amendment by section 411(b) of Pub. L. 98-459 not applicable with respect to any grant or payment made before Oct. 9, 1984, see section 803(a), (b)(3) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3037a. Payments of grants

(a) Contributions of recipients

To the extent the Commissioner deems it appropriate, the Commissioner shall require the recipient of any grant or contract under this subchapter to contribute money, facilities, or services for carrying out the project for which such grant or contract was made.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98-459, title IV, § 412, Oct. 9, 1984, 98 Stat. 1785.)

Amendments

1984—Subsec. (a). Pub. L. 98-459 substituted "the Commissioner deems" for "he deems".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3037b. Responsibilities of Commissioner

(a) The Commissioner shall be responsible for the administration, implementation, and making of grants and contracts under this subchapter and shall not delegate authority under this subchapter to any other individual, agency, or organization.

(b) The Commissioner shall prepare and publish annually as part of the report provided for in section 3018 of this title a detailed description of all grants, contracts, and activities for which funds are paid under this subchapter. Such report shall include the name of the recipient of each such grant or contract, the amount of funds provided for such grant or contract, and a justification of how the funded activity or project will achieve the purpose of this subchapter.

(Pub. L. 89-73, title IV, § 433, as added Pub. L. 98-459, title IV, § 413, Oct. 9, 1984, 98 Stat. 1785.)

EFFECTIVE DATE

Section effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as an Effective Date of 1984 Amendment note under section 3001 of this title.

SUBCHAPTER VII—NUTRITION PROGRAM FOR THE ELDERLY

§§ 3045 to 3045i. Repealed. Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558

NUTRITION PROJECTS FOR ELDERLY UNDER PRIOR PROVISIONS, QUALIFIED UNDER SUCCESSOR PROVISIONS, ELIGIBLE FOR FUNDS UNDER SUCH PROVISIONS; COMPETITIVE BIDDING; DISCONTINUANCE OF PAYMENTS FOR INEFFECTIVE ACTIVITIES

Pub. L. 95-478, title V, § 501(b), Oct. 18, 1978, 92 Stat. 1558, as amended by Pub. L. 97-115, § 14(a), Dec. 29, 1981, 95 Stat. 1608; Pub. L. 98-459, title VIII, § 801(b), Oct. 9, 1984, 98 Stat. 1792, provided that: "No contract awarded after September 30, 1982, shall be entered into for the provision of nutrition services unless such contract has been awarded through a competitive process. Such process shall include evaluation of each bidder's experience in providing services to older individuals. Whenever there is no evidence of improved quality of service and cost effectiveness on the part of another bidder, a provider of services who received funds under title VII of the Older Americans Act of 1965 [former sections 3045 to 3045i of this title] as in effect on September 29, 1978, shall be given preference."

SUBCHAPTER IX—COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1474, 3002, 3011, 4368a, 6873 of this title.

§ 3056. Older American Community Service Employment Program

[*See main edition for text of* (*a*)]

(b) Authority of Secretary; execution of agreements with terms and conditions for furthering purposes and goals of program; regulations for execution of subchapter provisions; development of alternatives for innovative work modes; creation of job opportunities; Senior Environmental Employment Corps

(1) In order to carry out the provisions of this subchapter, the Secretary is authorized to enter into agreements with public or private nonprofit agencies or organizations, including national organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations in order to further the purposes and goals of the program. Such agreements may include provisions for the payment of costs, as provided in subsection (c) of this section, of projects developed by such organizations and agencies in cooperation with the Secretary in order to make the program effective or to supplement the program. No payment shall be made by the Secretary toward the cost of any project established or administered by any such organization or agency unless the Secretary determines that such project—

[*See main edition for text of* (*A*) *to* (*I*)]

(J) will assure that safe and healthy conditions of work will be provided, and will assure that persons employed in community service jobs assisted under this subchapter shall be paid wages which shall not be lower than whichever is the highest of (i) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], if section 6(a)(1) of such Act [29 U.S.C. 206(a)(1)], applied to the participant and if the participant were not exempt under section 13 thereof [29 U.S.C. 213], (ii) the State or local minimum wage for the most nearly comparable covered employment, or (iii) the prevailing rates of pay for persons employed in similar public occupations by the same employer;

[*See main edition for text of* (*K*) *and* (*L*)]

(M) will assure that, to the extent feasible, such project will serve the needs of minority, Indian, and limited English-speaking eligible individuals in proportion to their numbers in the State;

(N) will authorize funds to be used, to the extent feasible, to include individuals participating in such project under any State unemployment insurance plan; and

(O) will post in such project workplace a notice, and will make available to each person associated with such project a written explanation, clarifying the law with respect to allowable and unallowable political activities under chapter 15 of title 5, applicable to the project and to each category of individuals associated with such project and containing the address and telephone number of the Inspector General of the Department of Labor, to whom questions regarding the application of such chapter may be addressed.

[*See main edition for text of* (*2*) *to* (*4*)]

(c) Authority of Secretary; project costs; non-Federal share; administration costs

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Of the amount for any project to be paid by the Secretary under this subsection, not more than—

(A) 13.5 percent for fiscal year 1986, and

(B) 12 percent for fiscal year 1987, and thereafter,

shall be available for paying the costs of administration for such project, except that whenever the Secretary determines that it is necessary to carry out the project assisted under this subchapter, based upon information submitted by the public or private nonprofit agency or organization with which the Secretary has an agreement under subsection (b) of this section, the Secretary may increase the amount available for paying the cost of administration to an amount not more than 15 percent of the cost of such project.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Pub. L. 98-459, title V, § 501, Oct. 9, 1984, 98 Stat. 1786.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-459, § 501(a)(1), substituted "unless the Secretary determines" for "unless he determines" in provisions preceding subpar. (A).

Subsec. (b)(1)(J)(i). Pub. L. 98-459, § 501(a)(2), substituted "if the participant were not exempt" for "if he were not exempt".

Subsec. (b)(1)(O). Pub. L. 98-459, § 501(a)(3)-(5), added subpar. (O).

Subsec. (c)(3). Pub. L. 98-459, § 501(b), added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

STUDY OF OLDER AMERICAN COMMUNITY SERVICE PROGRAMS

Section 505 of Pub. L. 98-459 provided that: "The Secretary of Labor shall conduct a study to identify additional mechanisms, supplementing the existing program under the Act [this chapter], to increase community service employment opportunities for eligible individuals. Not later than 1 year after the date of the enactment of this Act [Oct. 9, 1984], the Secretary of Labor shall submit to the Congress a report describing the results of such study and proposing draft legislation which, if enacted by the Congress, would increase such employment opportunities."

§ 3056a. Administration of community service projects

[See main edition for text of (a)]

(b) Coordination of Older American Community Service Employment Program with other Federal programs; prohibition against use of appropriations under this chapter for other Federal programs

If the Secretary determines that to do so would increase job opportunities available to individuals under this subchapter, the Secretary is authorized to coordinate the program assisted under this subchapter with programs authorized under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], the Community Services Block Grant Act [42 U.S.C. 9901 et seq.], and the Vocational Education Act of 1984 [20 U.S.C. 2301 et seq.]. Appropriations under this chapter may not be used to carry out any program under the Job Training Partnership Act, the Community Services Block Grant Act, or the Vocational Education Act of 1984.

[See main edition for text of (c) to (f)]

(Pub. L. 89-73, title V, § 503, formerly title IX, § 903, as added Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 722, and renumbered and amended Pub. L. 95-478, title I, § 105(a), (c)(1), (3), Oct. 18, 1978, 92 Stat. 1547, 1548; Pub. L. 97-115, § 12(d), Dec. 29, 1981, 95 Stat. 1607; Pub. L. 98-459, title V, § 502, Oct. 9, 1984, 98 Stat. 1786.)

REFERENCES IN TEXT

The Community Services Block Grant Act, referred to in subsec. (b), is subtitle B of title VI of Pub. L. 97-35, §§ 671 to 683, Aug. 13, 1981, 95 Stat. 511, as amended which is classified generally to chapter 106 (§ 9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Vocational Education Act of 1984, referred to in subsec. (b), probably means the Carl D. Perkins Vocational Education Act, which is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, and is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-459 struck out "the Emergency Jobs and Unemployment Assistance Act of 1974," before "the Job Training Partnership Act" wherever appearing and substituted "the Community Services Block Grant Act" for "the Community Services Act of 1974" and "the Vocational Education Act of 1984" for "the Emergency Employment Act of 1971", wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3056d. National grants or contracts and State allotments for projects

(a) National activities based on level of activities in fiscal year 1978: preference in awards, equitable distribution of aggregate activities; transitional employment funds; State allotments: allotment formula, allotment percentage; number of persons aged fifty-five or over; per capita income

[See main edition for text of (1) and (2)]

(3) The Secretary shall allot to the State agency on aging of each State the remainder of the sums appropriated for any fiscal year under section 3056f of this title so that each State will receive an amount which bears the same ratio to such remainder as the product of the number of persons aged fifty-five or over in the State and the allotment percentage of such State bears to the sum of the corresponding product for all States, except that (A) no State shall be allotted less than one-half of 1 per centum of the remainder of the sums appropriated for the fiscal year for which the determination is made, or $100,000, whichever is greater, and (B) Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands shall each be allotted an amount which is not less than one-fourth of 1 per centum of the remainder of the sums appropriated for the fiscal year for which the determination is made, or $50,000, whichever is greater. For the purpose of the exception contained in this paragraph the term "State" does not include Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

[See main edition for text of (4); (b) and (c)]

(d) Compliance reports by State agencies

The Secretary shall require the State agency for each State receiving funds under this subchapter to report at the beginning of each fiscal year on such State's compliance with subsection (c) of this section. Such report shall include the names and geographic location of all projects assisted under this subchapter and carried out in the State and the amount allotted to each such project.

(As amended Pub. L. 98-459, title V, § 503(a), (b), Oct. 9, 1984, 98 Stat. 1787.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-459, § 503(a), substituted "shall allot to the State agency" for "shall allot to State agency".

Subsec. (d). Pub. L. 98-459, § 503(b), added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3056e. Definitions

As used in this subchapter—

[See main edition for text of (1)]

(2) the term "eligible individual" means an individual who is fifty-five years old or older, who has a low income (including any such individual whose income is not more than 125 per centum of the poverty guidelines established by the Bureau of Labor Statistics), except that, pursuant to regulations prescribed by the Secretary, any such individual who is sixty years old or older shall have priority for the work opportunities provided for under this subchapter;

[See main edition for text of (3) and (4)]

(As amended Pub. L. 98-459, title V, § 503(c), Oct. 9, 1984, 98 Stat. 1787.)

AMENDMENTS

1984—Par. (2). Pub. L. 98-459 substituted "years old or older" for "years old or over" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3056f. Authorization of appropriations

(a) There is authorized to be appropriated to carry out this subchapter—

(1) $319,450,000 for fiscal year 1984, $335,000,000 for fiscal year 1985, $351,400,000 for fiscal year 1986, and $368,300,000 for fiscal year 1987; and

(2) such additional sums as may be necessary for each such fiscal year to enable the Secretary, through programs under this subchapter, to provide for at least 62,500 part-time employment positions for eligible individuals.

For purposes of clause (2), "part-time employment position" means an employment position within a workweek of at least 20 hours.

[See main edition for text of (b)]

(As amended Pub. L. 98-459, title V, § 504, Oct. 9, 1984, 98 Stat. 1787.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-459, § 504(3), substituted "clause (2)" for "paragraph (2)" in provisions following par. (2).

Subsec. (a)(1). Pub. L. 98-459, § 504(1), substituted provisions authorizing appropriations of $319,450,000 for fiscal year 1984, $335,000,000 for fiscal year 1985, $351,400,000 for fiscal year 1986, and $368,300,000 for fiscal year 1987 for provisions authorizing appropriations of $277,100,000 for fiscal year 1982, $296,500,000 for fiscal year 1983, and $317,300,000 for fiscal year 1984.

Subsec. (a)(2). Pub. L. 98-459, § 504(2), substituted "62,500" for "54,200".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

SUBCHAPTER X—GRANTS FOR INDIAN TRIBES

§ 3057a. Eligibility for assistance; definitions

(a) A tribal organization of an Indian tribe is eligible for assistance under this subchapter only if—

(1) the tribal organization represents at least 60 individuals who have attained 60 years of age or older;

[See main edition for text of (2) and (3); (b)]

(As amended Pub. L. 98-459, title VI, § 601, Oct. 9, 1984, 98 Stat. 1787.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-459 substituted "60 individuals" for "75 individuals".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3057c. Applications

(a) Approval criteria; provisions and assurances

No grant may be made under this subchapter unless the eligible tribal organization submits an application to the Commissioner which meets such criteria as the Commissioner may by regulation prescribe. Each such application shall—

[See main edition for text of (1) to (7)]

(8) provide assurances that either directly or by way of grant or contract with appropriate entities nutritional services will be delivered to older Indians represented by the tribal organization substantially in compliance with the provisions of part C of subchapter III of this chapter, except that in any case in which the need for nutritional services for older Indians represented by the tribal organization is already met from other sources, the tribal organization may use the funds otherwise required to be expended under this clause for supportive services;

[See main edition for text of (9) to (11); (b) and (c)]

(d) Disapproval by Commissioner

Whenever the Commissioner determines not to approve an application submitted under subsection (a) of this section the Commissioner shall—

(1) state objections in writing to the tribal organization within 60 days after such decision;

(2) provide to the extent practicable technical assistance to the tribal organization to overcome such stated objections; and

(3) provide the tribal organization with a hearing, under such rules and regulations as the Commissioner may prescribe.

[*See main edition for text of* (e)]

(As amended Pub. L. 98-459, title VI, § 602, Oct. 9, 1984, 98 Stat. 1788.)

AMENDMENTS

1984—Subsec. (a)(8). Pub. L. 98-459, § 602(a), substituted "under this clause" for "under this paragraph".

Subsec. (d). Pub. L. 98-459, § 602(b)(1), substituted "the Commissioner shall" for "he shall" in provisions preceding par. (1).

Subsec. (d)(1). Pub. L. 98-459, § 602(b)(2), substituted "objections" for "his objections".

Subsec. (d)(2). Pub. L. 98-459, § 602(b)(3), substituted "such stated objections" for "his stated objections".

Subsec. (d)(3). Pub. L. 98-459, § 602(b)(1), substituted "the Commissioner" for "he".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

§ 3057g. Authorization of appropriations

(a) There are authorized to be appropriated $7,500,000 for fiscal year 1984, $7,900,000 for fiscal year 1985, $8,300,000 for fiscal year 1986, and $8,600,000 for fiscal year 1987 to carry out the provisions of this subchapter other than section 3057e of this title.

[*See main edition for text of* (b)]

(c) Repealed. Pub. L. 98-459, title VI, § 603(b), Oct. 9, 1984, 98 Stat. 1788.

(As amended Pub. L. 98-459, title VI, § 603, Oct. 9, 1984, 98 Stat. 1788.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-459, § 603(a)(1), (2), struck out provisions authorizing appropriations of $6,500,000 for fiscal year 1982 and $7,000,000 for fiscal year 1983, and added provisions authorizing appropriations of $7,900,000 for fiscal year 1985, $8,300,000 for fiscal year 1986, and $8,600,000 for fiscal year 1987.

Subsec. (c). Pub. L. 98-459, § 603(b), struck out subsec. (c) which had authorized appropriation of such sums as might be necessary for fiscal years 1979, 1980, and 1981 to carry out the provisions of section 3057e of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

SUBCHAPTER XI—OLDER AMERICANS PERSONAL HEALTH EDUCATION AND TRAINING PROGRAM

§ 3058. Findings

The Congress hereby finds that—

(1) individuals 60 years of age or older constitute the fastest growing segment of the Nation's population;

(2) the process of aging, as well as the changes in lifestyle which accompany it, such as retirement, the end of parenting roles, and relocation, seem to increase and exacerbate health problems faced by older individuals (such health problems include physical, mental, and emotional health problems);

(3) many of the health problems faced by individuals 60 years of age or older, such as arteriosclerosis, arthritis, adult-onset diabetes, hypothermia, heat stress, Alzheimer's disease, circulatory problems, hypertension, diminished hearing and eyesight, reduced strength, social isolation, and bone fragility are particularly common to the older American population;

(4) although older individuals make up only 11 percent of our population, they consume 29 percent of the total health care expenditures and 50.5 percent of Federal health care (non-military) expenditures, and as our population ages the percentage of Federal health care dollars absorbed by older individuals will inevitably increase;

(5) older individuals consume more prescription and over-the-counter drugs than any other age group and are therefore more likely to be exposed to two or more active drugs which negatively interact;

(6) many of the health problems faced by older individuals and the fear of those health problems can be ameliorated and in some cases prevented if proper health education and training is available;

(7) health education and training focused specifically on the needs of older individuals can play an important role in health promotion and illness prevention and simultaneously help reduce medical costs for both individuals and the Government;

(8) the educational institutions of public health, the medical sciences, psychology, pharmacology, nursing, social work, health education, nutrition, and gerontology have much to offer in the design and implementation of health education and training services for older individuals; and

(9) the existing 3,300 multipurpose senior centers established under this chapter which already serve over 9,000,000 older individuals each year, are appropriate points of contact from which health education and training can be provided, but there is currently no uniform, standardized program consistently in place across the Nation.

(Pub. L. 89-73, title VII, § 702, as added Pub. L. 98-459, title VII, § 701, Oct. 9, 1984, 98 Stat. 1788.)

PRIOR PROVISIONS

A prior section 702 of Pub. L. 89-73, title VII, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 89, and amended Pub. L. 93-29, title VII, § 704(c), May 3, 1973, 87 Stat. 57; Pub. L. 93-644, § 9(a), Jan. 4, 1975, 88 Stat. 2310, which related to administration of a nutrition program for the elderly and which was classified to former section 3045a of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

EFFECTIVE DATE

Subchapter effective Oct. 1, 1984, see section 803(b)(4) of Pub. L. 98-459, set out as an Effective Date of 1984 Amendment note under section 3001 of this title.

SHORT TITLE

Section 701 of title VII of Pub. L. 89-73, as added by Pub. L. 98-459, title VII, § 701, Oct. 9, 1984, 98 Stat. 1788, provided that: "This title [enacting this subchapter] may be cited as the 'Older Americans Personal Health Education and Training Act'."

§ 3058a. Purposes

The purposes of this subchapter are to provide the necessary resources, leadership, and coordination (1) to design a uniform, standardized program of health education and training for older individuals; (2) to directly involve graduate educational institutions of public health in the design of such program; (3) to directly involve the graduate educational institutions of public health, the medical sciences, psychology, pharmacology, nursing, social work, health education, nutrition, and gerontology in the implementation of such program; (4) to implement such program in multipurpose senior centers established under this chapter; and (5) to evaluate such program.

(Pub. L. 89-73, title VII, § 703, as added Pub. L. 98-459, title VII, § 701, Oct. 9, 1984, 98 Stat. 1789.)

PRIOR PROVISIONS

A prior section 703 of Pub. L. 89-73, title VII, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 90, and amended Pub. L. 93-29, title VII, § 704(c), May 3, 1973, 87 Stat. 57; Pub. L. 94-135, title I, § 114(i), (j), Nov. 28, 1975, 89 Stat. 726, which related to allotment of funds, and which was classified to former section 3045b of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

§ 3058b. Older Americans personal health education and training program

(a) Establishment

In order to foster and promote the design and implementation of a health education and training program for individuals who are 60 years of age or older, the Secretary of Health and Human Services (hereinafter in this subchapter referred to as the "Secretary") shall establish an older individuals personal health education and training program within the Administration on Aging.

(b) Grants and contracts; conditions for payment; regulations

(1) In order to carry out the provisions of this subchapter, the Secretary, through the Administration on Aging, shall make grants and enter into contracts with public or private institutions of higher education having graduate programs with capability in public health, the medical sciences, psychology, pharmacology, nursing, social work, health education, nutrition, or gerontology in order to achieve the purposes of this subchapter. No payment shall be made by the Secretary toward the cost of any such project established or administered by any such institution unless the Secretary determines that such project—

(A) will provide for the design and implementation of a local or statewide demonstration health education and training program which is amenable to replication in multipurpose senior centers, as well as other sites convenient to older individuals;

(B) will provide for consultation with and utilization of multipurpose senior centers established under section 3030d(b)(1) of this title with regard to the provision of services to meet the specific needs of older individuals;

(C) will be generally applicable to the health needs of all individuals 60 years of age or older;

(D) will provide for the development of components appropriate for uniform, standardized use relating to specific problems encountered by older individuals, such as diet, mental health, physical fitness, hypertension, retirement, health insurance, hypothermia, and legal advice concerning rights to live and to receive medical treatment;

(E) will provide health education in the safe and effective use of prescription and nonprescription medicines;

(F) will address the motivation of older individuals including consideration of the elements of self-responsibility, physical fitness, stress management, nutrition, and environmental awareness; and the benefits older individuals can derive from behavioral and lifestyle modifications within their individual control;

(G) will provide for peer contact and interaction among participating older individuals;

(H) will provide for the training and utilization of graduate students (including the consideration of the granting of course credit to such students) and faculty in the fields of public health, the medical sciences, psychology, pharmacology, nursing, social work, health education, nutrition, and gerontology;

(I) will provide for the training and utilization of older individuals participating in such projects as volunteers;

(J) will ensure that participating older individuals are made aware of the health services available to them in their communities;

(K) will be designed in consultation with persons specifically competent in the field of public health;

(L) with regard to the provision of services, will be designed in consultation with each area agency on aging located in the geographic area to be served by such project with specific attention to State and area agency replication under section 3027(f) of this title;

(M) will demonstrate the ability of those who carry out such project to generate multidisciplinary working relationships with other groups in relevant fields, including the medical sciences, mental health, pharmacology, nursing, social work, health education, nutrition, and gerontology;

(N) will provide for coordination with the State agency designated under section 3025(a)(1) of this title and State health officials in the State in which such project is carried out; and

(O) will implement health education and training activity in at least 10 separate sites.

(2) The Secretary shall establish, issue, and amend such regulations as may be necessary to effectively carry out this subchapter.

(c) Federal share; contract considerations

(1) The Secretary shall pay not to exceed 90 percent of the cost of any project which is the subject of a contract entered into under subsection (b) of this section.

(2) The remaining cost of such project shall be provided from non-Federal sources, in cash or in-kind. In determining the amount of the non-Federal share, the Secretary is authorized to attribute fair-market value to services and facilities contributed from non-Federal sources.

(3) In considering grant or contract applications under this subchapter, the Secretary shall—

(A) give priority to grants and contracts smaller than $150,000; and

(B) to the extent practicable, ensure an equitable geographic distribution in the awarding of such grants or contracts, including an appropriate consideration of both urban and rural needs.

(d) Reports to Congress and the President; dissemination of information and materials to State agencies

(1) The Secretary shall prepare and submit to the Congress, not later than October 1, 1985, an interim report describing the projects approved under subsection (b) of this section and a design for the evaluation of such projects.

(2) Not later than October 1, 1986, the Secretary shall prepare and disseminate, through the Commissioner, to State agencies on aging information and materials relating to projects conducted under this subchapter, including uniform, standardized components of a program of health and nutrition education.

(3) The Secretary shall prepare and submit to the President and the Congress a final report on the projects approved under subsection (b) of this section not later than February 1, 1987, along with such findings and recommendations as the Secretary deems appropriate.

(Pub. L. 89–73, title VII, § 704, as added Pub. L. 98–459, title VII, § 701, Oct. 9, 1984, 98 Stat. 1789.)

PRIOR PROVISIONS

A prior section 704 of Pub. L. 89-73, title VII, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 91, and amended Pub. L. 93-29, title VII, § 704(c), May 3, 1973, 87 Stat. 57; which related to payment of grants for a nutrition program for the elderly, and which was classified to former section 3045c of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3027, 3058c of this title.

§ 3058c. Administration

(a) Use of services, equipment, personnel, and facilities of other agencies and instrumentalities

In carrying out this subchapter, the Secretary is authorized to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement, and to cooperate on a similar basis with other public and private agencies and instrumentalities in the use of services, equipment, and facilities.

(b) Manner of payment

Payments under this subchapter may be made in advance or by way of reimbursement, and in such installments as the Secretary may determine.

(c) Delegation of functions

Except as provided in section 3058b(d) of this title, the Secretary shall not delegate any function of the Secretary under this subchapter to any other department or agency of the United States.

(Pub. L. 89–73, title VII, § 705, as added Pub. L. 98–459, title VII, § 701, Oct. 9, 1984, 98 Stat. 1791.)

PRIOR PROVISIONS

A prior section 705 of Pub. L. 89-73, title VII, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 91, and amended Pub. L. 93-29, title VII, §§ 702-704, May 3, 1973, 87 Stat. 56, 57; Pub. L. 94-135, title I, § 114(k)-(n), Nov. 28, 1975, 89 Stat. 726, which related to provisions for State plans under the nutrition program for the elderly, and which was classified to former section 3045d of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

§ 3058d. Authorization of appropriations

(a) There are authorized to be appropriated to carry out this subchapter $8,550,000 for fiscal year 1985 and such sums as may be necessary for fiscal years 1986 and 1987.

(b) Amounts appropriated under this section for any fiscal year shall remain available for obligation until expended.

(Pub. L. 89–73, title VII, § 706, as added Pub. L. 98–459, title VII, § 701, Oct. 9, 1984, 98 Stat. 1791.)

PRIOR PROVISIONS

A prior section 706 of Pub. L. 89-73, title VII, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 93, and amended Pub. L. 93-29, title VII, § 704(c), May 3, 1973, 87 Stat. 57; Pub. L. 94-135, title I, § 114(*o*), (p), Nov. 28, 1975, 89 Stat. 726, which related to nutrition and other requirements for the nutrition program for the elderly, and which was classified to former section 3045e of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

A prior section 707 of Pub. L. 89-73, title VII, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 94, and amended Pub. L. 93-29, title VII, § 701, May 3, 1973, 87 Stat. 56; Pub. L. 93-351, § 5, July 12, 1974, 88 Stat. 358; Pub. L. 94-135, title I, § 111(a)-(d), (f), Nov. 28, 1975, 89 Stat. 718, 719; Pub. L. 95-65, § 2, July 11, 1977, 91 Stat. 269, which related to surplus commodities under the nutrition program for the elderly, and which was classified to former section 3045f of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

A prior section 708 of Pub. L. 89-73, title VII, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 94, and amended Pub. L. 93-351, § 1, July 12, 1974, 88 Stat. 357; Pub. L. 94-135, title I, §§ 111(e), 112(f), Nov. 28, 1975, 89 Stat. 719, 720, which provided for authorization of appropriations for the nutrition program for the elderly, and which was classified to former section 3045g of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

A prior section 709 of Pub. L. 89-73, title VII, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 95, which concerned the relationship of former sections 3045 to 3045i of this title to other laws, and which was classified to former section 3045h of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

A prior section 710 of Pub. L. 89-73, title VII, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 95, which related to agreements with profitmaking organizations, and which was classified to former section 3045i of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

CHAPTER 37—COMMUNITY FACILITIES AND ADVANCE LAND ACQUISITION

§§ 3102, 3103. Omitted

CODIFICATION

Section 3102, Pub. L. 89-117, title VII, § 702, Aug. 10, 1965, 79 Stat. 490; 1966 Reorg. Plan No. 2, eff. May 10, 1966, 31 F.R. 6857, 80 Stat. 1608; Pub. L. 90-19, § 22(b), (g), May 25, 1967, 81 Stat. 26, 27; Pub. L. 90-448, title VI, § 604, Aug. 1, 1968, 82 Stat. 534; Pub. L. 91-152, title III, § 305(a), Dec. 24, 1969, 83 Stat. 391; Pub. L. 91-431, § 3(c), Oct. 6, 1970, 84 Stat. 886; 1970 Reorg. Plan No. 3, § 2(a)(1), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2087; Pub. L. 92-213, § 6, Dec. 22, 1971, 85 Stat. 776; Pub. L. 92-335, § 7, July 1, 1972, 86 Stat. 405; Pub. L. 93-117, § 9, Oct. 2, 1973, 87 Stat. 423, which authorized grants for basic water and sewer facilities, was omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this section after Jan. 1, 1975.

Section 3103, Pub. L. 89-117, title VII, § 703, Aug. 10, 1965, 79 Stat. 491; Pub. L. 90-19, § 22(b), May 25, 1967, 81 Stat. 26; Pub. L. 98-181, title I, § 126(b)(2), Nov. 30, 1983, 97 Stat. 1175, which authorized grants for neighborhood facilities, was omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this section after Jan. 1, 1975.

§ 3105. Powers and duties of Secretary

REFERENCES IN TEXT

Subsection (c)(2) of section 1749a of title 12, referred to in subsec. (a), was repealed and subsec. (c)(3) was redesignated (c)(2) by Pub. L. 98-479, title II, § 201(d)(1), Oct. 17, 1984, 98 Stat. 2228.

CHAPTER 38—PUBLIC WORKS AND ECONOMIC DEVELOPMENT

§ 3121. Congressional findings and statement of purpose

PUBLIC WORKS IMPROVEMENT

Pub. L. 98-501, title I, §§ 101-111, Oct. 19, 1984, 98 Stat. 2320, provided:

"SHORT TITLE

"SEC. 101. This title may be cited as the 'Public Works Improvement Act of 1984'.

"ESTABLISHMENT

"SEC. 102. There is established a council to be known as the National Council on Public Works Improvement (hereinafter in this title referred to as the 'Council'.

"DUTIES

"SEC. 103. (a)(1) Not later than February 15, 1986, February 15, 1987, and February 15, 1988, the Council shall prepare and submit to the President and the Congress a report on the state of the Nation's infrastructure (hereinafter in this title referred to as the 'Infrastructure Report'). Each Infrastructure Report shall include, but not be limited to, an analysis of each of the following:

"(A) the age and condition of public works improvements and changes in their condition from preceding years;

"(B) the methods used to finance the construction, acquisition, rehabilitation, and maintenance of public works improvements, including but not limited to general obligation and revenue bonds, user fees, excise taxes, direct governmental assistance, and private investment;

"(C) any trends in methods used to finance such construction, acquisition, rehabilitation, and maintenance;

"(D) the capacity of public works improvements to sustain current and anticipated economic development and to support a sustained and expanding economy;

"(E) maintenance needs and projected expenditures for public works improvements.

"(2) In addition, each Infrastructure Report—

"(A) shall include a discussion of infrastructure program priorities (including alternative methods of meeting national infrastructure needs to effectuate balanced growth and economic development); and

"(B) to the extent practicable, shall provide, for other public works facilities owned or operated by the Federal Government, any State or local government, or any public agency or authority organized pursuant to State or local law, an analysis similar to the analysis provided under paragraph (1) for public works improvements.

"(b) Not later than September 30, 1985, the Council shall—

"(1) analyze criteria and procedures used by Federal agencies, States, and units of local government in inventorying existing and needed public works improvements and assessing the condition of public works improvements and develop and publish uniform criteria and procedures which may be used for conducting such inventories and assessments; and

"(2) develop and recommend to the President and the Congress proposed guidelines for the uniform reporting by Federal agencies of construction, acquisition, rehabilitation, and maintenance data with respect to public works improvements.

"(c) The Council shall convene its first meeting no earlier than February 15, 1985, and no later than April 15, 1985.

"(d) In carrying out its duties under this section, the Council shall use existing data and sampling techniques to the maximum extent feasible. When developing new data under this title, the Council shall make every effort to assure that such data is developed in consultation with the States so that uniform methods, categories, and analyses are used.

"(e) Each Infrastructure Report, when submitted to the Congress, shall be referred to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

"MEMBERSHIP

"SEC. 104. (a) The Council shall be composed of five members—

"(1) three of whom shall be appointed by the President;

"(2) one of whom shall be appointed by the Speaker of the House of Representatives; and

"(3) one of whom shall be appointed by the President pro tempore of the Senate;

from among persons knowledgeable and experienced in one or more of the following: public administration, planning, architecture, civil engineering, and public investment financing.

"(b) A vacancy in the Council shall not affect its powers but shall be filled in the manner in which the original appointment was made.

"(c) Four members of the Council shall constitute a quorum, but the Council may establish a lesser number as a quorum for the purpose of holding hearings, taking testimony, and receiving evidence.

"(d) The Chairman of the Council shall be elected by the members of the Council.

"(e) The Council shall meet at the call of the Chairman or a majority of its members.

"(f) Members of the Council shall be appointed for the life of the Council.

"(g) Members of the Council shall serve without pay, except that they shall receive per diem and travel expenses in accordance with section 5703 of title 5, United States Code.

"DIRECTOR AND STAFF

"SEC. 105. (a) The Council shall have a director who shall be appointed by the Council and shall be paid at a rate not to exceed the rate of basic pay payable to level V of the Executive Schedule.

"(b) The Council may appoint and fix the pay of such additional personnel as the Council considers appropriate.

"(c) The director and staff of the Council may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and may be made without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Any Federal employee subject to the civil service laws and regulations who may be employed by the Council shall retain civil service status without interruption or loss of status or privilege. In no event shall any employee of the Council other than the staff director receive as compensation an amount in excess of the maximum rate of basic pay payable for GS-18 of the General Schedule.

"POWERS OF THE COUNCIL

"SEC. 106. (a) Upon request of the Council, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this title.

"(b) Upon request of the Council, the Secretary of the Army, acting through the Chief of Engineers, shall provide, on a reimbursable basis, such office space, supplies, equipment, and other support services to the Council and its staff as may be necessary for the Council to carry out its duties under this title.

"(c) The Council may secure directly from any department or agency of the United States information necessary to enable it to carry out this title. Upon request of the Chairman of the Council, the head of such department or agency shall furnish such information to the Council.

"(d) The Council or any member authorized by the Council may, for the purpose of carrying out this title, hold such hearings, sit and act at such time and places, take such testimony, have such printing and binding done, enter into such contracts and other arrangements (with or without consideration or bond, to such extent or in such amounts as are provided in appropriation Acts, and without regard to section 3709 of the Revised Statutes (41 U.S.C. 5)), make such expenditures, and take such other actions as the Council or such member may deem advisable to carry out this title. Any member of the Council may administer oaths or affirmations to witnesses appearing before the Council or before such member.

"ADVISORY GROUP

"SEC. 107. (a) There is established an advisory group to provide such assistance and advice as the Council may request. Such group shall be composed of 12 members as follows:

"(1) the Secretary of the Army, who shall be the Chairman of such group;

"(2) the Secretary of Agriculture;

"(3) the Secretary of Housing and Urban Development;

"(4) the Secretary of Transportation;

"(5) the Administrator of the Environmental Protection Agency;

"(6) the Secretary of Commerce;

"(7) the Chairman of the National Governors Association;

"(8) the President of the National Conference of State Legislatures;

"(9) the President of the National Association of Counties;

"(10) the President of the National Association of Regional Councils;

"(11) the President of the National League of Cities; and

"(12) the President of the United States Conference of Mayors.

"(b) The members of the advisory group shall serve without pay.

"(c) The advisory group shall cease to exist on April 15, 1988.

"CONGRESSIONAL BUDGET OFFICE REVIEW

"SEC. 108. Not later than 90 days after the date on which each Infrastructure Report is submitted to the Congress by the Council, the Congressional Budget Office shall review such report and shall submit a report on the results of such review to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

"TERMINATION

"SEC. 109. The Council shall cease to exist on April 15, 1988.

"FUNDING

"SEC. 110. (a) From funds otherwise appropriated to the Secretary of the Army for purposes of civil works, the Secretary shall transfer to the Council in the fiscal year ending September 30, 1985, such amounts as the Council may request but not to exceed $3,200,000.

"(b) There is authorized to be appropriated to the Council to carry out the provisions of this title $3,500,000 per fiscal year for each of the fiscal years ending September 30, 1986, and September 30, 1987, and $2,000,000 for the fiscal year ending September 30, 1988.

"DEFINITIONS

"SEC. 111. For purposes of this title, the term—

"(1) 'acquisition' includes the addition of land, sites, equipment, structures, facilities, or rolling stock by purchase, lease-purchase, trade, or donation;

"(2) 'construction' includes the design, planning, and erection of new structures and facilities, the expansion of existing structures and facilities, the reconstruction of a project at an existing site or adjacent to an existing site, and the installation of initial and replacement equipment for such structures and facilities;

"(3) 'public works improvements' means the following publicly owned civilian facilities: highways; streets; bridges; mass transportation facilities and equipment; resource recovery facilities; airports; airway facilities; water supply and distribution systems; wastewater collection, treatment, and related facilities; dams; federally owned buildings; docks and ports; waterways; and such other public facilities as the Council determines are critical for national economic development;

"(4) 'maintenance' means regularly scheduled activities, including routine repairs, intended to keep a facility operating efficiently; and

"(5) 'rehabilitation' includes the alteration of or correction of deficiencies in an existing structure or facility so as to extend the useful life or improve the effectiveness of the structure or facility, the modernization or replacement of equipment at an existing structure or facility, and the modernization of, or replacement of parts for, rolling stock."

SUBCHAPTER I—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

§ 3131. Direct and supplementary grants

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3161, 3171, 3220, 3221, 3222, 3223, 3338 of this title.

CHAPTER 41—DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT PROGRAM

SUBCHAPTER II—PLANNED AREAWIDE DEVELOPMENT

§ 3337. Consultations and certifications

In carrying out his authority under section 3335 of this title, including the issuance of regulations, the Secretary shall consult with the Department of the Interior; the Department of Health and Human Services; the Department of Commerce; and the Federal Aviation Agency with respect to metropolitan development projects assisted by those departments and agencies; and he shall, for the purpose of section 3336 of this title, accept their respective certifications as to the cost of those projects and the amount of the non-Federal contribution paid or to be paid to that cost.

(Pub. L. 89-754, title II, § 207, Nov. 3, 1966, 80 Stat. 1264; Pub. L. 98-479, title II, § 201(f), Oct. 17, 1984, 98 Stat. 2228.)

AMENDMENTS

1984—Pub. L. 98-479 substituted "Health and Human Services" for "Health, Education, and Welfare".

CHAPTER 42—NARCOTIC ADDICT REHABILITATION

SUBCHAPTER II—CIVIL COMMITMENT OF PERSONS NOT CHARGED WITH ANY CRIMINAL OFFENSE

§ 3411. Definitions

REFERENCES IN TEXT

Section 802(16) of title 21, referred to in subsec. (a), was redesignated section 802(17) of title 21 by Pub. L. 98-473, title II, § 507(a), Oct. 12, 1984, 98 Stat. 2071.

CHAPTER 43—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
3510, 3511. Transferred.

SUBCHAPTER I—GENERAL PROVISIONS

§§ 3510, 3511. Transferred

CODIFICATION

Section 3510, Pub. L. 91-667, title II, § 200, Jan. 11, 1971, 84 Stat. 2015, which related to the Working Capital Fund, was transferred to section 3513a of this title.

Section 3511, Pub. L. 93-282, title II, § 201, May 14, 1974, 88 Stat. 134; Pub. L. 94-371, § 8, July 26, 1976, 90 Stat. 1040; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which established the Alcohol, Drug Abuse, and Mental Health Administration and National Panel on Alcohol, Drug Abuse, and Mental Health, was redesignated section 501 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(2), Apr. 26, 1983, 97 Stat. 176, and is classified to section 290aa of this title.

CHAPTER 44—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.
3542. Public notice and comment regarding demonstration programs not expressly authorized in law.

§ 3535. Administrative provisions

[*See main edition for text of* (*a*) *to* (*n*)]

(o) Agenda of rules or regulations under development or review; transmittal to Congress

[*See main edition for text of* (*1*) *to* (*5*)]

(6) For purposes of this subsection—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) the term "rule or regulation" does not include the setting of interest rates pursuant to section 235 or 236 of the National Housing Act [12 U.S.C. 1715z, 1715z-1].

[*See main edition for text of* (*p*)]

(As amended Pub. L. 98-479, title I, § 104(b), Oct. 17, 1984, 98 Stat. 2225.)

AMENDMENTS

1984—Subsec. (o)(6)(C). Pub. L. 98-479 substituted "section 235 or 236 of the National Housing Act" for "section 3 of Public Law 90-301".

§ 3541. Paperwork reduction

[*See main edition for text of* (*a*)]

(b) Uniform legal and other forms for use by agencies in housing programs

(1) Not later than October 1, 1980, the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Administrator of Veterans' Affairs shall, consistent with provisions of law governing the conduct of housing programs, employ in their respective programs—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) a uniform settlement statement which shall satisfy the requirements of the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.]; and

[*See main edition for text of (F), (2) and (3); (c)*]

(As amended Pub. L. 98-479, title II, § 204(n)(4), Oct. 17, 1984, 98 Stat. 2234.)

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b)(1)(E), Pub. L. 93-533, Dec. 22, 1974, 88 Stat. 1724, as amended, which is classified principally to chapter 27 (§ 2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

AMENDMENTS

1984—Subsec. (b)(1)(E). Pub. L. 98-479 added "of 1974" after "Act".

§ 3542. Public notice and comment regarding demonstration programs not expressly authorized in law

(a) No demonstration program not expressly authorized in law may be commenced by the Secretary of Housing and Urban Development until (1) a description of such demonstration program is published in the Federal Register, which description may be included in a notice of funding availability; and (2) there expires a period of sixty calendar days following the date of such publication, during which period the Secretary shall fully consider any public comments submitted with respect to such demonstration program.

(b) Nothing in this section may be considered to authorize the conducting of any demonstration program by the Secretary of Housing and Urban Development.

(Pub. L. 98-181, title IV, § 470, Nov. 30, 1983, 97 Stat. 1237.)

CODIFICATION

Section was enacted as part of the Supplemental Appropriations Act, 1984, and not as part of the Department of Housing and Urban Development Act which comprises this chapter.

CHAPTER 45—FAIR HOUSING

SUBCHAPTER I—GENERALLY

§ 3612. Enforcement by private persons

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3610 of this title; title 15 section 1691e.

§ 3614. Repealed. Pub. L. 98-620, title IV, § 402(40), Nov. 8, 1984, 98 Stat. 3360

Section, Pub. L. 90-284, title VIII, § 814, Apr. 11, 1968, 82 Stat. 88, related to expedition of court proceedings under section 3612 or 3613 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 46—JUSTICE SYSTEM IMPROVEMENT

Sec.
3701. Repealed.

SUBCHAPTER I—OFFICE OF JUSTICE PROGRAMS

3711. Establishment of Office of Justice Programs.
3712. Duties and functions of Assistant Attorney General.
  (a) Specific, general and delegated powers.
  (b) Annual report to President and Congress.
3713. Omitted.

SUBCHAPTER II—NATIONAL INSTITUTE OF JUSTICE

3724. Repealed.

SUBCHAPTER III—BUREAU OF JUSTICE STATISTICS

3734. Repealed.

SUBCHAPTER IV—BLOCK GRANTS

3741. Establishment of Bureau of Justice Assistance.
3742. Duties and functions of Director.
3743. Description of program.
  (a) Authorized purposes of grants.
  (b) Federal and non-Federal portions of program or project costs.
  (c) Period for receipt of funds.
3744. Eligibility
3745. Applications.
3746. Review of applications.
  (a) Bureau determinations prerequisite to assistance; presumption of approval.
  (b) Failure to conform to requirements or statutory purposes; suspension of funding; adjustment of grants.
  (c) Prohibited uses of grant funds.
  (d) Notice and opportunity for reconsideration.
3747. Allocation and distribution of funds.
  (a) Percentage of appropriation for allocation to States; basic amount; remainder amount.
  (b) Formula for distributions to units of local government; priority of needy jurisdictions; State expenditure of available funds; data requirements.
  (c) Limitation of distributions to approved programs.
  (d) Award of State earmarked funds to units of local government; priority of needy jurisdictions.
  (e) Available funds for subchapter V obligation.
3748. State office.

SUBCHAPTER V—DISCRETIONARY GRANTS

3751 to 3755. Repealed.
3761. Congressional statement of purpose.
3762. Percentage of appropriation for discretionary grant program.
3763. Procedure for establishing discretionary programs.
  (a) Periodic establishment; priority period.
  (b) Request to outside agencies to suggest discretionary programs and projects; priorities determination: establishment, modification and publication.
3764. Application requirements.
  (a) Contents of applications.
  (b) Certifications.

Sec.
3765. Criteria for award.
3766. Period for award.

SUBCHAPTER VI—CRIMINAL JUSTICE FACILITY CONSTRUCTION: PILOT PROGRAM

3769. Authority for payments.
3769a. Eligibility.
  (a) Conditions.
  (b) Development of plan; limitation of assistance.
3769b. Application; approval; payment.
  (a) Terms and conditions of application.
  (b) Approval of application; criteria.
  (c) Amount of payment; limitation.
  (d) Amendment of application; approval.
3769c. Recapture provisions.
3769d. Clearinghouse on the construction and modernization of criminal justice facilities.
  (a) Functions; information.
  (b) Authority of Director.

SUBCHAPTER VII—FBI TRAINING OF STATE AND LOCAL CRIMINAL JUSTICE PERSONNEL

3771. Training and manpower development.
  (a) Functions, powers, and duties of Director of Federal Bureau of Investigation.
  (b) General authority of Attorney General over Director.
  (c) Training programs for State and local personnel at Federal Training Center.
3772 to 3775. Omitted.

SUBCHAPTER VIII—ADMINISTRATIVE PROVISIONS

3781. Repealed.
3787. Subpoena power; employment of hearing officers; authority to hold hearings.
3788. Personnel and administrative authority.
  (a) Officers and employees of certain Federal agencies; employment; compensation.
  (b) Use of available services; reimbursement.
  (c) Other Federal agency performance of functions under this chapter; reimbursement.
  (d) Experts and consultants; compensation.
  (e) Advisory committees; compensation and travel expenses of committee members.
  (f) Payments; installments; advances or reimbursement; transportation and subsistence expenses for attendance at conferences or other assemblages.
  (g) Voluntary services; status as Federal employee; exceptions.
3789. Title to personal property.
3789a to 3789c. Repealed.
3789h. Repealed.
3789*o*. Repealed.

SUBCHAPTER X—FUNDING

3793a, 3793b. Repealed.

Chapter Referred to in Other Sections

This chapter is referred to in sections 5751, 10501 of this title.

§ 3701. Repealed. Pub. L. 98-473, title II, § 602, Oct. 12, 1984, 98 Stat. 2077

Section, Pub. L. 90-351, title I, § 100, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1169, set out the Congressional findings, declaration of policy, and statement of purpose for this chapter.

Effective Date of Repeal

Repeal of section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

SUBCHAPTER I—OFFICE OF JUSTICE PROGRAMS

Subchapter Referred to in Other Sections

This subchapter is referred to in section 5611 of this title.

§ 3711. Establishment of Office of Justice Programs

There is hereby established an Office of Justice Programs within the Department of Justice under the general authority of the Attorney General. The Office of Justice Programs (hereinafter referred to in this chapter as the "Office") shall be headed by an Assistant Attorney General (hereinafter in this chapter referred to as the "Assistant Attorney General") appointed by the President, by and with the advice and consent of the Senate.

(Pub. L. 90-351, title I, § 101, as added Pub. L. 98-473, title II, § 603(a), Oct. 12, 1984, 98 Stat. 2078.)

References in Text

This chapter, referred to in text, was in the original "this title", meaning title I of Pub. L. 90-351, as added by Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1167, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title of 1979 Amendment note below and Tables.

Prior Provisions

A prior section 3711, Pub. L. 90-351, title I, § 101, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1170, established the Law Enforcement Assistance Administration, prior to the general revision of this subchapter by Pub. L. 98-473.

Effective Date

Section 609AA of division I of chapter VI of title II of Pub. L. 98-473 provided that:

"(a) Except as provided in subsection (b), this division and the amendments made by this title [probably means division, see Short Title of 1984 Amendment note below] shall take effect on the date of the enactment of this joint resolution [Oct. 12, 1984] or October 1, 1984, whichever is later.

"(b)(1) The amendment made by section 609F [amending sections 3796 to 3796c of this title] shall take effect on October 1, 1984, and shall not apply with respect to injuries sustained before October 1, 1984.

"(2) Section 609Z [repealing section 204 of Pub. L. 98-411, which had amended sections 3796 to 3796b of this title and enacted provisions set out as a note under section 3796 of this title] shall take effect on October 1, 1984."

Short Title of 1984 Amendment

Section 601 of division I of chapter VI of title II of Pub. L. 98-473 provided that: "This division [sections 601 to 609AA of Pub. L. 98-473, enacting chapter 111 and sections 3711, 3712, 3741 to 3748, 3769 to 3769d, 3771, 3786 to 3789 of this title, amending sections 3721, 3722, 3731, 3732, 3761 to 3766, 3782 to 3785, 3789d to 3789g, 3789i, 3789*l*, 3791, 3793, 3795, 3795b, 3796 to 3796c, and 3797 of this title, sections 5314 and 5315 of Title 5, Government Organization and Employees, and section 1761 of Title 18, Crimes and Criminal Procedure, omitting sections 3713 and 3772 to 3775 of this title, repealing sections 3701, 3724, 3734, 3751 to 3755, 3781, 3786 to 3789c, 3789h, 3789o, 3793b, and 3796 to 3796b of this title, enacting provisions set out as notes under section 3711 of this title and section 1028 of Title 18, and amending provisions set out as a note under section 1761 of Title 18] may be cited as the 'Justice Assistance Act of 1984'."

SHORT TITLE OF 1979 AMENDMENT

Section 1 of Pub. L. 96-157 provided: "That this Act [enacting this chapter, amending sections 5314 and 5315 of Title 5, Government Organization and Employees, section 1761 of Title 18, Crimes and Criminal Procedure, and section 35 of Title 41, Public Contracts, and enacting provisions set out as a note under section 1761 of Title 18] may be cited as the 'Justice System Improvement Act of 1979'."

SHORT TITLE OF 1976 AMENDMENTS

Pub. L. 94-503, § 1, Oct. 15, 1976, 90 Stat. 2407, provided: "That this Act [enacting sections 3726 and 3739 of this title, amending sections 3701, 3711, 3721, 3723, 3724, 3725, 3731, 3732, 3733, 3734, 3736, 3737, 3738, 3742, 3750b, 3750d, 3751, 3755, 3757, 3763, 3766, 3767, 3768, 3769, 3781, 5633, 5635, and 5671 of this title, and sections 5108, 5315, and 5316 of Title 5, Government Organization and Employees, repealing section 3760 of this title, and enacting provisions set out as notes under sections 501, 509, and 532 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Crime Control Act of 1976'."

Pub. L. 94-430, § 1, Sept. 29, 1976, 90 Stat. 1346, provided: "That this Act [enacting sections 3796 to 3796c of this title, amending section 3768 of this title, and enacting provisions set out as notes under section 3796 of this title] may be cited as the 'Public Safety Officers' Benefits Act of 1976'."

SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93-83, § 1, Aug. 6, 1973, 87 Stat. 197, provided: "That this Act [enacting sections 3738, 3770, and 3771 of this title, reenacting sections 3334(a), 3734, 3735, 3745, 3750, 3750a, 3751 to 3755, 3757 to 3759, 3761 to 3765, and 3792 of this title and section 5314(55) of Title 5, Government Organization and Employees, renumbering former section 3748 as 3747 and repealing former section 3747 of this title, and amending sections 3701, 3711, 3721 to 3725, 3731 to 3733, 3736, 3737, 3741 to 3744, 3746, 3750b to 3750d, 3756, 3760, 3766 to 3769, 3781, 3791, 3793, and 3795 of this title, sections 5108(c)(10), 5315(90), and 5316(133) of Title 5, and section 484(n) of Title 40, Public Buildings, Property, and Works] may be cited as the 'Crime Control Act of 1973'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-644, § 1, Jan. 2, 1971, 84 Stat. 1880, provided: "That this Act [enacting sections 3747, 3748, 3750 to 3750d, 3791 to 3793, and 3795 of this title and sections 351 and 1752 of Title 18, Crimes and Criminal Procedure, amending sections 3711, 3723, 3724, 3731, 3733, 3735, 3736, 3746, 3756, 3763 to 3765, 3767 to 3769, and 3781 of this title, sections 5108 and 5313 to 5316 of Title 5, Government Organization and Employees, and sections 924, 3056, and 3731 of Title 18, enacting provisions set out as notes under section 3731 of Title 18, amending provisions set out as notes under section 2510 of Title 18, and repealing provisions set out as notes under section 2510 of Title 18] may be cited as the 'Omnibus Crime Control Act of 1970'."

SHORT TITLE

Section 1 of Pub. L. 90-351, June 19, 1968, 82 Stat. 197, provided: "That this Act [enacting this chapter, sections 5315(90), 5316(126), and 7313 of Title 5, Government Organization and Employees, sections 921 to 928 (chapter 44), 2510 to 2520 (chapter 119), 3103a, 3501, and 3502 of Title 18, Crimes and Criminal Procedure, and Appendix to Title 18, amending section 3334(a) of this title, section 3731 of Title 18, and section 605 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, repealing sections 901 to 910 of Title 15, Commerce and Trade, enacting provisions set out as notes under sections 7313 of Title 5, sections 921 and 2510 of Title 18, and section 532 of Title 28, Judiciary and Judicial Procedure, and repealing provisions set out as a note preceding section 3001 of Title 18] may be cited as the 'Omnibus Crime Control and Safe Streets Act of 1968'."

SEPARABILITY OF PROVISIONS

Section 1601 of Pub. L. 90-351, title XVI, June 19, 1968, 82 Stat. 239, provided that: "If the provisions of any part of this Act [see Short Title note above] or any amendments made thereby or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby."

REFERENCES IN OTHER LAWS

Section 609I of Pub. L. 98-473 provided that:

"(a) Any reference to the Law Enforcement Assistance Administration, or to the Administrator of the Law Enforcement Assistance Administration, in any law other than this Act [see Short Title of 1984 Amendment note set out above] and the Omnibus Crime Control and Safe Streets Act of 1968 [see Short Title note set out above], applicable to activities, functions, powers, and duties that after the date of the enactment of this Act [Oct. 12, 1984] are carried out by the Bureau of Justice Assistance shall be deemed to be a reference to the Bureau of Justice Assistance, or to the Director of the Bureau of Justice Assistance, as the case may be.

"(b) Any reference to the Office of Justice Assistance, Research, and Statistics, or to the Director of the Office of Justice Assistance, Research, and Statistics, in any law other than this Act and the Omnibus Crime Control and Safe Streets Act of 1968, applicable to activities, functions, powers, and duties that after the date of the enactment of this Act are carried out by the Office of Justice Programs, the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, or the Office of Juvenile Justice Delinquency Prevention shall be deemed to be a reference to the Office of Justice Programs, the Bureau of Justice Assistance, the Bureau of Justice Statistics, National Institute of Justice, or Office of Juvenile Justice Delinquency Prevention, or to the Director of the Office of Justice Programs, the Director of the Bureau of Justice Assistance, the Director of the Bureau of Justice Statistics, the Director of the National Institute of Justice, or the Administrator of the Office of Juvenile Justice and Delinquency Prevention, as the case may be."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5603 of this title.

§ 3712. Duties and functions of Assistant Attorney General

(a) Specific, general and delegated powers

The Assistant Attorney General shall—

(1) publish and disseminate information on the conditions and progress of the criminal justice systems;

(2) maintain liaison with the executive and judicial branches of the Federal and State governments in matters relating to criminal justice;

(3) provide information to the President, the Congress, the judiciary, State and local

governments, and the general public relating to criminal justice;

(4) maintain liaison with public and private educational and research institutions, State and local governments, and governments of other nations relating to criminal justice;

(5) provide staff support to coordinate the activities of the Office and the Bureau of Justice Assistance, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Juvenile Justice and Delinquency Prevention; and

(6) exercise such other powers and functions as may be vested in the Assistant Attorney General pursuant to this chapter or by delegation of the Attorney General.

(b) Annual report to President and Congress

The Assistant Attorney General shall submit an annual report to the President and to the Congress not later than March 31 of each year.

(Pub. L. 90-351, title I, § 102, as added Pub. L. 98-473, title II, § 603(a), Oct. 12, 1984, 98 Stat. 2078.)

Prior Provisions

A prior section 3712, Pub. L. 90-351, title I, § 102, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1170, described the duties and functions of the Administrator of the Law Enforcement Assistance Administration, prior to the general revision of this subchapter by Pub. L. 98-473.

A prior section 3713, Pub. L. 90-351, title I, § 103, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1170, provided for an Office of Community Anti-Crime Programs, prior to the general revision of this subchapter by Pub. L. 98-473.

Effective Date

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

§ 3713. Omitted

Codification

See Prior Provisions note, set out under section 3712 of this title.

SUBCHAPTER II—NATIONAL INSTITUTE OF JUSTICE

Subchapter Referred to in Other Sections

This subchapter is referred to in section 3797 of this title.

§ 3721. Statement of purpose

It is the purpose of this subchapter to establish a National Institute of Justice, which shall provide for and encourage research and demonstration efforts for the purpose of—

(1) improving Federal, State, and local criminal justice systems and related aspects of the civil justice system;

(2) preventing and reducing crimes;

(3) insuring citizen access to appropriate dispute-resolution forums; and

(4) identifying programs of proven effectiveness, programs having a record of proven success, or programs which offer a high probability of improving the functioning of the criminal justice system.

The Institute shall have authority to engage in and encourage research and development to improve and strengthen the criminal justice system and related aspects of the civil justice system and to disseminate the results of such efforts to Federal, State, and local governments, to evaluate the effectiveness of programs funded under this chapter, to develop and demonstrate new or improved approaches and techniques, to improve and strengthen the administration of justice, and to identify programs or projects carried out under this chapter which have demonstrated success in improving the quality of justice systems and which offer the likelihood of success if continued or repeated. In carrying out the provisions of this subchapter, the Institute shall give primary emphasis to the problems of State and local justice systems and shall insure that there is a balance between basic and applied research.

(As amended Pub. L. 98-473, title II, § 604(a), Oct. 12, 1984, 98 Stat. 2078.)

Amendments

1984—Pub. L. 98-473 redesignated par. (5) as (4), struck out former par. (4) relating to improvement of efforts to detect, investigate, prosecute, and otherwise combat and prevent white-collar crime and public corruption, and in closing provisions struck out "to develop alternatives to judicial resolution of disputes," after "local governments,", and inserted "and demonstrate" after "to develop".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3722. National Institute of Justice

[*See main edition for text of* (*a*)]

(b) Director of Institute; appointment by President; authority; restrictions

The Institute shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate. The Director shall have had experience in justice research. The Director shall report to the Attorney General through the Assistant Attorney General. The Director shall have final authority over all grants, cooperative agreements, and contracts awarded by the Institute. The Director shall not engage in any other employment than that of serving as Director; nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Institute makes any contract or other arrangement under this chapter.

(c) Duties and functions

The Institute is authorized to—

[*See main edition for text of* (*1*)]

(2) conduct or authorize multiyear and short-term research and development concerning the criminal and civil justice systems in an effort—

(A) to identify alternative programs for achieving system goals;

[*See main edition for text of* (*B*) *to* (*D*)]

(E) to develop new methods for the prevention and reduction of crime,,[1] including the development of programs to facilitate cooperation among the States and units of local government, the detection and apprehension of criminals, the expeditious, efficient, and fair disposition of criminal and juvenile delinquency cases, the improvement of police and minority relations, the conduct of research into the problems of victims and witnesses of crime, the feasibility and consequences of allowing victims to participate in criminal justice decisionmaking, the feasibility and desirability of adopting procedures and programs which increase the victim's participation in the criminal justice process, the reduction in the need to seek court resolution of civil disputes, and the development of adequate corrections facilities and effective programs of correction; and

[*See main edition for text of* (*F*)]

In carrying out the provisions of this subsection, the Institute may request the assistance of both public and private research agencies;

(3) evaluate the effectiveness of projects or programs carried out under this chapter;

(4) make recommendations for action which can be taken by Federal, State, and local governments and by private persons and organizations to improve and strengthen criminal and civil justice systems;

(5) provide research fellowships and clinical internships and carry out programs of training and special workshops for the presentation and dissemination of information resulting from research, demonstrations, and special projects including those authorized by this subchapter;

(6) collect and disseminate information obtained by the Institute or other Federal agencies, public agencies, institutions of higher education, and private organizations relating to the purposes of this subchapter;

(7) serve as a national and international clearinghouse for the exchange of information with respect to the purposes of this subchapter;

(8) after consultation with appropriate agencies and officials of States and units of local government, make recommendations for the designation of programs or projects which will be effective in improving the functioning of the criminal justice system, for funding as discretionary grants under subchapter V of this chapter; and

(9) encourage, assist, and serve in a consulting capacity to Federal, State, and local justice system agencies in the development, maintenance, and coordination of criminal and civil justice programs and services.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-473, title II, § 604(b), Oct. 12, 1984, 98 Stat. 2078.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-473, § 604(b)(1), required the Director to report to the Attorney General through the Assistant Attorney General.

Subsec. (c)(2)(A). Pub. L. 98-473, § 604(b)(2)(A)(i), struck out ", including programs authorized by section 3713 of this title" after "system goals".

Subsec. (c)(2)(E). Pub. L. 98-473, § 604(b)(2)(A)(ii), struck out "the prevention and reduction of parental kidnaping" after "reduction of crime,".

Subsec. (c)(3). Pub. L. 98-473, § 604(b)(2)(B), substituted "chapter" for "subchapter".

Subsec. (c)(4) to (7). Pub. L. 98-473, § 604(b)(2)(C), (F), redesignated pars. (5) to (8) as (4) to (7), respectively, and struck out former par. (4) relating to evaluation of programs and projects under other subchapters of this chapter to determine their impact upon criminal and civil justice systems and achievement of the purposes and policies of this chapter and for dissemination of information.

Subsec. (c)(8). Pub. L. 98-473, § 604(b)(2)(D)(i), (ii), (F), redesignated par. (10) as (8) and, in par. (8) as so designated, struck out "nationality priority grants under subchapter V of this chapter and" after "for funding as" and substituted "subchapter V of this chapter" for "subchapter VI of this chapter". Former par. (8) redesignated (7).

Subsec. (c)(9). Pub. L. 98-473, § 604(b)(2)(E), (F), redesignated par. (11) as (9), and struck out former par. (9) relating to a biennial report to the President and Congress on the state of justice research.

Subsec. (c)(10), (11). Pub. L. 98-473, § 604(b)(2)(F), redesignated pars. (10) and (11) as (8) and (9), respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3724. Repealed. Pub. L. 98-473, title II, § 604(c), Oct. 12, 1984, 98 Stat. 2079

Section, Pub. L. 90-351, title I, § 204, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1174, provided for a National Institute of Justice Advisory Board, including the establishment and composition of the Board, rules respecting organization and procedure, term of office, duties of the Board, and delegation of powers and duties to the Director.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

SUBCHAPTER III—BUREAU OF JUSTICE STATISTICS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3797 of this title.

§ 3731. Statement of purpose

It is the purpose of this subchapter to provide for and encourage the collection and analysis of statistical information concerning crime, juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system and to support the development of information and statistical systems at the Federal, State, and local levels to improve the efforts of these levels of government to measure and understand the levels of crime, juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system. The Bureau shall utilize to the maximum extent feasible State governmental organizations and facilities responsible for the collection and analysis of criminal justice data and statistics. In carrying out the provisions of this subchapter, the Bureau shall give primary emphasis to the problems of State and local justice systems.

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[1] So in original.

(As amended Pub. L. 98-473, title II, § 605(a), Oct. 12, 1984, 98 Stat. 2079.)

Amendments

1984—Pub. L. 98-473 struck out "(including white-collar crime and public corruption)" after "information concerning crime" and "(including crimes against the elderly, white-collar crime, and public corruption)" after "levels of crime".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3732. Bureau of Justice Statistics

[See main edition for text of (a)]

(b) Appointment of Director; experience; authority; restrictions

The Bureau shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate. The Director shall have had experience in statistical programs. The Director shall have final authority for all grants, cooperative agreements, and contracts awarded by the Bureau. The Director shall report to the Attorney General through the Assistant Attorney General. The Director shall not engage in any other employment than that of serving as Director; nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Bureau makes any contract or other arrangement under this Act.

(c) Duties and functions of Bureau

The Bureau is authorized to—

[See main edition for text of (1) to (12)]

(13) provide for the development of justice information systems programs and assistance to the States and units of local government relating to collection, analysis, or dissemination of justice statistics;

(14) develop and maintain a data processing capability to support the collection, aggregation, analysis and dissemination of information on the incidence of crime and the operation of the criminal justice system;

(15) collect, analyze and disseminate comprehensive Federal justice transaction statistics (including statistics on issues of Federal justice interest such as public fraud and high technology crime) and to provide technical assistance to and work jointly with other Federal agencies to improve the availability and quality of Federal justice data;

(16) maintain liaison with State and local governments and governments of other nations concerning justice statistics;

(17) cooperate in and participate with national and international organizations in the development of uniform justice statistics;

(18) ensure conformance with security and privacy requirement of section 3789g of this title and identify, analyze, and participate in the development and implementation of privacy, security and information policies which impact on Federal and State criminal justice operations and related statistical activities; and

(19) exercise the powers and functions set out in subchapter VIII of this chapter.

(d) Justice statistical collection, analysis, and dissemination

To insure that all justice statistical collection, analysis, and dissemination is carried out in a coordinated manner, the Director is authorized to—

(1) utilize, with their consent, the services, equipment, records, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor, and to enter into agreements with such agencies and instrumentalities for purposes of data collection and analysis;

(2) confer and cooperate with State, municipal, and other local agencies;

(3) request such information, data, and reports from any Federal agency as may be required to carry out the purposes of this chapter;

(4) seek the cooperation of the judicial branch of the Federal Government in gathering data from criminal justice records; and

(5) encourage replication, coordination and sharing among justice agencies regarding information systems, information policy, and data.

[See main edition for text of (e) and (f)]

(As amended Pub. L. 98-473, title II, § 605(b), Oct. 12, 1984, 98 Stat. 2079.)

Amendments

1984—Subsec. (b). Pub. L. 98-473, § 605(b)(1), added provision requiring the Director to report to the Attorney General through the Assistant Attorney General.

Subsec. (c)(13). Pub. L. 98-473, § 605(b)(2)(A), (C), added par. (13) and struck out former par. (13) relating to provision of financial and technical assistance to the States and units of local government relating to collection, analysis, or dissemination of justice statistics.

Subsec. (c)(14), (15). Pub. L. 98-473, § 605(b)(2)(C), added pars. (14) and (15). Former pars. (14) and (15) redesignated (16) and (17), respectively.

Subsec. (c)(16). Pub. L. 98-473, § 605(b)(2)(A), (B), redesignated par. (14) as (16) and struck out former par. (16) relating to insuring conformance with security and privacy regulations issued under section 3789g of this title.

Subsec. (c)(17). Pub. L. 98-473, § 605(b)(2)(B), redesignated par. (15) as (17). Former par. (17) redesignated (19).

Subsec. (c)(18). Pub. L. 98-473, § 605(b)(2)(D), added par. (18).

Subsec. (c)(19). Pub. L. 98-473, § 605(b)(2)(B), redesignated former par. (17) as (19).

Subsec. (d)(1). Pub. L. 98-473, § 605(b)(3)(A), inserted ", and to enter into agreements with such agencies and instrumentalities for purposes of data collection and analysis".

Subsec. (d)(5). Pub. L. 98-473, § 605(b)(3)(B)-(D), added par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3734. Repealed. Pub. L. 98-473, title II, § 605(c), Oct. 12, 1984, 98 Stat. 2080

Section, Pub. L. 90-351, title I, § 304, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1178, provided for a Bureau of Justice Statistics Advisory Board, including the establishment and composition of the Board, rules respecting organization and procedure, term of office, duties and functions of the Board, and delegation of powers and duties to the Director.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3735. Use of data

[*See main edition for text*]

(Pub. L. 90-351, title I, § 304, formerly § 305, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1179, and renumbered Pub. L. 98-473, title II, § 605(d), Oct. 12, 1984, 98 Stat. 2080.)

PRIOR PROVISIONS

A prior section 304 of Pub. L. 90-351, as added by Pub. L. 96-157, was classified to section 3734 of this title and was repealed by Pub. L. 98-473, title II, § 605(c), Oct. 12, 1984, 98 Stat. 2080.

SUBCHAPTER IV—BLOCK GRANTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3762, 3782, 3783, 3793 of this title.

§ 3741. Establishment of Bureau of Justice Assistance

(a) There is established within the Department of Justice, under the general authority of the Attorney General, a Bureau of Justice Assistance (hereinafter in this subchapter and subchapter V of this chapter referred to as the "Bureau").

(b) The Bureau shall be headed by a Director (hereinafter in this subchapter and subchapter V of this chapter referred to as the "Director") who shall be appointed by the Attorney General. The Director shall report to the Attorney General through the Assistant Attorney General. The Director shall have final authority for all grants, cooperative agreements, and contracts awarded by the Bureau. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Bureau makes any contract or other arrangement under this chapter.

(Pub. L. 90-351, title I, § 401, as added Pub. L. 98-473, title II, § 606, Oct. 12, 1984, 98 Stat. 2080.)

PRIOR PROVISIONS

A prior section 3741, Pub. L. 90-351, title I, § 401, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1179, described the formula grant program, prior to the general revision of this subchapter by Pub. L. 98-473.

EFFECTIVE DATE

Subchapter effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

§ 3742. Duties and functions of Director

The Director shall—

(1) provide funds to eligible States, units of local government and private nonprofit organizations pursuant to this subchapter and subchapter V of this chapter;

(2) establish priorities for programs in accordance with subchapter V of this chapter and, following public announcement of such priorities, award and allocate funds and technical assistance in accordance with the criteria of subchapter V of this chapter and on terms and conditions determined by the Director to be consistent with subchapter V of this chapter;

(3) cooperate with and provide technical assistance to States, units of local government, and other public and private organizations or international agencies involved in criminal justice activities;

(4) provide for the development of technical assistance and training programs for State and local criminal justice agencies and foster local participation in such activities;

(5) encourage the targeting of State and local resources on efforts to reduce the incidence of violent crime and on programs relating to the apprehension and prosecution of repeat offenders;

(6) establish and carry on a specific and continuing program of cooperation with the States and units of local government designed to encourage and promote consultation and coordination concerning decisions made by the Bureau affecting State and local criminal justice priorities; and

(7) exercise such other powers and functions as may be vested in the Director pursuant to this chapter.

(Pub. L. 90-351, title I, § 402, as added Pub. L. 98-473, title II, § 606, Oct. 12, 1984, 98 Stat. 2080.)

PRIOR PROVISIONS

A prior section 3742, Pub. L. 90-351, title I, § 402, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1181, related to eligibility provisions for formula grants, prior to the general revision of this subchapter by Pub. L. 98-473.

§ 3743. Description of program

(a) Authorized purposes of grants

It is the purpose of this subchapter to assist States and units of local government in carrying out specific programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on violent crime and serious offenders. The Bureau is authorized to make grants under this subchapter to States for the purpose of—

(1) providing community and neighborhood programs that enable citizens and police to

undertake initiatives to prevent and control neighborhood crime;

(2) disrupting illicit commerce in stolen goods and property;

(3) combating arson;

(4) effectively investigating and bringing to trial white-collar crime, organized crime, public corruption crimes, and fraud against the Government;

(5) identifying criminal cases involving persons (including juvenile offenders) with a history of serious criminal conduct in order to expedite the processing of such cases and to improve court system management and sentencing practices and procedures in such cases;

(6) developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

(7) providing alternatives to pretrial detention, jail, and prison for persons who pose no danger to the community;

(8) providing programs which identify and meet the needs of drug-dependent offenders;

(9) providing programs which alleviate prison and jail overcrowding and programs which identify existing State and Federal buildings suitable for prison use;

(10) providing training, management, and technical assistance to criminal justice personnel and determining appropriate prosecutorial and judicial personnel needs;

(11) providing prison industry projects designed to place inmates in a realistic working and training environment in which they will be enabled to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

(12) providing for operational information systems and workload management systems which improve the effectiveness of criminal justice agencies;

(13) providing programs of the same types as programs described in section 3761(a)(4) of this title—

(A) which the Director establishes, under section 3763(a) of this title, as discretionary programs for financial assistance under subchapter V of this chapter; and

(B) which are innovative and have been deemed by the Director as likely to prove successful;

(14) implement programs which address critical problems of crime, such as drug trafficking, which have been certified by the Director, after consultation with the Director of the National Institute of Justice, Director of the Bureau of Justice Statistics, and Administrator of the Office of Juvenile Justice and Delinquency Prevention, as having proved successful;

(15) providing programs which address the problem of serious offenses committed by juveniles;

(16) addressing the problem of crime committed against the elderly;

(17) providing training, technical assistance, and programs to assist State and local law enforcement authorities in rural areas in combating crime, with particular emphasis on violent crime, juvenile delinquency, and crime prevention; and

(18) improving the operational effectiveness of law enforcement by integrating and maximizing the effectiveness of police field operations and the use of crime analysis techniques.

(b) Federal and non-Federal portions of program or project costs

(1) For any fiscal year ending after September 30, 1984, the Federal portion of any grant made under this subchapter shall be 50 per centum of the cost of programs and projects specified in the application of such grant, except that in the case of funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any program or project described in subsection (a) of this section, the Federal portion shall be 100 per centum of such cost.

(2) The non-Federal portion of the cost of such program or project shall be in cash.

(c) Period for receipt of funds

No funds may be given under this chapter to a grant recipient for a program or project for which funds have been given under this chapter for four years (in the aggregate), including any period occurring before October 12, 1984.

(Pub. L. 90-351, title I, § 403, as added Pub. L. 98-473, title II, § 606, Oct. 12, 1984, 98 Stat. 2081.)

PRIOR PROVISIONS

A prior section 3743, Pub. L. 90-351, title I, § 403, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1187, concerned application requirements for formula grants, prior to the general revision of this subchapter by Pub. L. 98-473.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3745, 3746, 3747, 3761, 3782 of this title.

§ 3744. Eligibility

The Bureau is authorized to make financial assistance under this subchapter available to a State to enable it to carry out all or a substantial part of a program or project submitted and approved in accordance with the provisions of this subchapter.

(Pub. L. 90-351, title I, § 404, as added Pub. L. 98-473, title II, § 606, Oct. 12, 1984, 98 Stat. 2082.)

PRIOR PROVISIONS

A prior section 3744, Pub. L. 90-351, title I, § 404, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1188, provided for review of applications for formula grants, prior to the general revision of this subchapter by Pub. L. 98-473.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3797 of this title.

§ 3745. Applications

No grant may be made by the Bureau to a State, or by a State to an eligible recipient pursuant to this subchapter, unless the application for such grant sets forth criminal justice programs and projects covering a two-year period which meet the purposes of section 3743(a) of this title, designates which purpose specified in section 3743(a) of this title each such program or project is intended to achieve, and identifies the State agency or unit of local government which will implement each such program or project. This application must be amended annually if new programs are to be added to the application or if the programs contained in the original application are not implemented. The application must include—

(1) an assurance that following the first fiscal year covered by an application and each fiscal year thereafter, the applicant shall submit to the Bureau or to the State, as the case may be—

(A) a performance report concerning the activities carried out pursuant to this subchapter and subchapter V of this chapter; and

(B) an assessment by the applicant of the impact of those activities on the purposes of this subchapter and the needs and objectives identified in the applicant's statement;

(2) a certification that Federal funds made available under this chapter will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for criminal justice activities;

(3) an assurance that fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records as the Bureau shall prescribe shall be provided to assure fiscal control, proper management, and efficient disbursement of funds received under this chapter;

(4) an assurance that the applicant shall maintain such data and information and submit such reports in such form, at such times, and containing such data and information as the Bureau may reasonably require to administer other provisions of this chapter;

(5) a certification that its programs meet all the requirements of this section, that all the information contained in the application is correct, that there has been appropriate coordination with affected agencies, and that the applicant will comply with all provisions of this chapter and all other applicable Federal laws (such certification shall be made in a form acceptable to the Bureau and shall be executed by the chief executive or such other officer of the applicant qualified under regulations promulgated by the Office);

(6) if the applicant is a State, an assurance that not more than 10 per centum of the aggregate amount of funds received by a State under this subchapter for a fiscal year will be distributed for programs and projects designated as intended to achieve the purpose specified in section 3743(a)(13) of this title;

(7) an assurance that the State will take into account the needs and requests of units of general local government in the State and encourage local initiative in the development of programs which meet the purposes of section 3743(a) of this title;

(8) an assurance that the State application described in this section, and any amendment to such application, has been submitted for review to the State legislature or its designated body (for purposes of this section, such application or amendment shall be deemed to be reviewed if the State legislature or such body does not review such application or amendment within the 60-day period beginning on the date such application or amendment is so submitted); and

(9) an assurance that the State application and any amendment thereto was made public before submission to the Bureau and, to the extent provided under State law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups.

(Pub. L. 90-351, title I, § 405, as added Pub. L. 98-473, title II, § 606, Oct. 12, 1984, 98 Stat. 2082.)

PRIOR PROVISIONS

A prior section 3745, Pub. L. 90-351, title I, § 405, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1189, provided for allocation and distribution of funds for formula grants, prior to the general revision of this subchapter by Pub. L. 98-473.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3746 of this title.

§ 3746. Review of applications

(a) Bureau determinations prerequisite to assistance; presumption of approval

The Bureau shall provide financial assistance to each State applicant under this subchapter to carry out the programs or projects submitted by such applicant upon determining that—

(1) the application or amendment thereto is consistent with the requirements of this chapter; and

(2) before the approval of the application and any amendment thereto the Bureau has made an affirmative finding in writing that the program or project has been reviewed in accordance with section 3745 of this title.

Each application or amendment made and submitted for approval to the Bureau pursuant to section 3745 of this title shall be deemed approved, in whole or in part, by the Bureau not later than sixty days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

(b) Failure to conform to requirements or statutory purposes; suspension of funding; adjustment of grants

The Bureau shall suspend funding for an approved application in whole or in part if such application contains a program or project which has failed to conform to the requirements of this subchapter or purposes of section 3743(a) of this title. The Bureau may make appropriate adjustments in the amounts of grants in accordance with its findings pursuant to this subsection.

(c) Prohibited uses of grant funds

Grant funds awarded under this subchapter shall not be used for—

(1) the purchase of equipment or hardware, or the payment of personnel costs, unless the cost of such purchases and payments is incurred as an incidental and necessary part of a program under section 3743(a) of this title;

(2) programs which have as their primary purpose general salary payments for employees or classes of employees within an eligible jurisdiction, except for the compensation of personnel for time engaged in conducting or undergoing training programs or the compensation of personnel engaged in research, development, demonstration, or short-term programs;

(3) land acquisition or construction projects; or

(4) programs or projects which, based upon evaluations by the National Institute of Justice, Bureau of Justice Assistance, Bureau of Justice Statistics, State or local agencies, and other public or private organizations, have been demonstrated to offer a low probability of improving the functioning of the criminal justice system. Such programs must be formally identified by a notice in the Federal Register after opportunity for comment.

(d) Notice and opportunity for reconsideration

The Bureau shall not finally disapprove any application, or any amendment thereto, submitted to the Director under this subchapter without first affording the applicant reasonable notice and opportunity for reconsideration.

(Pub. L. 90-351, title I, § 406, as added Pub. L. 98-473, title II, § 606, Oct. 12, 1984, 98 Stat. 2084.)

§ 3747. Allocation and distribution of funds

(a) Percentage of appropriation for allocation to States; basic amount; remainder amount

Of the total amount appropriated for this subchapter and subchapter V of this chapter in any fiscal year, 80 per centum shall be set aside for this subchapter and allocated to States as follows:

(1) $250,000 shall be allocated to each of the participating States.

(2) Of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

(b) Formula for distributions to units of local government; priority of needy jurisdictions; State expenditure of available funds; data requirements

(1) Each State which receives funds under subsection (a) of this section in a fiscal year shall distribute among units of local government, or combinations of units of local government, in such State for the purposes specified in section 3743(a) of this title that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

(2) In distributing funds received under this subchapter among urban, rural, and suburban units of local government and combinations thereof, the State shall give priority to those jurisdictions with the greatest need.

(3) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by the State involved.

(4) For purposes of determining the distribution of funds under paragraph (1), the most accurate and complete data available for the fiscal year involved shall be used. If data for such fiscal year are not available, then the most accurate and complete data available for the most recent fiscal year preceding such fiscal year shall be used.

(c) Limitation of distributions to approved programs

No funds allocated to a State under subsection (a) of this section or received by a State for distribution under subsection (b) of this section may be distributed by the Director or by the State involved for any program other than a program contained in an approved application.

(d) Award of State earmarked funds to units of local government; priority of needy jurisdictions

If the Director determines, on the basis of information available to it during any fiscal year, that a portion of the funds allocated to a State for that fiscal year will not be required or that a State will be unable to qualify or receive funds under this subchapter, or that a State chooses not to participate in the program established by this subchapter, then such portion shall be awarded by the Director to urban, rural, and suburban units of local government or combinations thereof within such State giving priority to those jurisdictions with greatest need.

(e) Available funds for subchapter V obligation

Any funds not distributed under subsections (b) and (d) of this section shall be available for obligation under subchapter V of this chapter.

(Pub. L. 90-351, title I, § 407, as added Pub. L. 98-473, title II, § 606, Oct. 12, 1984, 98 Stat. 2084.)

§ 3748. State office

(a) The chief executive of each participating State shall designate a State office for purposes of—

(1) preparing an application to obtain funds under this subchapter; and

(2) administering funds received from the Bureau of Justice Assistance, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

(b) An office or agency performing other functions within the executive branch of a

State may be designated to carry out the functions specified in subsection (a) of this section.

(Pub. L. 90-351, title I, § 408, as added Pub. L. 98-473, title II, § 606, Oct. 12, 1984, 98 Stat. 2085.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3789 of this title.

SUBCHAPTER V—DISCRETIONARY GRANTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3722, 3741, 3742, 3743, 3745, 3747, 3782, 3793, 3797 of this title.

PRIOR PROVISIONS

A prior subchapter V, consisting of sections 3751 to 3755 and relating to national priority grants, was repealed by Pub. L. 98-473, title II, § 607, Oct. 12, 1984, 98 Stat. 2086.

Section 3751, Pub. L. 90-351, title I, § 501, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1192, set out Congressional statement of purpose of national priority grants.

Section 3752, Pub. L. 90-351, title I, § 502, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1192, prescribed the percentage of the appropriation for national priority grant program.

Section 3753, Pub. L. 90-351, title I, § 503, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1192, prescribed the procedure for designating national priority programs, including periodic and joint designations by Director of Office of Justice Assistance, Research, and Statistics and Administrator of Law Enforcement Assistance Administration and requests to outside agencies for suggestions.

Section 3754, Pub. L. 90-351, title I, § 504, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1193, prescribed application requirements, including contents of applications, certifications, review by State criminal justice councils, and private nonprofit organizations.

Section 3755, Pub. L. 90-351, title I, § 505, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1194, set out the criteria for award of national priority grants, including establishment of reasonable requirements, maximum per centum of grant funds, funds reserved or set aside but not used in the fiscal year, and three-year period for financial aid and assistance and extension or renewal of period.

Another prior subchapter V consisting of sections 3751 to 3774 related to administrative provisions prior to the general revision of this chapter by Pub. L. 96-157.

Section 3751, Pub. L. 90-351, title I, § 501, June 19, 1968, 82 Stat. 205; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 94-503, title I, § 120, Oct. 15, 1976, 90 Stat. 2418, related to administrative rules, regulations, and procedures.

Section 3752, Pub. L. 90-351, title I, § 502, June 19, 1968, 82 Stat. 205; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211, made provision for the delegation of the functions of the Law Enforcement Assistance Administration to other officers of the Department of Justice.

Section 3753, Pub. L. 90-351, title I, § 503, June 19, 1968, 82 Stat. 205; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211, required specific Congressional authorization to transfer functions, powers, and duties of the Law Enforcement Assistance Administration within the Department of Justice.

Section 3754, Pub. L. 90-351, title I, § 504, June 19, 1968, 82 Stat. 205; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211, provided for the place for the holding of hearings, the signing and issuance of subpenas, the administering of oaths, the examination of witnesses, and the reception of evidence by Administration personnel.

A prior section 505 of Pub. L. 90-351, title I, June 19, 1968, 82 Stat. 205, amended section 5315 of Title 5, Government Organization and Employees.

Section 3755, Pub. L. 90-351, title I, § 507, June 19, 1968, 82 Stat. 205; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 94-503, title I, §§ 119(b), 121, Oct. 15, 1976, 90 Stat. 2417, 2418, related to officers, employees, and hearing examiners.

Section 3756, Pub. L. 90-351, title I, § 508, June 19, 1968, 82 Stat. 205; Pub. L. 91-644, title I, § 7(3), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211, related to the use of services, equipment, personnel, and facilities of other Federal agencies.

Section 3757, Pub. L. 90-351, title I, § 509, June 19, 1968, 82 Stat. 206; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 94-503, title I, § 122(a), Oct. 15, 1976, 90 Stat. 2418, provided for the withholding of payments for noncompliance with certain requirements and for notice and hearing in the event of such withholding of payments.

Section 3758, Pub. L. 90-351, title I, § 510, June 19, 1968, 82 Stat. 206; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 212, made provision for administrative proceedings.

Section 3759, Pub. L. 90-351, title I, § 511, June 19, 1968, 82 Stat. 206; Pub. L. 90-351, title I, § 511, June 19, 1968, 82 Stat. 206; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 212, provided for judicial review.

Section 3760, Pub. L. 90-351, title I, § 512, June 19, 1968, 82 Stat. 207; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213, which authorized the Administration to carry out the programs provided for under this chapter during the fiscal year ending June 30, 1974, and the two succeeding fiscal years, was repealed by Pub. L. 94-503, title I, § 123, Oct. 15, 1976, 90 Stat. 2419.

Section 3761, Pub. L. 90-351, title I, § 513, June 19, 1968, 82 Stat. 207; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213, provided for the coordination of law enforcement assistance and related Federal programs.

Section 3762, Pub. L. 90-351, title I, § 514, June 19, 1968, 82 Stat. 207; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213, provided for the reimbursement of Federal agencies.

Section 3763, Pub. L. 90-351, title I, § 515, June 19, 1968, 82 Stat. 207; Pub. L. 91-644, title I, § 7(4), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213; Pub. L. 94-503, title I, § 124, Oct. 15, 1976, 90 Stat. 2421, provided for the functions, powers, and duties of the Law Enforcement Assistance Administration.

Section 3764, Pub. L. 90-351, title I, § 516, June 19, 1968, 82 Stat. 207; Pub. L. 91-644, title I, § 7(5), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213, provided for the making of payments under this chapter.

Section 3765, Pub. L. 90-351, title I, § 517, June 19, 1968, 82 Stat. 207; Pub. L. 91-644, title I, § 7(6), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213, provided for the personnel of the Administration.

Section 3766, Pub. L. 90-351, title I, § 518, June 19, 1968, 82 Stat. 208; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 214; Pub. L. 94-503, title I, § 122(b), Oct. 15, 1976, 90 Stat. 2418, prohibited certain constructions of the provisions of this chapter.

Section 3767, Pub. L. 90-351, title I, § 519, June 19, 1968, 82 Stat. 208; Pub. L. 91-644, title I, § 7(7), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 214; Pub. L. 94-273, § 5(5), Apr. 21, 1976, 90 Stat. 377; Pub. L. 94-503, title I, § 125, Oct. 15, 1976, 90 Stat. 2422; Pub. L. 95-115, § 9(a), Oct. 3, 1977, 91 Stat. 1060, related to annual reports to the President and the Congress.

Section 3768, Pub. L. 90-351, title I, § 520, June 19, 1968, 82 Stat. 208; Pub. L. 90-462, § 1, Aug. 8, 1968, 82 Stat. 638; Pub. L. 91-644, title I, § 7(8), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 214; Pub. L. 93-415, title V, § 544, Sept. 7, 1974, 88 Stat. 1142; Pub. L. 94-430, § 3, Sept. 29, 1976, 90 Stat. 1348;

Pub. L. 94-503, title I, § 126, Oct. 15, 1976, 90 Stat. 2423, related to the authorization of appropriations.

Section 3769, Pub. L. 90-351, title I, § 521, June 19, 1968, 82 Stat. 208; Pub. L. 91-644, title I, § 7(9), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 215; Pub. L. 94-503, title I, §§ 127, 128(a), Oct. 15, 1976, 90 Stat. 2424, related to recordkeeping requirements.

Section 3770, Pub. L. 90-351, title I, § 523, as added Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 215, provided for the use of unobligated Federal funds for 90 percent of costs.

Section 3771 of this title, Pub. L. 90-351, title I, § 524, as added Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 215, related to the availability of information for prescribed purposes.

Section 3772 of this title, Pub. L. 90-351, title I, § 526, as added Pub. L. 93-415, title V, § 545, Sept. 7, 1974, 88 Stat. 1143, related to the acceptance of volunteer services.

Section 3773 of this title, Pub. L. 90-351, title I, § 527, as added Pub. L. 93-415, title V, § 545, Sept. 7, 1974, 88 Stat. 1143, related to the administration of the juvenile delinquency programs by the Office of Juvenile Justice and Delinquency Prevention.

Section 3774 of this title, Pub. L. 90-351, title I, § 528, as added Pub. L. 93-415, title V, § 545, Sept. 7, 1974, 88 Stat. 1143, authorized the employment of personnel by the Law Enforcement Assistance Administration.

§§ 3751 to 3755. Repealed. Pub. L. 98-473, title II, § 607, Oct. 12, 1984, 98 Stat. 2086

See Prior Provisions note set out preceding this section.

§ 3761. Congressional statement of purpose

(a) The purpose of this subchapter is to provide additional Federal financial assistance to public agencies and private nonprofit organizations for purposes of—

(1) undertaking educational and training programs for criminal justice personnel;

(2) providing technical assistance to States and local units of governments;

(3) undertaking projects which are national or multi-State in scope and which address the purposes specified in section 3743(a) of this title; and

(4) providing financial assistance to public agencies and private nonprofit organizations for demonstration programs which, in view of previous research or experience, are likely to be a success in more than one jurisdiction and are not likely to be funded with moneys from other sources.

(b) In carrying out this subchapter, the Bureau is authorized to make grants, and enter into cooperative agreements and contracts with, public agencies and private nonprofit organizations.

(Pub. L. 90-351, title I, § 501, formerly § 601, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1195, and renumbered and amended Pub. L. 98-473, title II, § 608(a), Oct. 12, 1984, 98 Stat. 2086.)

Prior Provisions

For prior sections 501 of Pub. L. 90-351 and prior section 3761 of this title, see note set out preceding section 3761 of this title.

Amendments

1984—Pub. L. 98-473 amended section generally, designating existing provisions as subsec. (a), substituting therein provision for assistance to public agencies for provision respecting encouragement of States, units of local government, and combinations of such units to achieve certain objectives, and substituting cls. (1) to (4) listing objectives for former cls. (1) to (7) listing objectives, and adding subsec. (b).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

Section Referred to in Other Sections

This section is referred to in sections 3743, 3762 of this title.

§ 3762. Percentage of appropriation for discretionary grant program

Of the total amount appropriated for subchapter IV of this chapter and this subchapter in any fiscal year, 20 per centum shall be reserved and set aside for this subchapter in a special discretionary fund for use by the Bureau in carrying out the purposes specified in section 3761 of this title. Grants under this subchapter may be made for amounts up to 100 per centum of the costs of the programs or projects contained in the approved application.

(Pub. L. 90-351, title I, § 502, formerly § 602, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1195, and renumbered and amended Pub. L. 98-473, title II, § 608(a), Oct. 12, 1984, 98 Stat. 2086.)

Prior Provisions

For prior sections 502 of Pub. L. 90-351 and prior section 3762 of this title, see note set out preceding section 3761 of this title.

Amendments

1984—Pub. L. 98-473, in amending section generally, substituted reference to Bureau for Administration, deleted provision respecting appropriation of funds for former subchapter V respecting national priority grants, increased the per centum rate to 20 from 10, and deleted provision describing uses of funds for development and conduct of certain programs and projects.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3763. Procedure for establishing discretionary programs

(a) Periodic establishment; priority period

The Director of the Bureau shall periodically establish discretionary programs and projects for financial assistance under this subchapter. Such programs and projects shall be considered priorities for a period of time not to exceed three years from the time of such determination.

(b) Request to outside agencies to suggest discretionary programs and projects; priorities determination: establishment, modification and publication

The Director shall annually request the National Institute of Justice, the Bureau of Justice Statistics, the Office of Justice Programs, State and local governments, and other appropriate public and private agencies to suggest discretionary programs and projects. The Director shall then, pursuant to regulations, annually publish the proposed priorities pursuant to this subchapter and invite and encourage public comment concerning such priorities. Priorities shall not be established or modified until the Director has provided at least sixty-days advance notice for such public comment and the Director shall encourage and invite recommendations and opinion concerning such priorities from appropriate agencies and officials of State and units of local government. After considering any comments submitted during such period of time and after consultation with appropriate agencies and officials of State and units of local government, the Director shall determine whether existing established priorities should be modified. The Director shall publish in the Federal Register the priorities established pursuant to this subchapter before the beginning of fiscal year 1985 and each fiscal year thereafter for which appropriations will be available to carry out the program.

(Pub. L. 90-351, title I, § 503, formerly § 603, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1196, and renumbered and amended Pub. L. 98-473, title II, § 608(a), Oct. 12, 1984, 98 Stat. 2086.)

PRIOR PROVISIONS

For prior sections 503 of Pub. L. 90-351 and prior section 3763 of this title, see note set out preceding section 3761 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473 amended subsec. (a) generally, substituting provision making the Director of the Bureau solely responsible for establishment of discretionary programs and projects for financial assistance for provision which established such function jointly in the Director of Office of Justice Assistance, Research, and Statistics and Administrator of Law Enforcement Assistance Administration.

Subsec. (b). Pub. L. 98-473 amended subsec. (b) generally, establishing in the Director of the Bureau the performance of functions previously jointly vested in the Director of the Office of Justice Assistance, Research, and Statistics and Administrator of Law Enforcement Assistance Administration and substituted reference to Office of Justice Programs for Law Enforcement Assistance Administration and fiscal year 1985 for fiscal year 1981.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3743, 3765 of this title.

§ 3764. Application requirements

(a) Contents of applications

No grant may be made pursuant to this subchapter unless an application has been submitted to the Bureau in which the applicant—

(1) sets forth a program or project which is eligible for funding pursuant to this subchapter;

(2) describes the services to be provided, performance goals and the manner in which the program is to be carried out;

(3) describes the method to be used to evaluate the program or project in order to determine its impact and effectiveness in achieving the stated goals and agrees to conduct such evaluation according to the procedures and terms established by the Bureau;

(4) indicates, if it is a private nonprofit organization, that it has consulted with appropriate agencies and officials of the State and units of local government to be affected by the program and project.

(b) Certifications

Each applicant for funds under this subchapter shall certify that its program or project meets all the requirements of this section, that all the information contained in the application is correct, and that the applicant will comply with all the provisions of this chapter and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Bureau.

(Pub. L. 90-351, title I, § 504, formerly § 604, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1197, and renumbered and amended Pub. L. 98-473, title II, § 608(b), (f), Oct. 12, 1984, 98 Stat. 2087.)

PRIOR PROVISIONS

For prior sections 504 of Pub. L. 90-351 and prior section 3764 of this title, see note set out preceding section 3761 of this title.

AMENDMENTS

1984—Pub. L. 98-473, § 608(b), substituted "Bureau" for "Administration" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3765. Criteria for award

The Bureau shall, in its discretion and according to the criteria, and on the terms and conditions it determines consistent with this subchapter, provide financial assistance to those programs or projects which most clearly satisfy the priorities established under section 3763 of this title. In providing such assistance pursuant to this subchapter, the Bureau shall consider whether certain segments and components of the criminal justice system have received a disproportionate allocation of financial aid and assistance pursuant to other subchapters of this chapter, and, if such a finding is made, shall assure the funding of such other segments and components of the criminal justice system as to correct inequities resulting from such disproportionate allocations.

(Pub. L. 90-351, title I, § 505, formerly § 605, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1197, and renumbered and amended Pub. L. 98-473, title II, § 608(c), Oct. 12, 1984, 98 Stat. 2087.)

PRIOR PROVISIONS

For prior sections 505 of Pub. L. 90-351 and prior section 3765 of this title, see note set out preceding section 3761 of this title.

Amendments

1984—Pub. L. 98-473 amended section generally, substituting "Bureau" for "Administration" in two places and deleting authorization for Federal funding under this subchapter up to 100 per centum of the cost of the program and requirement that, in distributing funds among the States, the problems and projects of all the States are taken into account and that funds are provided for programs and projects responsive to each eligible jurisdiction.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3766. Period for award

The Bureau may provide financial aid and assistance to programs or projects under this subchapter for a period not to exceed three years. Grants made pursuant to this subchapter may be extended or renewed by the Bureau for an additional period of up to two years if—

(1) an evaluation of the program or project indicates that it has been effective in achieving the stated goals or offers the potential for improving the functioning of the criminal justice system; and

(2) the public agency or private nonprofit organization within which the program or project has been conducted agrees to provide at least one-half of the total cost of such program or project from any source of funds, including Federal grants, available to the eligible jurisdiction.

(Pub. L. 90-351, title I, § 506, formerly § 606, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1197, and renumbered and amended Pub. L. 98-473, title II, § 608(d), Oct. 12, 1984, 98 Stat. 2087.)

Prior Provisions

For prior sections 3766 to 3768, see note set out preceding section 3761 of this title.

Amendments

1984—Pub. L. 98-473 amended section generally, substituting "Bureau" for "Administration" in two places, and, in cl. (2), substituting "the public agency or private nonprofit organization" for "the State, unit of local government, or combination thereof and private nonprofit organizations" and "from any source of funds, including Federal grants" for "from any other source of funds, including other Federal grants", and deleting provision excepting funding for management and administration of national nonprofit organizations under section 3762(1) of this title from funding limitations of this section.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

SUBCHAPTER VI—CRIMINAL JUSTICE FACILITY CONSTRUCTION: PILOT PROGRAM

§ 3769. Authority for payments

In order to relieve overcrowding and substandard conditions at State and local correctional facilities, the Director of the Bureau of Justice Assistance (hereinafter in this subchapter referred to as the "Director") is authorized to make grants to States, units of local government, and combinations of such units to assist in construction of correctional facility projects approved under this subchapter, and in planning to relieve overcrowding and substandard conditions in correctional facilities.

(Pub. L. 90-351, title I, § 601, as added Pub. L. 98-473, title II, § 609, Oct. 12, 1984, 98 Stat. 2088.)

Prior Provisions

For prior sections 3769 and 3770, see note set out preceding section 3761 of this title.

A prior section 601 of Pub. L. 90-351 was renumbered section 501 and is classified to section 3761 of this title.

Another prior section 601 of Pub. L. 90-351, title I, June 19, 1968, 82 Stat. 209, was classified to section 3781 of this title and defined terms used in this chapter, prior to the general revision of this chapter by Pub. L. 96-157. See section 3791 of this title.

Effective Date

Subchapter effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

§ 3769a. Eligibility

(a) Conditions

A State, unit of local government, or combination of such units shall be eligible for assistance under this subchapter for a correctional facility project only—

(1) if the Director, with the concurrence of the Director of the National Institute of Corrections established in chapter 315[1] of title 18, has made a determination that such project represents a prototype of new and innovative methods and advanced design that will stand as examples of technology for avoiding delay and reducing costs in correctional facility design, construction, and improvement; and

(2) for not more than one such project in any State per fiscal year.

(b) Development of plan; limitation of assistance

A State, a unit of local government, or a combination of such units shall be eligible for assistance under this subchapter for the development of a plan for relieving overcrowding or substandard conditions in correctional facilities operated by the State, a unit of local government, or a combination of such units. Such assistance shall not exceed 50 percent of the cost of developing the plan.

(Pub. L. 90-351, title I, § 602, as added Pub. L. 98-473, title II, § 609, Oct. 12, 1984, 98 Stat. 2088.)

Prior Provisions

A prior section 602 of Pub. L. 90-351 was renumbered section 502 and is classified to section 3762 of this title.

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[1] So in original. Probably should be "319".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3769b of this title.

§ 3769b. Application; approval; payment

(a) Terms and conditions of application

A State, unit of local government, or combination of such units desiring to receive assistance under this subchapter for a correctional facility project shall submit to the Director an application which shall include—

(1) reasonable assurance that the applicant has developed an acceptable plan for reducing overcrowding and improving conditions of confinement in its correctional facilities and has implemented, or is in the process of implementing, such plan through legislative, executive, or judicial initiatives;

(2) a detailed description of the correctional facility to be constructed, altered, or expanded, including a description of the site of such facility;

(3) an estimate of the total cost of the construction of such project, including the amount of assistance requested for such project;

(4) reasonable assurance that title to such site is or will be vested solely in the applicant, or another agency or instrumentality of the applicant;

(5) reasonable assurance that adequate financial support will be available for the construction of the project and for its maintenance and operation when complete; and

(6) reasonable assurance that the applicant will comply with the standards and recommendations of the clearinghouse on the construction and modernization of correctional facilities established under section 3769c [2] of this title.

(b) Approval of application; criteria

(1) The Director may approve any such application only if the Director finds that—

(A) there are sufficient funds available to provide the assistance requested;

(B) such assistance does not exceed 20 percent of the estimated total cost of construction;

(C) the application contains such reasonable assurances as may be required under subsection (a) of this section; and

(D) the eligibility criteria of section 3769a of this title are met.

(2) In approving applications under this subsection, the Director shall consider the numbers and general characteristics of the inmate population (to include factors such as offenders' ages, offenses, average term of incarceration, and custody status), and the degree to which the applicant has implemented an inmate classification system which addresses the need for appropriate security assignment.

(c) Amount of payment; limitation

Upon approving an application under this section, the Director shall award the amount of assistance so approved, but in no event an amount greater than 20 percent of the cost of construction of the approved correctional facility project, and shall provide for payment to the applicant or, if designated by the applicant, any agency or instrumentality of the applicant. Such amount shall be paid, in advance or by way of reimbursement, and in such installments consistent with the progress of construction as the Director may determine. Funds paid under this subsection for the construction of an approved project shall be used solely for carrying out such project as so approved.

(d) Amendment of application; approval

An amendment of any application shall be subject to approval in the same manner as an original application.

(Pub. L. 90-351, title I, § 603, as added Pub. L. 98-473, title II, § 609, Oct. 12, 1984, 98 Stat. 2088.)

PRIOR PROVISIONS

A prior section 603 of Pub. L. 90-351 was renumbered section 503 and is classified to section 3763 of this title.

§ 3769c. Recapture provisions

If, within 20 years after completion of any correctional facility project with respect to which assistance has been provided under this section,[3] such facility ceases to be operated as a correctional facility, the United States may recover from the recipient of such assistance any amount not to exceed 20 percent of the then current value of such project (but in no event an amount greater than the amount of assistance provided under this subchapter for such project), as determined by agreement with the parties or by action brought in the district court of the United States for the district in which such facility is situated.

(Pub. L. 90-351, title I, § 605, as added Pub. L. 98-473, title II, § 609, Oct. 12, 1984, 98 Stat. 2089.)

CODIFICATION

This section is based on section 605 of Pub. L. 90-351, as added by section 609 of Pub. L. 98-473. Section 609 of Pub. L. 98-473 added this subchapter consisting of sections 601 to 603, 605, and 606 of Pub. L. 90-351, and did not contain a section 604.

PRIOR PROVISIONS

A prior section 605 of Pub. L. 90-351 was renumbered section 505 and is classified to section 3765 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3769b of this title.

§ 3769d. Clearinghouse on the construction and modernization of criminal justice facilities

(a) Functions; information

The Director shall provide for the operation of a clearinghouse on the construction and modernization of correctional facilities, which shall collect, prepare, and disseminate to the public and to interested State and local public agencies information, including recommendations, pertaining to the construction and modernization of correctional facilities. Such information shall include information regarding—

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[2] So in original. Probably should be "section 3769d".

[3] So in original. Probably should be "this subchapter,".

(1) new and innovative methods and advanced design that will stand as examples of technology for avoiding delay and reducing costs in correctional facility design, construction, and improvement;

(2) ways in which a construction planning program may be used to improve the administration of the criminal justice system within each State;

(3) recommended minimum standards concerning construction materials and methods, to be updated from time to time to reflect technological advances;

(4) the cost effectiveness of available construction materials, methods, and design technologies;

(5) the training of correctional facility personnel; and

(6) health and safety considerations in construction planning.

(b) Authority of Director

The Director is authorized to enter into contracts with private organizations and interagency agreements with the National Institute of Corrections, the National Institute of Justice, the Bureau of Justice and Statistics,[4] and other appropriate public agencies, to operate the clearinghouse required under this section.

(Pub. L. 90–351, title I, § 606, as added Pub. L. 98–473, title II, § 609, Oct. 12, 1984, 98 Stat. 2090.)

PRIOR PROVISIONS

A prior section 606 of Pub. L. 90–351 was renumbered section 506 and is classified to section 3766 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3769b of this title.

SUBCHAPTER VII—FBI TRAINING OF STATE AND LOCAL CRIMINAL JUSTICE PERSONNEL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3793 of this title.

§ 3771. Training and manpower development

(a) Functions, powers, and duties of Director of Federal Bureau of Investigation

The Director of the Federal Bureau of Investigation is authorized to—

(1) establish and conduct training programs at the Federal Bureau of Investigation National Academy at Quantico, Virginia, to provide, at the request of a State or unit of local government, training for State and local criminal justice personnel;

(2) develop new or improved approaches, techniques, systems, equipment, and devices to improve and strengthen criminal justice; and

(3) assist in conducting, at the request of a State or unit of local government, local and regional training programs for the training of State and local criminal justice personnel engaged in the investigation of crime and the apprehension of criminals. Training for rural criminal justice personnel shall include, when appropriate, effective use of regional resources and methods to improve coordination among criminal justice personnel in different areas and in different levels of government. Such training shall be provided only for persons actually employed as State police or highway patrol, police of a unit of local government, sheriffs, and their deputies, and other persons as the State or such unit may nominate for police training while such persons are actually employed as officers of such State or unit.

(b) General authority of Attorney General over Director

In the exercise of the functions, powers, and duties established under this section the Director of the Federal Bureau of Investigation shall be under the general authority of the Attorney General.

(c) Training programs for State and local personnel at Federal Training Center

Notwithstanding the provisions of subsection (a) of this section, the Secretary of the Treasury is authorized to establish, develop, and conduct training programs at the Federal Law Enforcement Training Center at Glynco, Georgia, to provide, at the request of a State or unit of local government, training for State and local criminal justice personnel provided that such training does not interfere with the Center's mission to train Federal law enforcement personnel.

(Pub. L. 90–351, title I, § 701, as added Pub. L. 98–473, title II, § 609A(a), Oct. 12, 1984, 98 Stat. 2090.)

PRIOR PROVISIONS

A prior section 3771, Pub. L. 90–351, title I, § 701, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1198, contained Congressional statement of purpose for training and manpower development, prior to the general revision of this subchapter by Pub. L. 98–473.

For another prior section 3771, see note set out preceding section 3761 of this title.

Prior sections 3772 to 3775 were omitted in the general revision of this subchapter by section 609A(a) of Pub. L. 98–473.

Section 3772, Pub. L. 90–351, title I, § 702, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1198, provided for a program to train prosecuting attorneys.

Section 3773, Pub. L. 90–351, title I, § 703, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1198, provided for a program to train State and local criminal justice personnel.

Section 3774, Pub. L. 90–351, title I, § 704, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1199, related to the training of State and local criminal justice personnel by the Federal Bureau of Investigation.

Section 3775, Pub. L. 90–351, title I, § 705, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1199, and amended Pub. L. 96–88, title III, §§ 301(a)(1), 305, title

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[4] So in original. Probably should be "Bureau of Justice Statistics,"

V, § 507, Oct. 17, 1979, 93 Stat. 677, 680, 692, authorized a criminal justice education program.

For other prior sections 3772 to 3774, see note set out preceding section 3761 of this title.

Effective Date

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

§§ 3772 to 3775. Omitted

See Prior Provisions note set out under section 3771 of this title.

SUBCHAPTER VIII—ADMINISTRATIVE PROVISIONS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 3722, 3732 of this title.

§ 3781. Repealed. Pub. L. 98-473, title II, § 609B(a), Oct. 12, 1984, 98 Stat. 2091

Section, Pub. L. 90-351, title I, § 801, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1201, related to establishment of Office of Justice Assistance, Research, and Statistics.

Effective Date of Repeal

Section repealed effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3782. Rules, regulations, and procedures; consultations and establishment

(a) General authorization of certain Federal agencies

The Office of Justice Programs, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Statistics, and the National Institute of Justice are authorized, after appropriate consultation with representatives of States and units of local government, to establish such rules, regulations, and procedures as are necessary to the exercise of their functions, and as are consistent with the stated purposes of this chapter.

(b) Continuing evaluation of selected programs or projects; cost, effectiveness, impact value, and comparative considerations; annual performance report; assessment of activity effectiveness; suspension of funds for nonsubmission of report

The Bureau of Justice Assistance shall, after consultation with the National Institute of Justice, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, State and local governments, and the appropriate public and private agencies, establish such rules and regulations as are necessary to assure the continuing evaluation of selected programs or projects conducted pursuant to subchapters IV and V of this chapter, in order to determine—

(1) whether such programs or projects have achieved the performance goals stated in the original application, are of proven effectiveness, have a record of proven success, or offer a high probability of improving the criminal justice system;

(2) whether such programs or projects have contributed or are likely to contribute to the improvement of the criminal justice system and the reduction and prevention of crime;

(3) their cost in relation to their effectiveness in achieving stated goals;

(4) their impact on communities and participants; and

(5) their implication for related programs.

In conducting evaluations described in this subsection, the Bureau of Justice Assistance shall, when practical, compare the effectiveness of programs conducted by similar applicants and different applicants. The Bureau of Justice Assistance shall also require applicants under subchapter IV of this chapter to submit an annual performance report concerning activities carried out pursuant to subchapter IV of this chapter together with an assessment by the applicant of the effectiveness of those activities in achieving the purposes of section 3743(a) of this title and the relationships of those activities to the needs and objectives specified by the applicant in the application submitted pursuant to section 3743 of this title. The Bureau shall suspend funding for an approved application under subchapter IV of this chapter if an applicant fails to submit such an annual performance report.

(c) Procedures for paperwork minimization and prevention of duplication and delays in award and expenditure of funds

The procedures established to implement the provisions of this chapter shall minimize paperwork and prevent needless duplication and unnecessary delays in award and expenditure of funds at all levels of government.

(Pub. L. 90-351, title I, § 801, formerly § 802, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1201, and renumbered and amended Pub. L. 98-473, title II, § 609B(b), Oct. 12, 1984, 98 Stat. 2091.)

Prior Provisions

A prior section 801 of Pub. L. 90-351 was classified to section 3781 of this title and was repealed by section 609B(a) of Pub. L. 98-473.

Another prior section 801 of Pub. L. 90-351, title III, June 19, 1968, 82 Stat. 211, is set out as a note under section 2510 of Title 18, Crimes and Criminal Procedure.

Amendments

1984—Subsec. (a). Pub. L. 98-473 in amending subsec. (a) generally, substituted "Office of Justice Programs" for "Office of Justice Assistance, Research, and Statistics" and "Bureau of Justice Assistance" for "Law Enforcement Assistance Administration" and also included authority for the Office of Juvenile Justice and Delinquency Prevention to establish rules, regulations, and procedures for exercise of its functions.

Subsec. (b). Pub. L. 98-473 in amending subsec. (b) generally, substituted "Bureau of Justice Assistance" for "Law Enforcement Assistance Administration" wherever appearing; provided for consultations with the Office of Juvenile Justice and Delinquency Prevention; and deleted provisions respecting: rules, regulations, and procedures affecting national priority grant programs or projects; evaluations in addition to the requirements of former sections 3743 and 3744 of this title; and requirement for comparison of effectiveness of formula grant programs or projects of States or local units of government with similar national priority and discretionary grant programs or projects.

Subsec. (c). Pub. L. 98-473 in amending section generally, reenacted subsec. (c) without change.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5672 of this title.

§ 3783. Notice and hearing on denial or termination of grant

(a) Payments to recipients; limitation, reduction, or termination

Whenever, after reasonable notice and opportunity for a hearing on the record in accordance with section 554 of title 5, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics finds that a recipient of assistance under this chapter has failed to comply substantially with—

(1) any provisions of this chapter;

(2) any regulations or guidelines promulgated under this chapter; or

(3) any application submitted in accordance with the provisions of this chapter, or the provisions of any other applicable Federal Act;

the Director involved shall, until satisfied that there is no longer any such failure to comply, terminate payments to the recipient under this chapter, reduce payments to the recipient under this chapter by an amount equal to the amount of such payments which were not expended in accordance with this chapter, or limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply.

(b) Notice of action; reasons for action; hearing or investigation; finality of findings and determinations; reasons in detail for action without hearing

If any grant application submitted under subchapter IV of this chapter has been denied, or any grant under this chapter has been terminated, then the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics, as appropriate, shall notify the applicant of its action and set forth the reason for the action taken. Whenever such an applicant requests a hearing, the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics, or any authorized officer thereof, is authorized and directed to hold such hearings or investigations, including hearings on the record in accordance with section 554 of title 5, at such times and places as necessary, following appropriate and adequate notice to such applicant; and the findings of fact and determinations made with respect thereto shall be final and conclusive, except as otherwise provided herein. The Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics is authorized to take final action without a hearing if, after an administrative review of the denial of such application or termination of such grant, it is determined that the basis for the appeal, if substantiated, would not establish a basis for awarding or continuing of the grant involved. Under such circumstances, a more detailed statement of reasons for the agency action should be made available, upon request, to the applicant.

(c) Rehearing; regulations and procedures; presentation of additional information

If the applicant involved is dissatisfied with the findings and determinations of the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics following notice and hearing provided for in subsection (a) of this section, a request may be made for rehearing, under such regulations and procedure as the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics may establish, and such applicant shall be afforded an opportunity to present such additional information as may be deemed appropriate and pertinent to the matter involved.

(Pub. L. 90-351, title I, § 802, formerly § 803, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1202, and renumbered and amended Pub. L. 98-473, title II, § 609B(b), Oct. 12, 1984, 98 Stat. 2092.)

PRIOR PROVISIONS

A prior section 802 of Pub. L. 90-351 was renumbered section 801 and is classified to section 3782 of this title.

Another prior section 802 of Pub. L. 90-351, title III, June 19, 1968, 82 Stat. 212-223, enacted sections 2510 to 2520 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473 in amending subsec. (a) generally, included provision for finding of noncompliance by the Bureau of Justice Assistance and excluded similar provision for Law Enforcement Assistance Administration, substituted "the Director involved shall, until satisfied that there is no longer any such failure to comply," for "they, until satisfied that there is no longer any such failure to comply, shall—", and deleted designations "(A)" before "terminate payment", "(B)" before "reduce payments", and "(C)" before "limit the availability of payments".

Subsec. (b). Pub. L. 98-473 in amending subsec. (b) generally, substituted "If any grant application submitted under subchapter IV of this chapter has been denied, or any grant under this chapter has been terminated" for "If a State grant application filed under subchapter IV of this chapter or any grant application filed under any other subchapter of this chapter has been rejected or a State applicant under subchapter IV of this chapter or applicant under any other subchapter of this chapter has been denied a grant or has had a grant, or any portion of a grant, discontinued, terminated or has been given a grant in a lesser amount that such applicant believes appropriate under the provisions of this chapter" deleted "or grantee" after "notify the applicant" and before "requests a hearing"; substituted requirement for notice by the Bureau of Justice Assistance rather than the Law Enforcement Assistance Administration; and added provisions for taking final action without hearing but requiring a more detailed statement of reasons for agency action to be made available to the applicant.

Subsec. (c). Pub. L. 98-473 in amending subsec. (c) generally, substituted provisions for findings and rehearings by the Bureau of Justice Assistance for similar provisions for Law Enforcement Assistance Administration; and substituted description of the party as "applicant" for prior designation as "recipient".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

Section Referred to in Other Sections

This section is referred to in sections 3785, 5633, 5638 of this title.

§ 3784. Finality of determinations

In carrying out the functions vested by this chapter in the Bureau of Justice Assistance, the Bureau of Justice Statistics, or the National Institute of Justice, their determinations, findings, and conclusions shall, after reasonable notice and opportunity for a hearing, be final and conclusive upon all applications, except as otherwise provided herein.

(Pub. L. 90-351, title I, § 803, formerly § 804, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1203, and renumbered and amended Pub. L. 98-473, title II, § 609B(c), (f), Oct. 12, 1984, 98 Stat. 2093.)

Prior Provisions

A prior section 803 of Pub. L. 90-351 was renumbered section 802 and is classified to section 3783 of this title.

Another prior section 803 of Pub. L. 90-351, title III, June 19, 1968, 82 Stat. 223, amended section 605 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

Amendments

1984—Pub. L. 98-473, § 609B(c), substituted "Bureau of Justice Assistance" for "Law Enforcement Assistance Administration".

Effective Date of 1984 Amendment

Amendment by section 609B(c) of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

Section Referred to in Other Sections

This section is referred to in sections 3785, 5633 of this title.

§ 3785. Appellate court review

(a) Jurisdiction of court of appeals; petition for review; time for filing, copies; record; objections before appropriate agency

If any applicant or recipient is dissatisfied with a final action with respect to section 3783, 3784, or 3789d(c)(2)(G) of this title, such applicant or recipient may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such applicant or recipient is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action. A copy of the petition shall forthwith be transmitted by the petitioner to the Office of Justice Programs, Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, or the National Institute of Justice, as appropriate, and the Attorney General of the United States, who shall represent the Federal Government in the litigation. The Office of Justice Programs, Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, or the National Institute of Justice, as appropriate, shall thereupon file in the court the record of the proceeding on which the action was based, as provided in section 2112 of title 28. No objection to the action shall be considered by the court unless such objection has been urged before the Office of Justice Programs, Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, or the National Institute of Justice, as appropriate.

(b) Determination by court of appeals: conclusiveness of findings; remand; conclusiveness of new or modified findings

The court shall have jurisdiction to affirm or modify a final action or to set it aside in whole or in part. The findings of fact by the Office of Justice Programs, Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, or the National Institute of Justice, if supported by substantial evidence on the record considered as a whole, shall be conclusive, but the court, for good cause shown, may remand the case to the Office of Justice Programs, Bureau of Justice Assistance, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention [1] or the Bureau of Justice Statistics, to take additional evidence to be made part of the record. The Office of Justice Programs, Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, or the National Institute of Justice, may thereupon make new or modified findings of fact by reason of the new evidence so taken and filed with the court and shall file such modified or new findings along with any recommendations such entity may have for the modification or setting aside of such entity's original action. All new or modified findings shall be conclusive with respect to questions of fact if supported by substantial evidence when the record as a whole is considered.

(c) Determination by court of appeals; Supreme Court review

Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Office of Justice Programs, Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, or the National Institute of Justice, or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certifications as provided in section 1254 of title 28.

(Pub. L. 90-351, title I, § 804, formerly § 805, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat.

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[1] So in original. Probably should be followed by a comma.

1203, and renumbered and amended Pub. L. 98-473, title II, § 609B(d), (f), Oct. 12, 1984, 98 Stat. 2093.)

PRIOR PROVISIONS

A prior section 804 of Pub. L. 90-351 was renumbered section 803 and is classified to section 3784 of this title.

Another prior section 804 of Pub. L. 90-351, title III, June 19, 1968, 82 Stat. 223, was set out as a note under section 2510 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1984—Pub. L. 98-473, § 609B(d)(1), (2), substituted "Office of Justice Programs, Bureau of Justice Assistance" for "Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration" and inserted "the Office of Juvenile Justice and Delinquency Prevention," before "or the National Institute of Justice" wherever appearing.

Subsec. (a). Pub. L. 98-473, § 609B(d)(3), made a conforming amendment to the references to sections 3783, 3784, or 3789d(c)(2)(G) of this title to reflect the renumbering of the corresponding sections of the original act.

Subsec. (b). Pub. L. 98-473, § 609B(d)(4), inserted "the Office of Juvenile Justice and Delinquency Prevention" before "or the Bureau of Justice Statistics".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(d) of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3789d, 5633 of this title.

§ 3786. Delegation of functions

The Attorney General, the Assistant Attorney General, the Director of the National Institute of Justice, the Director of the Bureau of Justice Statistics, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, and the Director of the Bureau of Justice Assistance may delegate to any of their respective officers or employees such functions under this chapter as they deem appropriate.

(Pub. L. 90-351, title I, § 805, as added Pub. L. 98-473, title II, § 609B(g), Oct. 12, 1984, 98 Stat. 2093.)

PRIOR PROVISIONS

A prior section 3786, Pub. L. 90-351, title I, § 806, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1204, which contained provisions similar to this section, was repealed by section 609B(e) of Pub. L. 98-473.

A prior section 805 of Pub. L. 90-351 was renumbered section 804 and is classified to section 3785 of this title.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

§ 3787. Subpoena power; employment of hearing officers; authority to hold hearings

The Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may appoint such hearing examiners or administrative law judges or request the use of such administrative law judges selected by the Office of Personnel Management pursuant to section 3344 of title 5, as shall be necessary to carry out their respective powers and duties under this chapter. The Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics or upon authorization, any member thereof or any hearing examiner or administrative law judge assigned to or employed thereby shall have the power to hold hearings and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States they respectively may designate.

(Pub. L. 90-351, title I, § 806, as added Pub. L. 98-473, title II, § 609B(g), Oct. 12, 1984, 98 Stat. 2094.)

PRIOR PROVISIONS

A prior section 3787, Pub. L. 90-351, title I, § 807, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1204, which contained provisions similar to this section, was repealed by section 609B(e) of Pub. L. 98-473.

A prior section 806 of Pub. L. 90-351 was classified to section 3786 of this title and was repealed by section 609B(e) of Pub. L. 98-473.

Provisions similar to this section were contained in part in section 3788 of this title prior to repeal of such section by section 609B(e) of Pub. L. 98-473.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5672 of this title.

§ 3788. Personnel and administrative authority

(a) Officers and employees of certain Federal agencies; employment; compensation

The Assistant Attorney General, the Director of the Bureau of Justice Assistance, the Director of the Institute, and the Director of the Bureau of Justice Statistics are authorized to select, appoint, employ, and fix compensation of such officers and employees as shall be necessary to carry out the powers and duties of the Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics, respectively, under this chapter.

(b) Use of available services; reimbursement

The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics are authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of Federal, State, and local agencies to the extent deemed appropriate after giving due consideration to the effectiveness of such existing services, equipment, personnel, and facilities.

(c) Other Federal agency performance of functions under this chapter; reimbursement

The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may arrange with and reimburse the heads of other Federal departments and agencies for the performance of any of the functions under this chapter.

(d) Experts and consultants; compensation

The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may procure the services of experts and consultants in accordance with section 3109 of title 5, relating to appointments in the Federal service, at rates of compensation for individuals not to exceed the daily equivalent of the rate of pay payable from time to time for GS-18 of the General Schedule under section 5332 of title 5.

(e) Advisory committees; compensation and travel expenses of committee members

The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics are authorized to appoint, without regard to the provisions of title 5, advisory committees to advise them with respect to the administration of this chapter as they deem necessary. Such committees shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.). Members of such committees not otherwise in the employ of the United States, while engaged in advising or attending meetings of such committees, shall be compensated at rates to be fixed by the Office but not to exceed the daily equivalent of the rate of pay payable from time to time for GS-18 of the General Schedule under section 5332 of title 5, and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(f) Payments; installments; advances or reimbursement; transportation and subsistence expenses for attendance at conferences or other assemblages

Payments under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Office, the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics, and may be used to pay the transportation and subsistence expenses of persons attending conferences or other assemblages notwithstanding section 1345 of title 31.

(g) Voluntary services; status as Federal employees; exceptions

The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics are authorized to accept and employ, in carrying out the provisions of this chapter, voluntary and uncompensated services notwithstanding section 1342 of title 31. Such individuals shall not be considered Federal employees except for purposes of chapter 81 of title 5 with respect to job-incurred disability and title 28 with respect to tort claims.

(Pub. L. 90-351, title I, § 807, as added Pub. L. 98-473, title II, § 609B(g), Oct. 12, 1984, 98 Stat. 2094.)

REFERENCES IN TEXT

Provisions of title 5 relating to appointments, referred to in subsec. (c), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

The tort claim provisions of title 28, referred to in subsec. (g), are the provisions of the Federal Tort Claims Act, which is classified generally to section 1346(b) and to chapter 171 (§ 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

A prior section 3788, Pub. L. 90-351, title I, § 810, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1204, which contained in part provisions similar to subsec. (a) of this section, was repealed by section 609B(e) of Pub. L. 98-473.

A prior section 807 of Pub. L. 90-351 was classified to section 3787 of this title and was repealed by section 609B(e) of Pub. L. 98-473.

Provisions similar to subsecs. (b), (c), (d) to (f), and (g) of this section were contained in sections 3789, 3789b(a), 3789c(a) to (c), and 3789h of this title, respectively, prior to repeal of such sections by section 609B(e) of Pub. L. 98-473.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

§ 3789. Title to personal property

Notwithstanding any other provision of law, title to all expendable and nonexpendable personal property purchased with funds made available under this chapter, including such property purchased with funds made available under this chapter as in effect before October 12, 1984, shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in section 3748 of this title that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

(Pub. L. 90-351, title I, § 808, as added Pub. L. 98-473, title II, § 609B(g), Oct. 12, 1984, 98 Stat. 2095.)

PRIOR PROVISIONS

A prior section 3789, Pub. L. 90-351, title I, § 811, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1205, which authorized use of available services, was repealed by section 609B(e) of Pub. L. 98-473. See section 3788(b) of this title.

A prior section 808 of Pub. L. 90-351, title I, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1204, amended section 5314 of Title 5, Government Organization and Employees, and was repealed by section 609B(e) of Pub. L. 98-473.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

§§ 3789a to 3789c. Repealed. Pub. L. 98–473, title II, § 609B(e), Oct. 12, 1984, 98 Stat. 2093

Section 3789a, Pub. L. 90-351, title I, § 812, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1205, authorized consultations with other Federal, State, and local officials.

Section 3789b, Pub. L. 90-351, title I, § 813, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1205, provided for reimbursement authority and authorized use of grants, contracts, or cooperative agreements under chapter 63 of title 31. See section 3788(c) of this title.

Section 3789c, Pub. L. 90-351, title I, § 814, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1205, provided for employment of services of experts and consultants and appointment of advisory committees. See section 3788(d) to (f) of this title.

EFFECTIVE DATE OF REPEAL

Sections repealed effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3789d. Prohibition of Federal control over State and local criminal justice agencies; prohibition of discrimination

(a) General rule

Nothing in this chapter or any other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other criminal justice agency of any State or any political subdivision thereof.

[*See main edition for text of* (*b*)]

(c) Discrimination prohibited; notice of non-compliance; suspension and restoration of payments; hearing; civil action by Attorney General; private action, attorney fees, intervention by Attorney General

[*See main edition for text of* (*1*)]

(2)(A) Whenever there has been—

[*See main edition for text of* (*i*)]

(ii) a determination after an investigation by the Office of Justice Programs (prior to a hearing under subparagraph (F) but including an opportunity for the State government or unit of local government to make a documentary submission regarding the allegation of discrimination with respect to such program or activity, with funds made available under this chapter) that a State government or unit of local government is not in compliance with paragraph (1);

the Office of Justice Programs shall, within ten days after such occurrence, notify the chief executive of the affected State, or the State in which the affected unit of local government is located, and the chief executive of such unit of local government, that such program or activity has been so found or determined not to be in compliance with paragraph (1), and shall request each chief executive, notified under this subparagraph with respect to such violation, to secure compliance. For purposes of clause (i) a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of chapter 5 of title 5.

(B) In the event the chief executive secures compliance after notice pursuant to subparagraph (A), the terms and conditions with which the affected State government or unit of local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of local government), and by the Office of Justice Programs. On or prior to the effective date of the agreement, the Office of Justice Programs shall send a copy of the agreement to each complainant, if any, with respect to such violation. The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of local government) shall file semiannual reports with the Office of Justice Programs detailing the steps taken to comply with the agreement. These reports shall cease to be filed upon the determination of the Office of Justice Programs that compliance has been secured, or upon the determination by a Federal or State court that such State government or local governmental unit is in compliance with this section. Within fifteen days of receipt of such reports, the Office of Justice Programs shall send a copy thereof to each such complainant.

(C) If, at the conclusion of ninety days after notification under subparagraph (A)—

(i) compliance has not been secured by the chief executive of that State or the chief executive of that unit of local government; and

(ii) an administrative law judge has not made a determination under subparagraph (F) that it is likely the State government or unit of local government will prevail on the merits; the Office of Justice Programs shall notify the Attorney General that compliance has not been secured and caused to have suspended further payment of any funds under this chapter to that program or activity. Such suspension shall be limited to the specific program or activity cited by the Office of Justice Programs in the notice under subparagraph (A). Such suspension shall be effective for a period of not more than one hundred and twenty days, or, if there is a hearing under subparagraph (G), not more than thirty days after the conclusion of such hearing, unless there has been an express finding by the Office of Justice Programs, after notice and opportunity for such a hearing, that the recipient is not in compliance with paragraph (1).

(D) Payment of the suspended funds shall resume only if—

(i) such State government or unit of local government enters into a compliance agreement approved by the Office of Justice Programs and the Attorney General in accordance with subparagraph (B);

(ii) such State government or unit of local government complies fully with the final order or judgment of a Federal or State court, or by a Federal or State administrative agency if that order or judgment covers all the matters raised by the Office of Justice Programs in the notice pursuant to subparagraph (A), or is found to be in compliance with paragraph (1) by such court; or

(iii) after a hearing the Office of Justice Programs pursuant to subparagraph (F) finds that noncompliance has not been demonstrated.

(E) Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, national origin, or sex in any program or activity of a State government or unit of local government which State government or unit of local government receives funds made available under this chapter, and the conduct allegedly violates the provisions of this section and neither party within forty-five days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may be otherwise available by law, the Office of Justice Programs shall cause to have suspended further payment of any funds under this chapter to that specific program or activity alleged by the Attorney General to be in violation of the provisions of this subsection until such time as the court orders resumption of payment.

[*See main edition for text of* (*F*)]

(G)(i) At any time after notification under subparagraph (A), but before the conclusion of the one-hundred-and-twenty-day period referred to in subparagraph (C), a State government or unit of local government may request a hearing on the record in accordance with section 554 of title 5, which the Office of Justice Programs shall initiate within sixty days of such request.

(ii) Within thirty days after the conclusion of the hearing, or, in the absence of a hearing, at the conclusion of the one-hundred-and-twenty-day period referred to in subparagraph (C), the Office of Justice Programs shall make a finding of compliance or noncompliance. If the Office of Justice Programs makes a finding of noncompliance, the Office of Justice Programs shall notify the Attorney General in order that the Attorney General may institute a civil action under paragraph (3), cause to have terminated the payment of funds under this chapter, and, if appropriate, seek repayment of such funds.

(iii) If the Office of Justice Programs makes a finding of compliance, payment of the suspended funds shall resume as provided in subparagraph (D).

(H) Any State government or unit of local government aggrieved by a final determination of the Office of Justice Programs under subparagraph (G) may appeal such determination as provided in section 3785[2] of this title.

[*See main edition for text of* (*3*)]

(4)(A) Whenever a State government or unit of local government, or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by this subsection, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction. Administrative remedies shall be deemed to be exhausted upon the expiration of sixty days after the date the administrative complaint was filed with the Office of Justice Programs or any other administrative enforcement agency, unless within such period there has been a determination by the Office of Justice Programs or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

[*See main edition for text of* (*B*) *and* (*C*)]

(Pub. L. 90-351, title I, § 809, formerly § 815, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1206, and renumbered and amended Pub. L. 98-473, title II, § 609B(f), (h)), Oct. 12, 1984, 98 Stat. 2093, 2095.)

REFERENCES IN TEXT

Section 3785 of this title, referred to in subsec. (c)(2)(H), was in the original "section 805 of this title", meaning section 805 of title I of Pub. L. 90-351, and has been translated as reading "section 804 of this title" to reflect the renumbering of section 805 as 804 by section 609B(f) of Pub. L. 98-473.

PRIOR PROVISIONS

A prior section 809 of Pub. L. 90-351, title I, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1204, amended section 5315 of Title 5, Government Organization and Employees, and was repealed by section 609B(e) of Pub. L. 98-473.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, § 609B(h)(2), struck out "contained" after "Nothing".

Subsec. (c). Pub. L. 98-473, § 609B(h)(3), substituted "Office of Justice Programs" for "Office of Justice Assistance, Research, and Statistics" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(h) of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3785, 5672, 10504 of this title.

§ 3789e. Report to President and Congress

Not later than April 1 of each year, the Assistant Attorney General, the Director of the Bureau of Justice Assistance, the Director of the Bureau of Justice Statistics, and the Director of the National Institute of Justice shall each submit a report to the President and to the Speaker of the House of Representatives and the President of the Senate, on their activities under this chapter during the fiscal year next preceding such date.

(Pub. L. 90-351, title I, § 810, formerly § 816, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1209, and renumbered and amended Pub. L. 98-473, title II, § 609B(f), (i), Oct. 12, 1984, 98 Stat. 2093, 2095.)

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[2] See References in Text note below.

Prior Provisions

A prior section 810 of Pub. L. 90-351 was classified to section 3788 of this title and was repealed by section 609B(e) of Pub. L. 98-473.

Amendments

1984—Pub. L. 98-473, § 609B(i), substituted requirement of individual reports by certain officials of listed agencies to the President and the Speaker of the House and President of the Senate for former subsec. (a) through (e) provisions which included requirement of an annual report on or before March 31 of each year to the President and Committees on the Judiciary of the Senate and the House, including description of scope of coverage; report covering receipt and compilation of evaluations, statistics, and performance reports, comprehensive statistics, analyses, and findings respecting attainment of described objectives; plan for collection, analysis, and evaluation of data for measurement of progress in prescribed and additional areas, definition of "comprehensive statistics" and "reasonably expected contribution"; attainment of reasonably expected contribution in prescribed and added areas; and data collection, including minimum duplication.

Effective Date of 1984 Amendment

Amendment by section 609B(i) of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3789f. Other administrative provisions

(a) Recordkeeping requirement; scope of disclosure; other sources of funds

Each recipient of funds under this chapter shall keep such records as the Office of Justice Programs shall prescribe, including records which fully disclose the amount and disposition by such recipient of the funds, the total cost of the project or undertaking for which such funds are used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Access to records for audit and examination

The Office of Justice Programs or any of its duly authorized representatives, shall have access for purpose of audit and examination of any books, documents, papers, and records of the recipients of funds under this chapter which in the opinion of the Office of Justice Programs may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to under this chapter.

[*See main edition for text of* (c)]

(d) Recipients of assistance subject to provisions of section

The provisions of this section shall apply to all recipients of assistance under this chapter, whether by direct grant, cooperative agreement, or contract under this chapter or by subgrant or subcontract from primary grantees or contractors under this chapter.

(e) Revolving fund for acquisition of stolen goods and property within Law Enforcement Assistance Administration [3]

There is hereby established within the Law Enforcement Assistance Administration [3] a revolving fund for the purpose of supporting projects that will acquire stolen goods and property in an effort to disrupt illicit commerce in such goods and property. Notwithstanding any other provision of law, any income or royalties generated from such projects together with income generated from any sale or use of such goods or property, where such goods or property are not claimed by their lawful owner, shall be paid into the revolving fund. Where a party establishes a legal right to such goods or property, the Administrator of the fund may in his discretion assert a claim against the property or goods in the amount of Federal funds used to purchase such goods or property. Proceeds from such claims shall be paid into the revolving fund. The Administrator is authorized to make disbursements by appropriate means, including grants, from the fund for the purpose of this section.

(f) Redesignated (e)

(Pub. L. 90-351, title I, § 811, formerly § 817, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1212, and renumbered and amended Pub. L. 98-473, title II, § 609B(f), (j), Oct. 12, 1984, 98 Stat. 2093, 2096.)

Prior Provisions

A prior section 811 of Pub. L. 90-351 was classified to section 3789 of this title and was repealed by section 609B(e) of Pub. L. 98-473.

Amendments

1984—Subsecs. (a), (b). Pub. L. 98-473, § 609B(j)(1), substituted "Office of Justice Programs" for "Office of Justice Assistance, Research, and Statistics" wherever appearing.

Subsecs. (d) to (f). Pub. L. 98-473, § 609B(j)(2), (3), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) relating to civil rights regulations and conforming changes of the regulations.

Effective Date of 1984 Amendment

Amendment by section 609B(j) of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3789g. Confidentiality of information

[*See main edition for text of* (a)]

(b) Criminal history information; disposition and arrest data; procedures for collection, storage, dissemination, and current status; security and privacy; availability for law enforcement, criminal justice, and other lawful purposes; automated systems: review, challenge, and correction of information

All criminal history information collected, stored, or disseminated through support under this chapter shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Office of Justice Programs shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this chapter, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction.

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[3] So in original. Probably should be "Bureau of Justice Assistance".

(c) Criminal intelligence systems and information; prohibition against violation of privacy and constitutional rights of individuals

All criminal intelligence systems operating through support under this chapter shall collect, maintain, and disseminate criminal intelligence information in conformance with policy standards which are prescribed by the Office of Justice Programs and which are written to assure that the funding and operation of these systems furthers the purpose of this chapter and to assure that such systems are not utilized in violation of the privacy and constitutional rights of individuals.

[*See main edition for text of* (*d*)]

(Pub. L. 90-351, title I, § 812, formerly § 818, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1213, and renumbered and amended Pub. L. 98-473, title II, § 609B(f), (k), Oct. 12, 1984, 98 Stat. 2093, 2096.)

PRIOR PROVISIONS

A prior section 812 of Pub. L. 90-351 was classified to section 3789a of this title and was repealed by section 609B(e) of Pub. L. 98-473.

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98-473, 609B(k), substituted "Office of Justice Programs" for "Office of Justice Assistance, Research, and Statistics".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(k) of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3732, 5672, 10505 of this title.

§ 3789h. Repealed. Pub. L. 98-473, title II, § 609B(e), (*l*), Oct. 12, 1984, 98 Stat. 2093, 2096

Section, Pub. L. 90-351, title I, § 819, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1213, authorized acceptance of voluntary services. See section 3788(g) of this title.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3789i. Administration of juvenile delinquency programs

The Director of the National Institute of Justice and the Director of the Bureau of Justice Statistics shall work closely with the Administrator of the Office of Juvenile Justice and Delinquency Prevention in developing and implementing programs in the juvenile justice and delinquency prevention field.

(Pub. L. 90-351, title I, § 813, formerly § 820, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214, and renumbered and amended Pub. L. 98-473, title II, § 609B(f), (m), Oct. 12, 1984, 98 Stat. 2093, 2096.)

PRIOR PROVISIONS

A prior section 813 of Pub. L. 90-351 was classified to section 3789b of this title and was repealed by section 609B(e) of Pub. L. 98-473.

AMENDMENTS

1984—Pub. L. 98-473, § 609B(m), struck out subsec. (a) relating to programs concerned with juvenile delinquency and administered by the Law Enforcement Assistance Administration and struck out subsec. (b) designation.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(m) of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3789j. Prohibition on land acquisition

No funds under this chapter shall be used for land acquisition.

(Pub. L. 90-351, title I, § 814, formerly § 821, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214, and renumbered Pub. L. 98-473, title II, § 609B(f), Oct. 12, 1984, 98 Stat. 2093.)

PRIOR PROVISIONS

A prior section 814 of Pub. L. 90-351 was classified to section 3789c of this title and was repealed by section 609B(e) of Pub. L. 98-473.

§ 3789k. Prohibition on use of Central Intelligence Agency services

[*See main edition for text*]

(Pub. L. 90-351, title I, § 815, formerly § 822, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214, and renumbered Pub. L. 98-473, title II, § 609B(f), Oct. 12, 1984, 98 Stat. 2093.)

PRIOR PROVISIONS

A prior section 815 of Pub. L. 90-351 was renumbered section 809 and is classified to section 3789d of this title.

§ 3789*l*. Indian liability waiver

Where a State does not have an adequate forum to enforce grant provisions imposing liability on Indian tribes, the Assistant Attorney General is authorized to waive State liability and may pursue such legal remedies as are necessary.

(Pub. L. 90-351, title I, § 816, formerly § 823, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat.

1214, and renumbered and amended Pub. L. 98-473, title II, § 609B(f), (n), Oct. 12, 1984, 98 Stat. 2093, 2096.)

Prior Provisions

A prior section 816 of Pub. L. 90-351 was renumbered section 810 and is classified to section 3789e of this title.

Amendments

1984—Pub. L. 98-473, § 609B(n), substituted "Assistant Attorney General" for "Administration".

Effective Date of 1984 Amendment

Amendment by section 609B(n) of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3789m. District of Columbia matching fund source

[See main edition for text]

(Pub. L. 90-351, title I, § 817, formerly § 824, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214, and renumbered Pub. L. 98-473, title II, § 609B(f), Oct. 12, 1984, 98 Stat. 2093.)

Prior Provisions

A prior section 817 of Pub. L. 90-351 was renumbered section 811 and is classified to section 3789f of this title.

§ 3789n. Limitation on civil justice matters

[See main edition for text]

(Pub. L. 90-351, title I, § 818, formerly § 825, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214, and renumbered Pub. L. 98-473, title II, § 609B(f), Oct. 12, 1984, 98 Stat. 2093.)

Prior Provisions

A prior section 818 of Pub. L. 90-351 was renumbered section 812 and is classified to section 3789g of this title.

§ 3789o. Repealed. Pub. L. 98-473, title II, § 609B(e), Oct. 12, 1984, 98 Stat. 2093

Section, Pub. L. 90-351, title I, § 826, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214, required reimbursement of Federal assistance for unused equipment.

SUBCHAPTER IX—DEFINITIONS

§ 3791. General provisions

(a) Definitions

As used in this chapter—

[See main edition for text of (1)]

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(3) "unit of local government" means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands;

(4) "construction" means the erection, acquisition, renovation, repairs, remodeling, or expansion of new or existing buildings or other physical facilities, and the acquisition or installation of initial equipment therefor;

[See main edition for text of (5) and (6)]

(7) "correctional facility" means any place for the confinement or rehabilitation of offenders or individuals charged with or convicted of criminal offenses;

(8) "correctional facility project" means a project for the construction, replacement, alteration or expansion of a prison or jail for the purpose of relieving overcrowding or substandard conditions;

[See main edition for text of (9) to (12)]

(13) "cost of construction" means all expenses found by the Director to be necessary for the construction of the project, including architect and engineering fees, but excluding land acquisition costs;

[See main edition for text of (14) to (16)]

(17) "institution of higher education" means any such institution as defined by section 1141(a) of title 20, subject, however, to such modifications and extensions as the Office may determine to be appropriate;

[See main edition for text of (18) to (21)]

(b) Data basis for definitions; reflection of technical changes or modifications

Where appropriate, the definitions in subsection (a) of this section shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available ninety days prior to the beginning of such fiscal year. The Office may by regulation change or otherwise modify the meaning of the terms defined in subsection (a) of this section in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

[See main edition for text of (c)]

(As amended Pub. L. 98-473, title II, § 609C, Oct. 12, 1984, 98 Stat. 2096.)

Amendments

1984—Subsec. (a)(2). Pub. L. 98-473, § 609C(b)(1), struck out references to Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Subsec. (a)(3). Pub. L. 98-473, § 609C(b)(2), added references to Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Subsec. (a)(4). Pub. L. 98-473, § 609C(b)(3), extended definition of "construction" to include renovation, repairs, and remodeling and deleted previous exclusion of such items from the definition.

Subsec. (a)(7). Pub. L. 98-473, § 609C(b)(4), substituted "correctional facility" for "correctional institution or facility".

Subsec. (a)(8). Pub. L. 98-473, § 609C(b)(5), substituted definition of "correctional facility project" for "comprehensive".

Subsec. (a)(13). Pub. L. 98-473, § 609C(b)(6), substituted definition of "cost of construction" for "municipality".

Subsecs. (a)(17), (b). Pub. L. 98-473, § 609C(a), substituted "Office" for "Administration".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

SUBCHAPTER X—FUNDING

§ 3793. Authorization of appropriations

(a)(1) There are authorized to be appropriated for fiscal years 1984, 1985, 1986, 1987, and 1988 such sums as may be necessary to carry out the functions of the Bureau of Justice Statistics.

(2) There are authorized to be appropriated for fiscal years 1984, 1985, 1986, 1987, and 1988 such sums as may be necessary to carry out the functions of the National Institute of Justice.

(3) There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1984, 1985, 1986, 1987, and 1988 to carry out the remaining functions of the Office of Justice Programs and the Bureau of Justice Assistance, other than functions under subchapters VI, VII, and XII of this chapter.

(4) There is authorized to be appropriated $25,000,000 for each of the fiscal years 1984, 1985, 1986, 1987, and 1988 to carry out subchapter VI of this chapter.

(5) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out subchapter XII of this chapter.

(6) Funds appropriated for any fiscal year may remain available for obligation until expended.

(b) Notwithstanding any other provision of law, no funds appropriated under this section for subchapters IV and V of this chapter may be transferred or reprogrammed for carrying out any activity which is not authorized under such subchapters.

(As amended Pub. L. 98-473, title II, § 609D(a), Oct. 12, 1984, 98 Stat. 2097.)

Amendments

1984—Pub. L. 98-473, in amending section generally, designated existing provisions as subsec. (a), and therein substituted appropriations authorization of necessary sums for fiscal years 1984 through 1988 for authorizations for fiscal years ending Sept. 30, 1980, through 1983, deleted provisions authorizing appropriations for subchapter VIII and for carrying out remaining functions of the Law Enforcement Assistance Administration, and added subsec. (b).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§§ 3793a, 3793b. Repealed. Pub. L. 98-473, title II, § 609D(b), Oct. 12, 1984, 98 Stat. 2097

Section 3793a, Pub. L. 90-351, title I, § 1002, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1218, required maintenance of a fund for juvenile delinquency programs consisting of minimum of 19.15 per centum of the appropriations each fiscal year for this chapter.

Section 3793b, Pub. L. 90-351, title I, § 1003, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1219, authorized annual appropriations of $25,000,000 for fiscal years ending Sept. 30, 1980, through 1983, for Office of Community Anti-Crime Programs.

Effective Date of Repeal

Sections repealed effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

SUBCHAPTER XI—CRIMINAL PENALTIES

§ 3795. Misuse of Federal assistance

Whoever embezzles, willfully misapplies, steals, or obtains by fraud or endeavors to embezzle, willfully misapply, steal, or obtain by fraud any funds, assets, or property which are the subject of a grant or contract or other form of assistance pursuant to this chapter, whether received directly or indirectly from the Office of Justice Programs, Bureau of Justice Assistance, the National Institute of Justice, the Bureau of Justice Statistics, or whoever receives, conceals, or retains such funds, assets or property with intent to convert such funds, assets or property to his use or gain, knowing such funds, assets, or property has been embezzled, willfully misapplied, stolen or obtained by fraud, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(As amended Pub. L. 98-473, title II, § 609E(a), Oct. 12, 1984, 98 Stat. 2097.)

Amendments

1984—Pub. L. 98-473 substituted "Office of Justice Programs, Bureau of Justice Assistance" for "Law Enforcement Assistance Administration".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

§ 3795b. Conspiracy to commit offense against United States

Any law enforcement or criminal justice program or project underwritten, in whole or in part, by any grant, or contract or other form of assistance pursuant to this chapter, whether received directly or indirectly from the Office of Justice Programs, Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics shall be subject to the provisions of section 371 of title 18.

(As amended Pub. L. 98-473, title II, § 609E(b), Oct. 12, 1984, 98 Stat. 2098.)

Amendments

1984—Pub. L. 98-473 substituted "Office of Justice Programs, Bureau of Justice Assistance" for "Law Enforcement Assistance Administration".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

SUBCHAPTER XII—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

§ 3796. Payment of death benefits

(a) Amount; recipients

In any case in which the Bureau of Justice Assistance (hereinafter in this subchapter referred to as the "Bureau") determines, under regulations issued pursuant to this subchapter, that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Bureau shall pay a benefit of $50,000 as follows:

(1) if there is no surviving child of such officer, to the surviving spouse of such officer;

(2) if there is a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal shares and one-half to the surviving spouse;

(3) if there is no surviving spouse, to the child or children of such officer in equal shares; or

(4) if none of the above, to the dependent parent or parents of such officer in equal shares.

(b) Interim benefit payment

Whenever the Bureau determines upon showing of need and prior to final action that the death of a public safety officer is one with respect to which a benefit will probably be paid, the Bureau may make an interim benefit payment not exceeding $3,000 to the individual entitled to receive a benefit under subsection (a) of this section.

(c) Deduction of interim payment

The amount of an interim payment under subsection (b) of this section shall be deducted from the amount of any final benefit paid to such individual.

(d) Repayment of interim payment; waiver

Where there is no final benefit paid, the recipient of any interim payment under subsection (b) of this section shall be liable for repayment of such amount. The Bureau may waive all or part of such repayment, considering for this purpose the hardship which would result from such repayment.

(e) Reductions from final benefit payment

The benefit payable under this subchapter shall be in addition to any other benefit that may be due from any other source, except—

(1) payments authorized by section 12(k) of the Act of September 1, 1916, as amended (D.C. Code, sec. 4-622); or

(2) benefits authorized by section 8191 of title 5. Such beneficiaries shall only receive benefits under such section 8191 that are in excess of the benefits received under this subchapter.

(f) Execution or attachment prohibited

No benefit paid under this subchapter shall be subject to execution or attachment.

(Pub. L. 90-351, title I, § 1201, as added Pub. L. 98-473, title II, § 609F, Oct. 12, 1984, 98 Stat. 2098.)

Prior Provisions

A prior section 3796, Pub. L. 90-351, title I, § 1201, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1219, and amended Pub. L. 98-411, title II, § 204(a)(1), Aug. 30, 1984, 98 Stat. 1561; Pub. L. 98-473, title II, § 609Z, Oct. 12, 1984, 98 Stat. 2107, contained provisions similar to this section, prior to the general revision of this subchapter by section 609F of Pub. L. 98-473.

Effective Date

Subchapter effective Oct. 1, 1984, and inapplicable with respect to injuries sustained before Oct. 1, 1984, see section 609AA(b)(1) of Pub. L. 98-473, set out as a note under section 3711 of this title.

§ 3796a. Limitations on benefits

No benefit shall be paid under this subchapter—

(1) if the death was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about his death;

(2) if the public safety officer was voluntarily intoxicated at the time of his death;

(3) if the public safety officer was performing his duties in a grossly negligent manner at the time of his death;

(4) to any individual who would otherwise be entitled to a benefit under this subchapter if such individual's actions were a substantial contributing factor to the death of the public safety officer; or

(5) to any individual employed in a capacity other than a civilian capacity.

(Pub. L. 90-351, title I, § 1202, as added Pub. L. 98-473, title II, § 609F, Oct. 12, 1984, 98 Stat. 2099.)

Prior Provisions

A prior section 3796a, Pub. L. 90-351, title I, § 1202, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1220, and amended Pub. L. 98-411, title II, § 204(a)(2), Aug. 30, 1984, 98 Stat. 1561; Pub. L. 98-473, title II, § 609Z, Oct. 12, 1984, 98 Stat. 2107, contained provisions similar to this section, prior to the general revision of this subchapter by section 609F of Pub. L. 98-473.

§ 3796b. Definitions

As used in this subchapter—

(1) "child" means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is—

(i) 18 years of age or under;

(ii) over 18 years of age and a student as defined in section 8101 of title 5; or

(iii) over 18 years of age and incapable of self-support because of physical or mental disability;

(2) "dependent" means any individual who was substantially reliant for support upon the income of the deceased public safety officer;

(3) "firefighter" includes an individual serving as an officially recognized or designated member of a legally organized volunteer fire department;

(4) "intoxication" means a disturbance of mental or physical faculties resulting from the introduction of alcohol into the body as evidenced by—

(i) a post-mortem blood alcohol level of .20 per centum or greater; or

(ii) a post-mortem blood alcohol level of at least .10 per centum but less than .20 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to his death;

or resulting from drugs or other substances in the body;

(5) "law enforcement officer" means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws, including, but not limited to, police, corrections, probation, parole, and judicial officers;

(6) "public agency" means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, department, agency, or instrumentality of any of the foregoing; and

(7) "public safety officer" means an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or a firefighter.

(Pub. L. 90-351, title I, § 1203, as added Pub. L. 98-473, title II, § 609F, Oct. 12, 1984, 98 Stat. 2099.)

PRIOR PROVISIONS

A prior section 3796b, Pub. L. 90-351, title I, § 1203, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1220, and amended Pub. L. 98-411, title II, § 204(a)(3), Aug. 30, 1984, 98 Stat. 1561; Pub. L. 98-473, title II, § 609Z, Oct. 12, 1984, 98 Stat. 2107, contained provisions similar to this section, prior to the general revision of this subchapter by section 609F of Pub. L. 98-473.

§ 3796c. Administrative provisions; rules, regulations, and procedures; use of State and local administrative and investigative assistance

(a) The Bureau is authorized to establish such rules, regulations, and procedures as may be necessary to carry out the purposes of this subchapter. Such rules, regulations, and procedures will be determinative of conflict of laws issues arising under this subchapter. Rules, regulations, and procedures issued under this subchapter may include regulations governing the recognition of agents or other persons representing claimants under this subchapter before the Bureau. The Bureau may prescribe the maximum fees which may be charged for services performed in connection with any claim under this subchapter before the Bureau, and any agreement in violation of such rules and regulations shall be void.

(b) In making determinations under section 3796 of this title, the Bureau may utilize such administrative and investigative assistance as may be available from State and local agencies. Responsibility for making final determinations shall rest with the Bureau.

(Pub. L. 90-351, title I, § 1204, as added Pub. L. 98-473, title II, § 609F, Oct. 12, 1984, 98 Stat. 2100.)

PRIOR PROVISIONS

A prior section 3796c, Pub. L. 90-351, title I, § 1204, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1221, contained provisions similar to this section, prior to the general revision of this subchapter by section 609F of Pub. L. 98-473.

SUBCHAPTER XIII—TRANSITION; EFFECTIVE DATE; REPEALER

§ 3797. Continuation of rules, authorities, and proceedings

(a) Continuing status until otherwise affected

(1) All orders, determinations, rules, regulations, and instructions of the Law Enforcement Assistance Administration which are in effect on December 27, 1979, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President or the Attorney General, the Office of Justice Assistance, Research, and Statistics or the Director of the Bureau of Justice Statistics, the National Institute of Justice, or the Administrator of the Law Enforcement Assistance Administration with respect to their functions under this chapter or by operation of law.

(2) All orders, determinations, rules, regulations, and instructions issued under this chapter which are in effect on October 12, 1984, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Attorney General, the Assistant Attorney General, the Director of the Bureau of Justice Statistics, the Director of the National Institute of Justice, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, or the Director of the Bureau of Justice Assistance with respect to their functions under this chapter or by operation of law.

[*See main edition for text of* (b) *to* (i)]

(j) Construction project funding for additional two years

Notwithstanding the provisions of section 3744(c)(3)[1] of this title, any construction projects which were funded under this chapter, as in effect before December 27, 1979, and which were budgeted in anticipation of receiving additional Federal funding for such construction may continue for two years to be funded under this chapter.

(k) Redesignated (j)

(As amended Pub. L. 98-473, title II, § 609G, Oct. 12, 1984, 98 Stat. 2100.)

REFERENCES IN TEXT

Subchapter V of this chapter, referred to in subsec. (h), was repealed and former subchapter VI was redesignated as V by Pub. L. 98-473, title II, §§ 607, 608(e), Oct. 12, 1984, 98 Stat. 2086, 2087.

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[1] See References in Text note below.

Section 3744(c)(3) of this title, referred to in subsec. (j), is a reference to section 3744(c)(3) of this title as in effect prior to the general amendment of section 3744 of this title by Pub. L. 98-473.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, § 609G(1), designated existing provisions as par. (1) and added par. (2).

Subsecs. (j), (k). Pub. L. 98-473, § 609G(2), (3), redesignated subsec. (k) as (j) and struck out former subsec. (j) relating to State planning agency meeting representation requirement as competent to carry out functions, powers, and duties of State criminal justice council.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

CHAPTER 48—GUARANTEES FOR FINANCING NEW COMMUNITY LAND DEVELOPMENT

§§ 3901 to 3906. Repealed. Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

Section 3901, Pub. L. 90-448, title IV, § 402, Aug. 1, 1968, 82 Stat. 513, set out a Congressional statement of purpose for this chapter.

Section 3902, Pub. L. 90-448, title IV, § 403, Aug. 1, 1968, 82 Stat. 514, provided the Secretary with authority to guarantee obligations.

Section 3903, Pub. L. 90-448, title IV, § 404, Aug. 1, 1968, 82 Stat. 514, related to eligible new community development entitled to guarantees under this chapter.

Section 3904, Pub. L. 90-448, title IV, § 405, Aug. 1, 1968, 82 Stat. 514, related to eligibility of bonds, debentures, notes, and other obligations under this chapter.

Section 3905, Pub. L. 90-448, title IV, § 406, Aug. 1, 1968, 82 Stat. 515, related to fees and charges for guarantees and the submission of a report to Congress concerning such fees and charges.

Section 3906, Pub. L. 90-448, title IV, § 407, Aug. 1, 1968, 82 Stat. 515; Pub. L. 91-351, title VII, § 703, July 24, 1970, 84 Stat. 462; Pub. L. 91-609, title III, § 303(a), Dec. 31, 1970, 84 Stat. 1780, provided for a revolving guarantee fund. Section 4528 of this title transferred all receipts, funds, or other assets and all liabilities of the revolving fund established under this section to the revolving fund established under section 4518 of this title.

SHORT TITLE

Section 401 of title IV of Pub. L. 90-448 which provided that this title, which enacted this chapter and amended section 1492 of this title and sections 371 and 1464 of Title 12, Banks and Banking, may be referred to as the "New Communities Act of 1968", was repealed by Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239.

SAVINGS PROVISION

Section 474(e) of Pub. L. 98-181 provided that: "Any actions taken, prior to repeal, under the authority of any of the sections which are repealed by this section [repealing 42 U.S.C. 3901 to 3906, 3908, 3909, 3911, 3914, 4511 to 4524, 4528 to 4532] shall continue to be valid. Nothing in this subsection shall impair the validity of any guarantees which have been made pursuant to title IV [of the Housing and Urban Development Act of 1968, 42 U.S.C. 3901 et seq.] or title VII [of the Housing and Urban Development Act of 1970, 42 U.S.C. 4501 et seq.] and any such guarantees shall continue to be governed by the provisions of title IV or title VII, as applicable, as they existed immediately before the date of the enactment of this Act [Nov. 30, 1983]."

§ 3907. Omitted

CODIFICATION

Section, Pub. L. 90-448, title IV, § 408, Aug. 1, 1968, 82 Stat. 516; Pub. L. 91-609, title III, § 303(c), Dec. 31, 1970, 84 Stat. 1780, which related to the incontestability of guarantees was omitted pursuant to section 4528 of this title, which terminated authority to guarantee bonds, debentures, notes, or other obligations under this chapter after Dec. 31, 1970, with exceptions now inapplicable.

§§ 3908, 3909. Repealed. Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

Section 3908, Pub. L. 90-448, title IV, § 409, Aug. 1, 1968, 82 Stat. 516, related to encouragement of small builders in new community construction under this chapter.

Section 3909, Pub. L. 90-448, title IV, § 410, Aug. 1, 1968, 82 Stat. 516, related to labor standards in construction under this chapter.

§ 3910. Omitted

CODIFICATION

Section, Pub. L. 90-448, title IV, § 411, Aug. 1, 1968, 82 Stat. 516, which related to real property taxation was omitted pursuant to section 4528 of this title, which terminated authority to guarantee bonds, debentures, notes, or other obligations under this chapter after Dec. 31, 1970, with exceptions now inapplicable.

§ 3911. Repealed. Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

Section, Pub. L. 90-448, title IV, § 412, 1, 1968, 82 Stat. 516; Pub. L. 91-152, title III, § 304, Dec. 24, 1969, 83 Stat. 391; Pub. L. 91-609, title III, § 303(b), Dec. 31, 1970, 84 Stat. 1780, provided for supplementary grants under this chapter.

§§ 3912, 3913. Omitted

CODIFICATION

Sections were omitted pursuant to section 4528 of this title, which terminated authority to guarantee bonds, debentures, notes, or other obligations under this chapter after Dec. 31, 1970, with exceptions now inapplicable.

Section 3912, Pub. L. 90-448, title IV, § 413, Aug. 1, 1968, 82 Stat. 517, set out the functions, powers and duties of the Secretary under this chapter.

Section 3913, Pub. L. 90-448, title IV, § 414, Aug. 1, 1968, 82 Stat. 517, related to the audit of financial transactions of those whose obligations are guaranteed under this chapter.

§ 3914. Repealed. Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

Section, Pub. L. 90-448, title IV, § 415, Aug. 1, 1968, 82 Stat. 517, defined "land development", "actual costs", and "new community assistance projects" for the purposes of this chapter.

CHAPTER 49—NATIONAL HOUSING PARTNERSHIPS

§ 3936. Purposes and powers of corporation

(a) Building, rehabilitation, acquisition, and financing of housing and related facilities for families and individuals of low or moderate income; acquisition and disposal of property; funds

In order to achieve the objectives and carry out the purposes of this chapter, the corporation is authorized to—

(1) plan, initiate, and carry out, pursuant to Federal programs or otherwise, the building, rehabilitation, acquisition, and financing of housing and related facilities primarily for the benefit of families and individuals of low or moderate income;

(2) buy, own, manage, lease, or otherwise acquire or dispose of property in connection with the developments, projects, or undertakings referred to in paragraph (1);

(3) provide such funds as may be necessary to accomplish the developments, projects, or undertakings referred to in paragraph (1); and

(4) for the purpose of generating income to support the building or rehabilitation of housing primarily for the benefit of families and individuals of low or moderate income (A) design, develop, manufacture and sell products and services for use in the construction, sale, or financing of housing, and (B) design and develop commercial, industrial, or retail facilities that are not directly related to housing, except that the development and preservation of housing for families and individuals of low or moderate income shall be the primary activity of the corporation.

[*See main edition for text of* (*b*) *to* (*d*)]

(e) Maximum combined outstanding equity commitment

The combined outstanding equity commitment of the corporation and the partnership with respect to activities undertaken under subsection (a)(4) of this section may not exceed (1) 7 percent of their total combined equity commitment outstanding during the first 12-month period following October 17, 1984; (2) 14 percent of their total combined equity commitment outstanding during the second 12-month period following October 17, 1984; or (3) 20 percent of their total combined equity commitment outstanding at any time thereafter.

(As amended Pub. L. 98-181, title IV, § 467, Nov. 30, 1983, 97 Stat. 1236; Pub. L. 98-479, title I, § 104(c)(1), (2), Oct. 17, 1984, 98 Stat. 2225.)

Amendments

1984—Subsec. (a)(4). Pub. L. 98-479, § 104(c)(1), added par. (4).

Subsec. (e). Pub. L. 98-479, § 104(c)(2), added subsec. (e).

1983—Subsec. (a)(1). Pub. L. 98-181 inserted references to acquisition and financing.

Section Referred to in Other Sections

This section is referred to in sections 3937, 3938 of this title.

§ 3938. Annual report of corporation; audit of accounts

(a)(1) The corporation shall submit an annual report to the President for transmittal to the Congress within six months after the end of its fiscal year. The report shall include a comprehensive and detailed report of the operations, activities, and financial condition of the corporation and the partnership under this chapter.

(2) The report shall contain a description of the activities undertaken under section 3936(a)(4) of this title, and shall specify, as a percentage of equity and in dollars, the extent of the corporation's and the partnership's investment in housing for the benefit of families and individuals of low or moderate income, the extent of the corporation's and the partnership's investment in other housing, and the extent of the corporation's and the partnership's activities which are undertaken under section 3936(a)(4) of this title.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-479, title I, § 104(c)(3), Oct. 17, 1984, 98 Stat. 2225.)

Amendments

1984—Subsec. (a). Pub. L. 98-479 designated existing provisions as par. (1) and added par. (2).

CHAPTER 50—NATIONAL FLOOD INSURANCE

§ 4003. Additional definitions

[*See main edition for text*]

(Pub. L. 93-234, § 3, Dec. 31, 1973, 87 Stat. 976; Pub. L. 95-128, title VII, § 703(b), Oct. 12, 1977, 91 Stat. 1145; Pub. L. 98-181, title IV, § 451(e), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Subsec. (a)(6). Pub. L. 98-181, § 451(e)(2), substituted definition of "Director" meaning the Director of the Federal Emergency Management Agency for definition of "Secretary" meaning the Secretary of Housing and Urban Development.

Subsec. (b). Pub. L. 98-181, § 451(e)(1), substituted "Director" for "Secretary".

SUBCHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

§ 4011. Authorization to establish and carry out program; participation by insurance companies and other insurers

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1304, Aug. 1, 1968, 82 Stat. 574; Pub. L. 98-181, title IV, § 451(d)(1), (2), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Subsec. (a). Pub. L. 98-181, § 451(d)(2), substituted "Director of the Federal Emergency Management Agency" for "Secretary of Housing and Urban Development".

Subsec. (b). Pub. L. 98-181, § 451(d)(1), substituted "Director" for "Secretary".

§ 4012. Scope of program and priorities

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1305, Aug. 1, 1968, 82 Stat. 574; Pub. L. 91-152, title IV, § 410(a), Dec. 24, 1969, 83 Stat. 397; Pub. L. 92-213, § 2(c)(1), Dec. 22, 1971, 85 Stat. 775; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4012a. Requirement of flood insurance for Federal approval of financial assistance

[*See main edition for text*]

(Pub. L. 93-234, title I, § 102, Dec. 31, 1973, 87 Stat. 978; Pub. L. 98-181, title IV, § 451(e)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4013. Nature and limitation of insurance coverage; regulations

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1306, Aug. 1, 1968, 82 Stat. 575; Pub. L. 92-213, § 2(c)(2), Dec. 22, 1971, 85 Stat. 775; Pub. L. 93-234, title I, § 101, Dec. 31, 1973, 87 Stat. 977; Pub. L. 95-128, title VII, § 704(a), Oct. 12, 1977, 91 Stat. 1145; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Subsecs. (a), (b)(1)(B), (4). Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4014. Estimates of premium rates

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1307, Aug. 1, 1968, 82 Stat. 576; Pub. L. 93-234, title I, § 109, Dec. 31, 1973, 87 Stat. 980; Pub. L. 93-383, title VIII, § 816(b), Aug. 22, 1974, 88 Stat. 739; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Subsecs. (a) to (c), (e). Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4015. Chargeable premium rates

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1308, Aug. 1, 1968, 82 Stat. 576; Pub. L. 93-234, title I, § 103, Dec. 31, 1973, 87 Stat. 978; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Subsecs. (a), (c), (d). Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

MORATORIUM ON FLOOD INSURANCE RATE INCREASES THROUGH SEPTEMBER 30, 1984

Section 451(g)(1) of Pub. L. 98-181 provided that: "The premium rates charged for flood insurance under any program established pursuant to the National Flood Insurance Act of 1968 [this chapter] may not be increased during the period beginning on the date of the enactment of this Act [Nov. 30, 1983] and ending on September 30, 1984."

§ 4016. Financing provisions; issuance of notes or other obligations; limitation; report to Congressional committees; deposits in Fund

(a) All authority which was vested in the Director by virtue of section 2414(e) of this title (pertaining to the issue of notes or other obligations to the Secretary of the Treasury), as amended by subsections (a) and (b) of section 1303 of this Act, shall be available to the Director for the purpose of carrying out the flood insurance program under this chapter; except that the total amount of notes and obligations which may be issued by the Director pursuant to such authority (1) without the approval of the President, may not exceed $500,000,000, and (2) with the approval of the President, may not exceed $1,000,000,000. The Director shall report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at any time when he requests the approval of the President in accordance with the preceding sentence.

[*See main edition for text of* (b)]

(Pub. L. 90-448, title XIII, § 1309, Aug. 1, 1968, 82 Stat. 577; Pub. L. 89-174, § 5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 93-234, title I, § 104, Dec. 31, 1973, 87 Stat. 979; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 98-479, title II, § 204(g), Oct. 17, 1984, 98 Stat. 2233.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-479 substituted ", Finance and Urban Affairs" for "and Currency" and inserted a comma after "Housing" in last sentence.

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4017. National Flood Insurance Fund

[*See main edition for text of* (a) *to* (d)]

(e) Annual budget

An annual business-type budget for the fund shall be prepared, transmitted to the Congress, considered, and enacted in the manner prescribed by sections 9103 and 9104 of title 31 for wholly-owned Government corporations.

[*See main edition for text of* (*f*)]

(Pub. L. 90-448, title XIII, § 1310, Aug. 1, 1968, 82 Stat. 577; Pub. L. 97-35, title III, § 341(c), Aug. 13, 1981, 95 Stat. 419; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 98-479, title II, § 203(j)(1), Oct. 17, 1984, 98 Stat. 2231.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-479 substituted "sections 9103 and 9104 of title 31" for "law (sections 102, 103, and 104 of the Government Corporations Control Act (31 U.S.C. 847-849))".

1983—Subsecs. (a), (b)(5), (c), (d). Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4018. Operating costs and allowances; definitions

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1311, Aug. 1, 1968, 82 Stat. 579; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Subsecs. (a), (b)(1)(D), (2). Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4019. Payment of claims

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1312, Aug. 1, 1968, 82 Stat. 579; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary".

§ 4020. Dissemination of flood insurance information

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1313, Aug. 1, 1968, 82 Stat. 579; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" in provisions preceding par. (1).

§ 4022. State and local land use controls

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1315, Aug. 1, 1968, 82 Stat. 580; Pub. L. 91-152, title IV, § 410(b), Dec. 24, 1969, 83 Stat. 397; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary".

§ 4023. Properties in violation of State and local law

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1316, Aug. 1, 1968, 82 Stat. 580; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary".

§ 4024. Coordination with other programs

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1317, Aug. 1, 1968, 82 Stat. 581; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary".

§ 4025. Flood insurance advisory committee

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1318, Aug. 1, 1968, 82 Stat. 581; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Subsecs. (a), (c). Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4026. Expiration of program

No new contract for flood insurance under this chapter shall be entered into after March 17, 1986.

(As amended Pub. L. 98-35, § 4(a), May 26, 1983, 97 Stat. 198; Pub. L. 98-109, § 5(a), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98-181, title IV, § 451(a), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 99-120, § 4(a)(1), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99-156, § 4(a)(1), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99-219, § 4(a)(1), Dec. 26, 1985, 99 Stat. 1731.)

AMENDMENTS

1985—Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1983—Pub. L. 98-181 substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

§ 4027. Biennial report to President

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1320, Aug. 1, 1968, 82 Stat. 581; Pub. L. 96-470, title II, § 205(b), Oct. 19, 1980, 94 Stat. 2244; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary".

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATION OF FLOOD INSURANCE PROGRAM

§ 4041. Implementation of program

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1330, Aug. 1, 1968, 82 Stat. 581; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary".

PART A—INDUSTRY PROGRAM WITH FEDERAL FINANCIAL ASSISTANCE

§ 4051. Industry flood insurance pool; requirements for participation

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1331, Aug. 1, 1968, 82 Stat. 582; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4052. Agreements with flood insurance pool

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1332, Aug. 1, 1968, 82 Stat. 582; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Subsecs. (a), (b)(3), (c). Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4053. Adjustment and payment of claims; judicial review; limitations; jurisdiction

The insurance companies and other insurers which form, associate, or otherwise join together in the pool under this part may adjust and pay all claims for proved and approved losses covered by flood insurance in accordance with the provisions of this chapter and, upon the disallowance by any such company or other insurer of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance of the claim, may institute an action on such claim against such company or other insurer in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy.

(As amended Pub. L. 98-181, title IV, § 451(d)(3), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Pub. L. 98-181 added "original exclusive" before "jurisdiction".

§ 4054. Premium equalization payments; basis; aggregate amount; establishment of designated periods

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1334, Aug. 1, 1968, 82 Stat. 583; Pub. L. 93-234, title I, § 111, Dec. 31, 1973, 87 Stat. 981; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4055. Reinsurance coverage

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1335, Aug. 1, 1968, 82 Stat. 583; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4056. Emergency implementation of flood insurance program; applicability of other provisions of law

(a) Notwithstanding any other provisions of this chapter, for the purpose of providing flood insurance coverage at the earliest possible time, the Director shall carry out the flood insurance program authorized under subchapter I of this chapter during the period ending March 17, 1986, in accordance with the provisions of this part and the other provisions of this chapter insofar as they relate to this part but subject to the modifications made by or under subsection (b) of this section.

[*See main edition for text of* (*b*)]

(Pub. L. 90-448, title XIII, § 1336, as added Pub. L. 91-152, title IV, § 408, Dec. 24, 1969, 83 Stat. 396, and amended Pub. L. 92-213, § 2(a), Dec. 22, 1971, 85 Stat. 775; Pub. L. 93-234, title I, § 106, Dec. 31, 1973, 87 Stat. 979; Pub. L. 94-173, § 5, Dec. 23, 1975, 89 Stat. 1028; Pub. L. 94-375, § 14(b), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 95-128, title VII, § 701(b), Oct. 12, 1977, 91 Stat. 1144; Pub. L. 95-406, § 6(b), Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, § 308(b), Oct. 31, 1978, 92 Stat. 2098; Pub. L. 96-153, title VI, § 602(b), Dec. 21, 1979, 93 Stat. 1137; Pub. L. 97-35, title III, § 341(b)(2), Aug. 13, 1981, 95 Stat. 419; Pub. L. 97-289, § 4(b), Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98-35, § 4(b), May 26, 1983, 97 Stat. 198; Pub. L. 98-109, § 5(b), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98-181, title IV, § 451(b), (d)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 99-120, § 4(a)(2), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99-156, § 4(a)(2), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99-219, § 4(a)(2), Dec. 26, 1985, 99 Stat. 1731.)

Amendments

1985—Subsec. (a). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1983—Subsec. (a). Pub. L. 98-181, § 451(d)(1), substituted "Director" for "Secretary".

Pub. L. 98-181, § 451(b), substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

Subsec. (b). Pub. L. 98-181, § 451(d)(1), substituted "Director" for "Secretary".

PART B—GOVERNMENT PROGRAM WITH INDUSTRY ASSISTANCE

§ 4071. Federal operation of program; determination by Director; fiscal agents; report to the Congress

(a) If at any time, after consultation with representatives of the insurance industry, the Director determines that operation of the flood insurance program as provided under part A cannot be carried out, or that such operation, in itself, would be assisted materially by the Federal Government's assumption, in whole or in part, of the operational responsibility for flood insurance under this chapter (on a temporary or other basis) he shall promptly undertake any necessary arrangements to carry out the program of flood insurance authorized under subchapter I of this chapter through the facilities of the Federal Government, utilizing, for purposes of providing flood insurance coverage, either—

[*See main edition for text of* (*1*)]

(2) such other officers and employees of any executive agency (as defined in section 105 of title 5) as the Director and the head of any such agency may from time to time, agree upon, on a reimbursement or other basis, or

[*See main edition for text of* (*3*); (*b*)]

(Pub. L. 90-448, title XIII, § 1340, Aug. 1, 1968, 82 Stat. 584; Pub. L. 98-181, title IV, § 451(d)(1), (4), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Subsec. (a). Pub. L. 98-181, § 451(d)(1), in provisions preceding par. (1), substituted "Director" for "Secretary".

Subsec. (a)(2). Pub. L. 98-181, § 451(d)(4), struck out "officers and employees of the Department of Housing and Urban Development, and" before "such other officers".

Pub. L. 98-181, § 451(d)(1), substituted "Director" for "Secretary".

Subsec. (b). Pub. L. 98-181, § 451(d)(1), substituted "Director" for "Secretary" wherever appearing.

§ 4072. Adjustment and payment of claims; judicial review; limitations; jurisdiction

In the event the program is carried out as provided in section 4071 of this title, the Director shall be authorized to adjust and make payment of any claims for proved and approved losses covered by flood insurance, and upon the disallowance by the Director of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance by the Director, may institute an action against the Director on such claim in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in the controversy.

(Pub. L. 90-448, title XIII, § 1341, Aug. 1, 1968, 82 Stat. 584; Pub. L. 98-181, title IV, § 451(d)(1), (5), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Pub. L. 98-181, § 451(d)(5), added "original exclusive" before "jurisdiction".

Pub. L. 98-181, § 451(d)(1), substituted "Director" for "Secretary" wherever appearing.

Part C—General Provisions

§ 4081. Services by insurance industry; contracts, agreements, or other arrangements

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1345, Aug. 1, 1968, 82 Stat. 585; Pub. L. 97-35, title III, § 341(e), Aug. 13, 1981, 95 Stat. 419; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Subsec. (a). Pub. L. 98-181 substituted "Director" for "Secretary".

§ 4082. Use of insurance pool, companies, or other private organizations for certain payments

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1346, Aug. 1, 1968, 82 Stat. 585; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Subsecs. (a), (b), (d), (e)(1), (f). Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4083. Settlement of claims; arbitration

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1347, Aug. 1, 1968, 82 Stat. 586; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4084. Records and audits

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1348, Aug. 1, 1968, 82 Stat. 586; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

Amendments

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

SUBCHAPTER III—COORDINATION OF FLOOD INSURANCE WITH LAND-MANAGEMENT PROGRAMS IN FLOOD-PRONE AREAS

§ 4101. Identification of flood-prone areas

(a) Publication of information; establishment of flood-risk zones; estimates of flood-caused loss

The Director is authorized to consult with, receive information from, and enter into any agreements or other arrangements with the Secretaries of the Army, the Interior, Agriculture, and Commerce, the Tennessee Valley Authority, and the heads of other Federal departments or agencies, on a reimbursement basis, or with the head of any State or local agency, or enter into contracts with any persons or private firms, in order that he may—

[*See main edition for text of* (*1*)]

(2) establish flood-risk zones in all such areas, and make estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas, by March 17, 1986.

(b) Accelerated identification of flood-risk zones; authority of Director: grants, technical assistance, transactions, and payments

The Director is directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of this section, in order to make known the degree of hazard within each such zone at the earliest possible date. To accomplish this objective, the Director is authorized, without regard to subsections (a) and (b) of section 3324 of title 31 and section 5 of title 41, to make grants, provide technical assistance, and enter into contracts, cooperative agreements, or other transactions, on such terms as he may deem appropriate, or consent to modifications thereof, and to make advance or progress payments in connection therewith.

[*See main edition for text of* (*c*)]

(d) Plan for bringing communities with flood-risk zones into full program status

The Director shall, not later than September 30, 1984, submit to the Congress a plan for bringing all communities containing flood-risk zones into full program status by September 30, 1987.

(Pub. L. 90-448, title XIII, § 1360, Aug. 1, 1968, 82 Stat. 587; Pub. L. 93-234, title II, § 204, Dec. 31, 1973, 87 Stat. 983; Pub. L. 98-181, title IV, § 451(d)(1), (6), (7), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 98-479, title II, § 203(j)(2), Oct. 17, 1984, 98 Stat. 2231; Pub. L. 99-120, § 4(a)(3), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99-156, § 4(a)(3), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99-219, § 4(a)(3), Dec. 26, 1985, 99 Stat. 1731.)

AMENDMENTS

1985—Subsec. (a)(2). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1984—Subsec. (b). Pub. L. 98-479 substituted reference to subsections (a) and (b) of section 3324 of title 31 for reference to section 3648 of the Revised Statutes, as amended (31 U.S.C. 529).

1983—Subsec. (a). Pub. L. 98-181, § 451(d)(1), in provisions preceding par. (1) substituted "Director" for "Secretary".

Subsec. (a)(2). Pub. L. 98-181, § 451(d)(6), substituted "by September 30, 1985" for "within fifteen years following such date".

Subsecs. (b), (c). Pub. L. 98-181, § 451(d)(1), substituted "Director" for "Secretary" wherever appearing.

Subsec. (d). Pub. L. 98-181, § 451(d)(7), added subsec. (d).

§ 4102. Criteria for land management and use

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1361, Aug. 1, 1968, 82 Stat. 587; Pub. L. 91-152, title IV, § 410(c), Dec. 24, 1969, 83 Stat. 397; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Subsecs. (a), (c). Pub. L. 98-181 substituted "Director" for "Secretary".

§ 4103. Purchase of insured properties damaged substantially beyond repair by flood

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1362, Aug. 1, 1968, 82 Stat. 588; Pub. L. 95-128, title VII, § 704(b), Oct. 12, 1977, 91 Stat. 1145; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 4104. Flood elevation determinations

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1363, as added Pub. L. 93-234, title I, § 110, Dec. 31, 1973, 87 Stat. 980, and amended Pub. L. 95-128, title VII, § 704(c), Oct. 12, 1977, 91 Stat. 1146; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" and "Director's" for "Secretary's" wherever appearing.

§ 4104a. Notification of purchaser or lessee of special flood hazards in area of location of improved real estate or mobile home securing loan; regulations prescribing procedures

[*See main edition for text*]

(Pub. L. 90-448, title XIII, § 1364, as added Pub. L. 93-383, title VIII, § 816(a), Aug. 22, 1974, 88 Stat. 739, and amended Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary".

§ 4105. Disaster mitigation requirements; notification to flood-prone areas

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Administrative procedures; establishment; reimbursement of certain expenses; appropriation authorization

The Director is authorized to establish administrative procedures whereby the identification under this section of one or more areas in the community as having special flood hazards may be appealed to the Director by the community or any owner or lessee of real property within the community who believes his property has been inadvertently included in a special flood hazard area by the identification. When, incident to any appeal under this subsection, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the Director shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Director in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection not to exceed $250,000.

(Pub. L. 93-234, title II, § 201, Dec. 31, 1973, 87 Stat. 982; Pub. L. 95-128, title VII, § 704(d), Oct. 12, 1977, 91 Stat. 1146; Pub. L. 98-181, title IV, § 451(e)(1), Nov. 30, 1983, 97 Stat. 1229; Pub. L. 98-479, title II, § 204(j), Oct. 17, 1984, 98 Stat. 2233.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-479 struck out the quotation marks before "$250,000".

1983—Subsecs. (a) to (c), (e). Pub. L. 98-181 substituted "Director" for "Secretary" and "Director's" for "Secretary's" wherever appearing.

§ 4106. Nonparticipation in flood insurance program

[See main edition for text]

(Pub. L. 93-234, title II, § 202, Dec. 31, 1973, 87 Stat. 982; Pub. L. 94-50, title III, § 303, July 2, 1975, 89 Stat. 256; Pub. L. 94-198, Dec. 31, 1975, 89 Stat. 1116; Pub. L. 94-375, § 14(a), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 95-128, title VII, § 703(a), Oct. 12, 1977, 91 Stat. 1144; Pub. L. 98-181, title IV, § 451(e)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181 substituted "Director" for "Secretary".

§ 4107. Consultation with local officials; scope

[See main edition for text]

(Pub. L. 93-234, title II, § 206, Dec. 31, 1973, 87 Stat. 983; Pub. L. 98-181, title IV, § 451(e)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 4121. Definitions

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1370, Aug. 1, 1968, 82 Stat. 588; Pub. L. 91-152, title IV, § 409(b), Dec. 24, 1969, 83 Stat. 397; Pub. L. 93-234, title I, §§ 107, 108(b), Dec. 31, 1973, 87 Stat. 979, 980; Pub. L. 98-181, title IV, § 451(d)(1), (8), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-181, § 451(d)(1), substituted "Director" for "Secretary".

Subsec. (a)(6). Pub. L. 98-181, § 451(d)(8), substituted definition of "Director" as the Director of the Federal Emergency Management Agency for definition of "Secretary" as the Secretary of Housing and Urban Development.

Subsecs. (b), (c). Pub. L. 98-181, § 451(d)(1), substituted "Director" for "Secretary".

§ 4122. Studies of other natural disasters; cooperation and consultation with other departments and agencies

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1371, Aug. 1, 1968, 82 Stat. 588; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

STUDY OF SINKHOLE INSURANCE

Section 453 of Pub. L. 98-181 provided that: "The Director of the Federal Emergency Management Agency may make a grant to a nonprofit organization, educational institution or affiliated agency or entity, or State or local agency to finance a study of the feasibility of expanding the national flood insurance program to cover damage or loss arising from sinkholes. There is authorized to be appropriated not to exceed $1,000,000 to carry out the provisions of this section."

§ 4123. Advance payments

[See main edition for text]

(Pub. L. 90-448, title XIII, § 1372, Aug. 1, 1968, 82 Stat. 589; Pub. L. 98-181, title IV, § 451(d)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary".

§ 4124. Applicability of fiscal controls

The provisions of chapter 91 of title 31 shall apply to the program authorized under this chapter to the same extent as they apply to wholly owned Government corporations.

(As amended Pub. L. 98-479, title II, § 203(j)(3), Oct. 17, 1984, 98 Stat. 2231.)

AMENDMENTS

1984—Pub. L. 98-479 substituted "chapter 91 of title 31" for "the Government Corporation Control Act".

§ 4127. Authorization of appropriations; availability

[See main edition for text of (a) *and* (b)*]*

(c) There are authorized to be appropriated for studies under this chapter not to exceed $100,000,000 for the fiscal year 1977, not to exceed $108,000,000 for the fiscal year 1978, not to exceed $114,000,000 for the fiscal year 1979, not to exceed $74,000,000 for the fiscal year 1980, not to exceed $61,600,000 for the fiscal year 1981, not to exceed $42,600,000 for the fiscal year 1982, not to exceed $49,752,000 for the fiscal year 1984, and such sums as may be necessary for fiscal year 1985.

(As amended Pub. L. 98-181, title IV, § 451(c), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-181 added "not to exceed $49,752,000 for the fiscal year 1984, and such sums as may be necessary for fiscal year 1985".

§ 4128. Rules and regulations

[*See main edition for text*]

(Pub. L. 93-234, title II, § 205, Dec. 31, 1973, 87 Stat. 983; Pub. L. 98-181, title IV, § 451(e)(1), Nov. 30, 1983, 97 Stat. 1229.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

CHAPTER 51—DESIGN AND CONSTRUCTION OF PUBLIC BUILDINGS TO ACCOMMODATE THE PHYSICALLY HANDICAPPED

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3027, 6022, 6042, 6705 of this title; title 20 sections 351a, 1132a, 1406; title 29 sections 721, 776, 792, 796d; title 39 section 410.

CHAPTER 55—NATIONAL ENVIRONMENTAL POLICY

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

Sec.
4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control.
  (a) Technical assistance to environmental agencies.
  (b) Pre-award certifications.
  (c) Prior appropriation Acts.
4370a. Assistant Administrators of Environmental Protection Agency; appointment; duties.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4374, 5175, 5304, 6508, 7364, 7616, 8302, 8775, 10133, 10134, 10161, 10196 of this title; title 10 section 2391; title 15 sections 719f, 719h, 793; title 16 sections 410hh, 460ii-4, 460qq, 470h-2, 590h, 839d, 1434, 1536, 1602, 1604, 2705, 3164, 3232, 3233, 3636; title 21 section 343; title 23 sections 103, 117; title 25 section 640d-26; title 30 sections 185, 1292; title 33 sections 59c-2, 59k, 59n, 59*o*, 1293a, 1344, 1371, 1505; title 43 sections 421h, 1351, 1577, 1597, 1638, 1652, 1866, 1904, 2006; title 45 sections 917, 1010, 1207, 1212; title 49 App. sections 1604, 2208.

§ 4321. Congressional declaration of purpose

REORGANIZATION PLAN NO. 3 OF 1970

Eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, as amended Pub. L. 98-80, § 2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

ENVIRONMENTAL PROTECTION AGENCY

SECTION 1. ESTABLISHMENT OF AGENCY

[*See main edition for text of* (a)]

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate. [As amended Pub. L. 98-80, § 2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486.]

[*See main edition for text of Secs. 2 to 7*]

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control

(a) Technical assistance to environmental agencies

Notwithstanding any other provision of law relating to Federal grants and cooperative agreements, the Administrator of the Environmental Protection Agency is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations designated by the Secretary of Labor under title V of the Older Americans Act of 1965 [42 U.S.C. 3056 et seq.] to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Administrator (and consistent with such provisions of law) in providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control. Funding for such grants or agreements may be made available from such programs or through title V of the Older Americans Act of 1965 and title IV of the Job Training Partnership Act [29 U.S.C. 1671 et seq.].

(b) Pre-award certifications

Prior to awarding any grant or agreement under subsection (a) of this section, the applicable Federal, State, or local environmental agency shall certify to the Administrator that such grants or agreements will not—

(1) result in the displacement of individuals currently employed by the environmental agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the environmental agency concerned; or

(3) affect existing contracts for services.

(c) Prior appropriation Acts

Grants or agreements awarded under this section shall be subject to prior appropriation Acts.

(Pub. L. 98-313, § 2, June 12, 1984, 98 Stat. 235.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (a), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended. Title V of the Older Americans Act of 1965, known as the "Older Americans Community Services Employment Act", is classified generally to subchapter IX (§ 3056 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Job Training Partnership Act, referred to in subsec. (a), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended. Title IV of the Job Training Partnership Act is classified generally to subchapter IV (§ 1671 et seq.) of chapter 19 of Title 29, Labor. For complete classification of the Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

Codification

Section was enacted as part of the Environmental Programs Assistance Act of 1984, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Short Title

Section 1 of Pub. L. 98-313 provided that: "This Act [enacting this section] may be cited as the 'Environmental Programs Assistance Act of 1984'."

§ 4370a. Assistant Administrators of Environmental Protection Agency; appointment; duties

(a) The President, by and with the advice and consent of the Senate, may appoint three Assistant Administrators of the Environmental Protection Agency in addition to—

(1) the five Assistant Administrators provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 (5 U.S.C. Appendix);

(2) the Assistant Administrator provided by section 2625(g) of title 15; and

(3) the Assistant Administrator provided by section 6911a of this title.

(b) Each Assistant Administrator appointed under subsection (a) of this section shall perform such duties as the Administrator of the Environmental Protection Agency may prescribe.

(Pub. L. 98-80, § 1, Aug. 23, 1983, 97 Stat. 485.)

References in Text

Reorganization Plan Numbered 3 of 1970, referred to in subsec. (a)(1), is set out under section 4321 of this title.

Codification

Section was not enacted as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHAPTER 56—ENVIRONMENTAL QUALITY IMPROVEMENT

Sec.
4375. Office of Environmental Quality Management Fund.
  (a) Establishment; financing of study contracts and Federal interagency environmental projects.
  (b) Study contract or project initiative.
  (c) Regulations.

§ 4374. Authorization of appropriations

There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91-190:

[See main edition for text of (a) to (c)]

(d) $480,000 for each of the fiscal years ending September 30, 1985 and September 30, 1986.

(As amended Pub. L. 98-581, § 1, Oct. 30, 1984, 98 Stat. 3093.)

Amendments

1984—Cl. (d). Pub. L. 98-581 added cl. (d).

§ 4375. Office of Environmental Quality Management Fund

(a) Establishment; financing of study contracts and Federal interagency environmental projects

There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance—

(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

(2) Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Study contract or project initiative

Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) Regulations

The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

(Pub. L. 91-224, title II, § 206, as added Pub. L. 98-581, § 2, Oct. 30, 1984, 98 Stat. 3093.)

CHAPTER 59—NATIONAL URBAN POLICY AND NEW COMMUNITY DEVELOPMENT

Part B—Development of New Communities

Sec.
4511 to 4524. Repealed.
4526 to 4532. Repealed.

Chapter Referred to in Other Sections

This chapter is referred to in sections 1439, 5307 of this title; title 12 section 1701g-5b.

Part A—Development of a National Urban Policy

§ 4502. Congressional findings and declaration of policy

[See main edition for text of (a) to (c)]

(d) The Congress further declares that the national urban policy should—

[See main edition for text of (1) to (7)]

(8) facilitate increased coordination in the administration of Federal programs so as to encourage desirable patterns of urban development and redevelopment, encourage the

prudent use of energy and other natural resources, and protect the physical environment.

(As amended Pub. L. 98-479, title II, § 204(i), Oct. 17, 1984, 98 Stat. 2233.)

AMENDMENTS

1984—Subsec. (d)(8). Pub. L. 98-479 struck out "of" before "the physical environment".

PART B—DEVELOPMENT OF NEW COMMUNITIES

§§ 4511 to 4524. Repealed. Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

The new communities program was liquidated and its assets and liabilities transferred pursuant to sections 1701g-5a and 1701g-5b of Title 12, Banks and Banking.

Section 4511, Pub. L. 91-609, title VII, § 710, Dec. 31, 1970, 84 Stat. 1793, set out the Congressional findings and purpose in setting up the program for the development of new communities.

Section 4512, Pub. L. 91-609, title VII, § 711, Dec. 31, 1970, 84 Stat. 1795; Pub. L. 93-383, title VIII, § 803(a)(1), (e), Aug. 22, 1974, 88 Stat. 725, defined the terms used in this part.

Section 4513, Pub. L. 91-609, title VII, § 712, Dec. 31, 1970, 84 Stat. 1796, set out the conditions under which a new community development program qualified for assistance under this part.

Section 4514, Pub. L. 91-609, title VII, § 713, Dec. 31, 1970, 84 Stat. 1796; Pub. L. 93-117, § 12, Oct. 2, 1973, 87 Stat. 423; Pub. L. 93-383, title VIII, § 803(a)(1), (c), Aug. 22, 1974, 88 Stat. 725, authorized the guarantee of bonds, notes, debentures, and other obligations in connection with approved new community developments.

Section 4515, Pub. L. 91-609, title VII, § 714, Dec. 31, 1970, 84 Stat. 1797; Pub. L. 93-383, title VIII, § 803(a)(1), Aug. 22, 1974, 88 Stat. 725, authorized the making of loans by the Secretary in connection with new community developments.

Section 4516, Pub. L. 91-609, title VII, § 715, Dec. 31, 1970, 84 Stat. 1798; Pub. L. 93-383, title VIII, § 803(a)(1), Aug. 22, 1974, 88 Stat. 725, provided for public service grants and authorized appropriations therefor.

Section 4517, Pub. L. 91-609, title VII, § 716, Dec. 31, 1970, 84 Stat. 1798, set limitations on guarantees and loans.

Section 4518, Pub. L. 91-609, title VII, § 717, Dec. 31, 1970, 84 Stat. 1798; Pub. L. 97-35, title III, § 339F, Aug. 13, 1981, 95 Stat. 418, created a revolving fund for use in connection with the new communities development program.

Section 4519, Pub. L. 91-609, title VII, § 718, Dec. 31, 1970, 84 Stat. 1799; Pub. L. 92-213, § 7, Dec. 22, 1971, 85 Stat. 776; Pub. L. 93-383, title VIII, § 803(d), Aug. 22, 1974, 88 Stat. 725, provided for supplementary grants for carrying out new community assistance projects.

Section 4520, Pub. L. 91-609, title VII, § 719, Dec. 31, 1970, 84 Stat. 1800, authorized the Secretary to provide technical assistance to private and public bodies in carrying out new community development programs.

Section 4521, Pub. L. 91-609, title VII, § 720, Dec. 31, 1970, 84 Stat. 1800; Pub. L. 94-375, § 19, Aug. 3, 1976, 90 Stat. 1077; Pub. L. 95-128, title II, § 208, Oct. 12, 1977, 91 Stat. 1130; Pub. L. 95-406, § 4, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, § 306, Oct. 31, 1978, 92 Stat. 2097, provided for financial assistance for planning new community development programs.

Section 4522, Pub. L. 91-609, title VII, § 721, Dec. 31, 1970, 84 Stat. 1801, authorized establishment and collection of fees and charges for the guarantees and other assistance provided in the new communities development program.

Section 4523, Pub. L. 91-609, title VII, § 722, Dec. 31, 1970, 84 Stat. 1801, directed the Secretary to develop methods of encouraging the involvement of small builders in the new communities development program.

Section 4524, Pub. L. 91-609, title VII, § 723, Dec. 31, 1970, 84 Stat. 1801, provided authority for new communities demonstration projects.

SAVINGS PROVISION

Section 474(e) of Pub. L. 98-181 provided in part that: "Section 717 of title VII [42 U.S.C. 4518] shall remain in effect until completion of the transfer required in title I of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984 [12 U.S.C. 1701g-5a]."

Any actions taken, prior to repeal, under the authority of sections 4511 to 4524 and 4528 to 4532 of this title to continue to be valid, with nothing in the repeal impairing the validity of any guarantees which have been made pursuant to this chapter and with such guarantees continuing to be governed by the provisions of this chapter, as it existed immediately before Nov. 30, 1983, see section 474(e) of Pub. L. 98-181, set out in part as a note under section 3901 of this title.

§ 4527. General powers of Secretary

REFERENCES IN TEXT

Subsection (c) of section 1749a of title 12, referred to in par. (1), was amended by Pub. L. 98-479, title II, § 201(d)(1), Oct. 17, 1984, 98 Stat. 2228, which repealed par. (2) of subsec. (c) and redesignated pars. (3) to (5) as (2) to (4), respectively.

Section 4520 of this title, referred to in par. (1), was repealed by Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239.

§§ 4528 to 4532. Repealed. Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

Section 4528, Pub. L. 91-609, title VII, § 727(a), Dec. 31, 1970, 84 Stat. 1802, provided for termination of new community development projects under chapter 48 (§ 3901 et seq.) of this title and transition provisions for projects under this part.

Section 4529, Pub. L. 91-609, title VII, § 727(f), Dec. 31, 1970, 84 Stat. 1803, provided for the application of Federal labor standards for laborers and mechanics employed by contractors and subcontractors in the new communities development program.

Section 4530, Pub. L. 91-609, title VII, § 727(g), Dec. 31, 1970, 84 Stat. 1803, directed that the interest paid on obligations issued by State land development agencies be included as gross income for purposes of chapter 1 of title 26.

Section 4531, Pub. L. 91-609, title VII, § 728, Dec. 31, 1970, 84 Stat. 1803, authorized the use of funds under the new communities development program jointly with funds available under other Federal assistance programs.

Section 4532, Pub. L. 91-609, title VII, § 729, Dec. 31, 1970, 84 Stat. 1804; Pub. L. 93-383, title VIII, § 803(a), (b), Aug. 22, 1974, 88 Stat. 725, provided for the establishment and operation of the New Community Development Corporation within the Department of Housing and Urban Development.

CHAPTER 60—COMPREHENSIVE ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION PROGRAM

SUBCHAPTER I—NATIONAL INSTITUTE ON, AND INTERAGENCY COMMITTEE ON FEDERAL ACTIVITIES FOR, ALCOHOL ABUSE AND ALCOHOLISM; REPORTS AND RECOMMENDATIONS

Sec.
4551 to 4553. Repealed or Transferred.

SUBCHAPTER II—ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION PROGRAMS FOR GOVERNMENT AND OTHER EMPLOYEES

4561. Transferred.

SUBCHAPTER III—TECHNICAL ASSISTANCE AND FEDERAL GRANTS AND CONTRACTS

PART A—TECHNICAL ASSISTANCE

4571 to 4574. Repealed or Transferred.

PART C—ADMISSION TO HOSPITALS AND OUTPATIENT FACILITIES; CONFIDENTIALITY OF RECORDS

4581, 4582. Transferred.

SUBCHAPTER IV—RESEARCH

4585 to 4588. Repealed or Transferred.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 217a-1, 300m, 4542 of this title; title 38 section 4134.

§ 4541. Congressional findings and declaration of purpose

NATIONAL COMMISSION ON ALCOHOLISM AND OTHER ALCOHOL-RELATED PROBLEMS; ESTABLISHMENT; EXECUTIVE SECRETARY; INTERIM AND FINAL REPORTS OF STUDY; TERMINATION; AUTHORIZATION OF APPROPRIATIONS

Section 18 of Pub. L. 96-180 as amended by Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979; Pub. L. 98-24, § 5(a)(2), Apr. 26, 1983, 97 Stat. 183, 93 Stat. 695, provided that:

[*See main edition for text of* (*a*)]

"(b) The Commission shall conduct a study of alcoholism and alcohol-related problems and shall include in the study—

[*See main edition for text of* (*1*) *to* (*9*)]

"(10) an evaluation of the needs of special and underserved population groups, including American Indians, Alaskan Natives, Native Hawaiians, Native American Pacific Islanders, youth, the elderly, women, and the handicapped and assess the adequacy of existing services to fulfill such needs.

[*See main edition for text of* (*c*) *to* (*e*)]

SUBCHAPTER I—NATIONAL INSTITUTE ON, AND INTERAGENCY COMMITTEE ON FEDERAL ACTIVITIES FOR, ALCOHOL ABUSE AND ALCOHOLISM; REPORTS AND RECOMMENDATIONS

§ 4551. Transferred

CODIFICATION

Section, Pub. L. 91-616, title I, § 101, Dec. 31, 1970, 84 Stat. 1848; Pub. L. 93-282, title II, § 203(a), May 14, 1974, 88 Stat. 135; Pub. L. 96-180, § 3, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97-35, title IX, § 966(a), Aug. 13, 1981, 95 Stat. 595, which established the National Institute on Alcohol Abuse and Alcoholism, was redesignated section 502 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(3), Apr. 26, 1983, 97 Stat. 177, and is classified to section 290aa-1 of this title.

§§ 4552, 4553. Repealed. Pub. L. 98-24, § 2(c)(1), Apr. 26, 1983, 97 Stat. 182

Section 4552, Pub. L. 91-616, title I, § 102, Dec. 31, 1970, 84 Stat. 1848; Pub. L. 93-282, title II, § 203(b)(1), (2)(A), May 14, 1974, 88 Stat. 136; Pub. L. 96-180, § 4, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97-35, title IX, § 966(b), Aug. 13, 1981, 95 Stat. 595, required reports and recommendations by the Secretary to the Congress and to the President on programs of alcohol abuse and alcoholism. See section 290aa-4 of this title.

Section 4553, Pub. L. 91-616, title I, § 103, as added Pub. L. 93-282, title I, § 131, May 14, 1974, 88 Stat. 133, and amended Pub. L. 96-180, § 5, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97-35, title IX, § 966(c), Aug. 13, 1981, 95 Stat. 595, established the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism.

SUBCHAPTER II—ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION PROGRAMS FOR GOVERNMENT AND OTHER EMPLOYEES

§ 4561. Transferred

CODIFICATION

Section, Pub. L. 91-616, title II, § 201, Dec. 31, 1970, 84 Stat. 1849; Pub. L. 96-180, § 6(a), (b)(1), Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97-35, title IX, §§ 961, 966(d), (e), Aug. 13, 1981, 95 Stat. 592, 595, which provided for programs of alcohol abuse and alcoholism prevention for government and other employees, was redesignated section 521 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd-1 of this title.

SUBCHAPTER III—TECHNICAL ASSISTANCE AND FEDERAL GRANTS AND CONTRACTS

PART A—TECHNICAL ASSISTANCE

§ 4571. Transferred

CODIFICATION

Section, Pub. L. 91-616, title III, § 301, Dec. 31, 1970, 84 Stat. 1849; Pub. L. 92-554, Oct. 25, 1972, 86 Stat. 1167; Pub. L. 93-282, title I, § 105(a), May 14, 1974, 88 Stat. 127; Pub. L. 94-371, § 3(a), July 26, 1976, 90 Stat. 1035; Pub. L. 96-180, § 7, Jan. 2, 1980, 93 Stat. 1303; Pub. L. 97-35, title IX, § 962(a), Aug. 13, 1981, 95 Stat. 592, which provided for a program of technical assistance to States, was redesignated section 520 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd of this title.

PART B—IMPLEMENTATION AND PROJECT GRANTS AND CONTRACTS

§ 4577. Grants and contracts for the demonstration of new and more effective drug and alcohol abuse prevention, treatment, and rehabilitation programs

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Application, coordination of applications in State, evaluation of projects and programs; review and recommendation by Council; criteria for approval; special consideration for underserved populations; authorization from chief executive officer required; maximum amount and duration of grants; applicant to provide proposed performance standards; drug abuse programs included

[*See main edition for text of* (*1*) *to* (*3*)]

(4) The Secretary shall encourage the submission of and give special consideration to applications under this section for programs and projects aimed at underserved populations such as racial and ethnic minorities, Native Americans (including Native Hawaiians and Native American Pacific Islanders), youth, the elderly, women, handicapped individuals, public inebriates, and families of alcoholics.

[*See main edition for text of* (5) *to* (7)]

(As amended Pub. L. 98-24, § 5(a)(1), Apr. 26, 1983, 97 Stat. 183.)

AMENDMENTS

1983—Subsec. (c)(4). Pub. L. 98-24 added parenthetical reference to Native Hawaiians and Native American Pacific Islanders.

§ 4578. Authorizations of appropriations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x-1a, 300x-4 of this title.

PART C—ADMISSION TO HOSPITALS AND OUTPATIENT FACILITIES; CONFIDENTIALITY OF RECORDS

§§ 4581, 4582. Transferred

CODIFICATION

Section 4581, Pub. L. 91-616, title III, § 321, Dec. 31, 1970, 84 Stat. 1852; Pub. L. 93-282, title I, § 121(a), May 14, 1974, 88 Stat. 130; Pub. L. 94-371, § 11(a), (b), July 26, 1976, 90 Stat. 1041; Pub. L. 94-581, title I, § 111(c)(1), Oct. 21, 1976, 90 Stat. 2852, which provided for the admission of alcohol abusers and alcoholics to general hospitals and outpatient facilities, was redesignated section 522 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd-2 of this title.

Section 4582, Pub. L. 91-616, title III, § 333, Dec. 31, 1970, 84 Stat. 1853; Pub. L. 93-282, title I, § 122(a), May 14, 1974, 88 Stat. 131; Pub. L. 94-581, title I, § 111(c)(4), Oct. 21, 1976, 90 Stat. 2852, which provided for the confidentiality of patient records, was redesignated section 523 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd-3 of this title.

SUBCHAPTER IV—RESEARCH

§ 4585. Transferred

CODIFICATION

Section, Pub. L. 91-616, title V, § 501, as added Pub. L. 94-371, § 7, July 26, 1976, 90 Stat. 1038, and amended Pub. L. 95-622, title II, § 268(c), (d), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96-180, § 14, Jan. 2, 1980, 93 Stat. 1305, which directed the Secretary to take certain steps to encourage research, was redesignated section 510 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(9), Apr. 26, 1983, 97 Stat. 179, and is classified to section 290bb of this title.

A prior section 501 of Pub. L. 91-616, title V, Dec. 31, 1970, 84 Stat. 1854, was renumbered 601 by section 7 of Pub. L. 94-371, and is classified to section 4591 of this title.

§ 4586. Repealed. Pub. L. 98-24, § 2(c)(1), Apr. 26, 1983, 97 Stat. 182

Section, Pub. L. 91-616, title V, § 502, as added Pub. L. 94-371, § 7, July 26, 1976, 90 Stat. 1039, provided for scientific peer review of grants and contracts. See section 290aa-5 of this title.

A prior section 502 of Pub. L. 91-616, title V, Dec. 31, 1970, 84 Stat. 1854, was renumbered 602 by section 7 of Pub. L. 94-371, and is classified to section 4592 of this title.

§§ 4587, 4588. Transferred

CODIFICATION

Section 4587, Pub. L. 91-616, title V, § 503, formerly § 504, as added Pub. L. 94-371, § 7, July 26, 1976, 90 Stat. 1039, and amended Pub. L. 95-622, title I, § 110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96-180, § 16, Jan. 2, 1980, 93 Stat. 1305; renumbered and amended Pub. L. 97-35, title IX, § 965(b), (c), Aug. 13, 1981, 95 Stat. 594, which provided for the designation of National Alcohol Research Centers, was redesignated section 511 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(9), Apr. 26, 1983, 97 Stat. 179, and is classified to section 290bb-1 of this title.

A prior section 4587, Pub. L. 91-616, title V, § 503, as added Pub. L. 94-371, § 7, July 26, 1976, 90 Stat. 1039, and amended Pub. L. 96-180, § 15, Jan. 2, 1980, 93 Stat. 1305, which related to authorization of appropriations, was renumbered section 504 of Pub. L. 91-616, and was classified to section 4588 of this title.

A prior section 503 of Pub. L. 91-616, title V, Dec. 31, 1970, 34 Stat. 1855, was renumbered 603 by section 7 of Pub. L. 94-371, and is classified to section 4593 of this title.

Section 4588, Pub. L. 91-616, title V, § 504, formerly § 503, as added Pub. L. 94-371, § 7, July 26, 1976, 90 Stat. 1039, and amended Pub. L. 96-180, § 15, Jan. 2, 1980, 93 Stat. 1305; renumbered and amended Pub. L. 97-35, title IX, § 965(a), (c), Aug. 13, 1981, 95 Stat. 594; Pub. L. 97-414, § 9(e), Jan. 4, 1983, 96 Stat. 2064, which authorized appropriations for carrying out research on alcohol abuse and alcoholism, was redesignated section 512 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(9), Apr. 26, 1983, 97 Stat. 179, and is classified to section 290bb-2 of this title.

A prior section 4588, Pub. L. 91-616, title V, § 504, as added Pub. L. 94-371, § 7, July 26, 1976, 90 Stat. 1039, and amended Pub. L. 95-622, title I, § 110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96-180, § 16, Jan. 2, 1980, 93 Stat. 1305, relating to National Alcohol Research Centers, was redesignated as section 503 of Pub. L. 91-616 and was classified to section 4587 of this title.

CHAPTER 61—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

SUBCHAPTER II—UNIFORM RELOCATION ASSISTANCE

§ 4633. Regulations and procedures

IMPROVEMENT OF ADMINISTRATION AND IMPLEMENTATION OF THIS CHAPTER

Memorandum of the President dated February 27, 1985, 50 F.R. 8953, provided:

The purpose of this Memorandum is to improve administration and implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.].

Specifically, I hereby direct the following actions:

1. The Presidential Memorandum of September 6, 1973 on this subject is superseded.

2. As with other Administration management improvement initiatives, a lead agency, the Department of Transportation (DOT), is designated to coordinate and monitor implementation of the Act, and consult periodically with State and local governments and other organizations and interest groups affected by administration of the Act.

3. DOT, jointly with the Department of Housing and Urban Development, shall interact with the principal executive departments and agencies affected by the Act in developing Administration policy.

4. Within 90 days of the date of this Memorandum, all affected executive departments and agencies shall propose common regulations under the Act. Within one year of the date of this Memorandum, such departments and agencies shall issue common regulations under the Act. Such regulations shall be consistent with the model policy promulgated by DOT, in consultation and coordination with other affected agencies, and published in final form in the Federal Register simultaneously with this Memorandum.

5. DOT shall report annually to the President's Council on Management Improvement, through the Office of Management and Budget, on implementation of the Act.

CHAPTER 65—NOISE CONTROL

§ 4917. Motor carrier noise emission standards

[*See main edition for text of* (*a*) *to* (*c*)]

(d) "Motor carrier" defined

For purposes of this section, the term "motor carrier" includes a common carrier by motor vehicle, a contract carrier by motor vehicle, and a private carrier of property by motor vehicle as those terms are defined by section 10102 of title 49.

[*See main edition for credits*]

CODIFICATION

In subsecs. (b) and (d), "subtitle IV of title 49" and "section 10102 of title 49" was substituted for "the Interstate Commerce Act [49 U.S.C. 1 et seq.]" and "paragraphs (14), (15), and (17) of section 203(a) of the Interstate Commerce Act (49 U.S.C. 303(a))", respectively, on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

CHAPTER 66—DOMESTIC VOLUNTEER SERVICES

SUBCHAPTER II—NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS

PART D—GENERAL PROVISIONS

Sec.
5024. Use of locally generated contributions.

SUBCHAPTER IV—ADMINISTRATION AND COORDINATION

5045. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 6022 of this title; title 20 sections 1077, 1078, 1087dd.

SUBCHAPTER I—NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 294d, 5041, 5044, 5055, 5061 of this title.

PART A—VOLUNTEERS IN SERVICE TO AMERICA

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 4972, 4992, 5055, 5081 of this title; title 5 section 8332.

§ 4951. Congressional statement of purpose

This part provides for the Volunteers in Service to America (VISTA) program of full-time volunteer service, together with appropriate powers and responsibilities designed to assist in the development and coordination of such program. The purpose of this part is to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition the objective of this part is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes set forth in this section.

(As amended Pub. L. 98-288, § 2, May 21, 1984, 98 Stat. 189.)

AMENDMENTS

1984—Pub. L. 98-288, in second sentence, added "and alleviate" after "eliminate", struck out "human, social, and environmental" after "poverty-related", added ", all geographical areas," after "all walks of life" and "low-income individuals," before "elderly", and added at end thereof, "In addition the objective of this part is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes set forth in this section."

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-288 provided: "That this Act [enacting section 5024 of this title, amending sections 4951 to 4956, 4958, 4971, 4972, 4974, 4991 to 4993, 5001, 5011, 5013, 5041 to 5044, 5047, 5052, 5056 to 5060, 5081, 5082, 5084, 9902, and 9912 of this title, repealing section 5045 of this title, and enacting provisions set out as notes under sections 5042 and 5045 of this title] may be cited as the 'Domestic Volunteer Service Act Amendments of 1984'."

§ 4952. Authority to operate VISTA program

(a) General authority of Director

The Director may recruit, select, and train persons to serve in full-time volunteer programs consistent with the provisions and to carry out the purpose of this part.

(b) Replacement of applicants who become unavailable for service

If any applicant under this part who is recruited locally becomes unavailable for service prior to the commencement of service, the recipient of the project grant or contract may replace such applicant with another qualified applicant approved by the Director.

(c) Age quota

The Director shall ensure that not less than 20 per centum of all volunteers under this part are fifty-five years of age or older.

(As amended Pub. L. 98-288, § 3, May 21, 1984, 98 Stat. 189.)

Amendments

1984—Subsec. (a). Pub. L. 98-288 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

§ 4953. Assignment of volunteers

(a) Programs or projects for Indians, migratory and seasonal farmworkers and their families, residents of certain areas, mentally ill, developmentally disabled, and other handicapped individuals, and persons eligible for assistance under this chapter or for economic opportunity assistance

The Director, upon request of Federal, State, or local agencies, or private nonprofit organizations, may assign such volunteers to work in the several States in the local communities in which the volunteers were recruited in appropriate projects and programs, including work—

[*See main edition for text of* (*1*)]

(2) in the care and rehabilitation of mentally ill, developmentally disabled, and other handicapped individuals, especially those with severe handicaps;

(3) in addressing the problems of the homeless, the jobless, the hungry, illiterate or functionally illiterate youth and other individuals, and low-income youths;

(4) in addressing the special needs connected with alcohol and drug abuse prevention, education, and related activities, consistent with the purpose of this part; and

(5) in connection with programs or activities authorized, supported, or of a character eligible for assistance under this chapter or the Community Service Block Grant Act [42 U.S.C. 9901 et seq.], titles VIII and X of the Economic Opportunity Act of 1964 [42 U.S.C. 2991 et seq., 2996 et seq.], the Headstart Act [42 U.S.C. 9831 et seq.], or the Community Economic Development Act of 1981 [42 U.S.C. 9801 et seq.], in furtherance of the purpose of this subchapter.

(b) Home community services of teams of low-income community volunteers and nationally recruited volunteers

The Director, wherever feasible and appropriate, shall assign low-income community volunteers to serve in their home communities in teams with nationally recruited specialist volunteers. The Director shall make efforts to assign volunteers to serve in their home communities or in nearby communities and shall make national efforts to attract other volunteers to serve in the VISTA program.

(c) Provision of plans to volunteers for job advancement; coordination with private industry councils under Job Training Partnership Act

The Director shall provide each low-income community volunteer with an individual plan for job advancement or for transition to a situation leading to gainful employment. Whenever feasible, such efforts shall be coordinated with an appropriate private industry council under the Job Training Partnership Act [29 U.S.C. 1501 et seq.].

(d) Educational and vocational counseling for volunteers; Director to provide

The Director may provide or arrange for educational and vocational counseling of volunteers and recent former volunteers under this part to (1) encourage them to use, in the national interest, the skills and experience which they have derived from their training and service, particularly working in combating poverty as members of the helping professions, and (2) promote the development of appropriate opportunities for the use of such skills and experience, and the placement therein of such volunteers.

(e) Terms and conditions; restrictions on political activities; place of service

Except as provided in subsection (d) of this section, the assignment of volunteers under this section shall be on such terms and conditions (including restrictions on political activities that appropriately recognize the special status of volunteers living among the persons or groups served by programs to which they have been assigned) as the Director may determine, including work assignments in their own or nearby communities.

(f) Program or project submittal to Governor; commencement and termination of service

Volunteers under this part shall not be assigned to work in a program or project in any community unless the application for such program or project contains evidence of local support and has been submitted to the Governor or other chief executive officer of the State concerned, and such Governor or other chief executive officer has not, within 45 days of the date of such submission, notified the Director in writing, supported by a statement of reasons, that such Governor or other chief executive officer disapproves such program or project. In the event of a timely request in writing, supported by a statement of reasons, by the Governor or other chief executive officer of the State concerned, the Director shall terminate a program or project or the assignment of a volunteer to a program or project not later than 30 days after the date such request is received by the Director, or at such later date as is agreed upon by the Director and such Governor or other chief executive officer.

(As amended Pub. L. 98-288, § 4(a)-(c)(1), (d), May 21, 1984, 98 Stat. 189, 190.)

References in Text

The Community Service Block Grant Act, referred to in subsec. (a)(5), probably means the Community Services Block Grant Act, which is subtitle B of title VI of Pub. L. 97-35, §§ 671 to 683, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§ 9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (a)(5), is Pub. L. 88-452, Aug. 20, 1964, 78

Stat. 508, as amended. Titles VIII and X of the Act are classified generally to subchapters VIII (§ 2991 et seq.) and X (§ 2996 et seq.), respectively, of chapter 34 of this title. For complete classification of this Act to the Code, see Tables.

The Headstart Act, referred to in subsec. (a)(5), is subchapter B, §§ 635 to 657, of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Community Economic Development Act of 1981, referred to in subsec. (a)(5), is subchapter A, §§ 611 to 633, of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 489, as amended, which is classified generally to subchapter I (§ 9801 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Job Training Partnership Act, referred to in subsec. (c), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified principally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-288, § 4(a)(1), added "in the local communities in which the volunteers were recruited" and added ", including work" in provisions before par. (1).

Subsec. (a)(2). Pub. L. 98-288, § 4(a)(2), substituted a semicolon for ", under the supervision of nonprofit institutions or facilities, and".

Subsec. (a)(3), (4). Pub. L. 98-288, § 4(a)(4), added pars. (3) and (4). Former par. (3) redesignated (5).

Subsec. (a)(5). Pub. L. 98-288, § 4(a)(3), (4), redesignated par. (3) as (5), and substituted therein "the Community Service Block Grant Act, titles VIII and X of the Economic Opportunity Act of 1964, the Headstart Act, or the Community Economic Development Act of 1981," for "the Economic Opportunity Act of 1964, as amended".

Subsec. (b). Pub. L. 98-288, § 4(b), substituted "The Director shall make efforts to assign volunteers to serve in their home communities or in nearby communities and shall make national efforts to attract other volunteers to serve in the VISTA program" for "Not later than 30 days after the assignment of any such community volunteer, the Director shall insure that each such volunteer is provided an individual plan designed to provide an opportunity for job advancement or for transition to a situation leading to gainful employment. One hundred and twenty days prior to the completion of such community volunteer's term of service, the Director shall insure that such plan is updated and reviewed with the volunteer. The Director shall offer to provide each volunteer enrolled for a period of full-time service of not less than one year under this subchapter, and, upon the request of such volunteer, provide such volunteer with an individual and updated plan as described in the preceding two sentences".

Subsecs. (c), (d). Pub. L. 98-288, § 4(c)(1)(B), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated subsecs. (e) and (f), respectively.

Subsec. (e). Pub. L. 98-288, § 4(c)(1)(A), redesignated subsec. (c) as (e).

Subsec. (f). Pub. L. 98-288, § 4(c)(1)(A), (d), redesignated subsec. (d) as (f), and substituted therein "work in a program or project in any community unless the application for such program or project contains evidence of local support and" for "duties or work in a program or project in any State unless such program or project".

§ 4954. Terms and periods of service

(a) Personal commitment; scope of commitment

Volunteers serving under this part shall be required to make a full-time personal commitment to combating poverty and poverty-related problems. To the maximum extent practicable, the requirement for full-time commitment shall include a commitment to live among and at the economic level of the people served, and to remain available for service without regard to regular working hours, at all times during their periods of service, except for authorized periods of leave.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-288, § 5, May 21, 1984, 98 Stat. 190.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-288 struck out "human, social, and environmental" in first sentence after "poverty-related", and substituted "the requirement for full-time commitment" for "this" in second sentence.

§ 4955. Support services

[*See main edition for text of* (*a*)]

(b) Description of allowances and support services

The Director shall also provide volunteers such living, travel (including travel to and from places of training), and leave allowances, and such housing, supplies, equipment, subsistence, clothing, health and dental care, transportation, supervision, pre-service training and where appropriate in-service training, technical assistance, and such other support as he deems necessary and appropriate to carry out the purpose and provisions of this part, and shall insure that each such volunteer has available such allowances and support as will enable the volunteer to carry out the purpose and provisions of this part and to effectively perform the work to which such volunteer is assigned.

(As amended Pub. L. 98-288, § 6, May 21, 1984, 98 Stat. 191.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-288 added "pre-service training and where appropriate in-service training,".

§ 4956. Participation of program beneficiaries

To the maximum extent practicable, the people of the communities to be served by volunteers under this subchapter shall participate in planning, developing, and implementing programs thereunder, and the Director, after consultation with sponsoring agencies (including volunteers assigned to them) and the people served by such agencies, shall establish in regulations, a continuing mechanism for the meaningful participation of such program beneficiaries.

(As amended Pub. L. 98-288, § 7, May 21, 1984, 98 Stat. 191.)

AMENDMENTS

1984—Pub. L. 98-288 substituted "establish in regulations" for "take all necessary steps to establish, in regulations he shall prescribe".

§ 4958. Limitation on funds appropriated for grants and contracts for direct cost of supporting volunteers in programs or projects

(a) Of funds appropriated for the purpose of this part under section 5081 of this title, not more than 16 per centum for the fiscal year ending September 30, 1984, and for each fiscal year thereafter, may be obligated for the direct cost of supporting volunteers in programs or projects carried out pursuant to grants and contracts made under section 5042(12) of this title.

(b) No funds shall be obligated under this part pursuant to grants or contracts made after December 13, 1979, for new projects for the direct cost of supporting volunteers unless the recipient of each such grant or contract has been selected through a competitive process which includes—

[*See main edition for text of* (*1*)]

(2) a requirement that each applicant for any such grant or contract identify, with sufficient particularity to assure that the assignments of volunteers under such grants and contracts will carry out the purpose of this part, the particular poverty or poverty-related problems on which the grant or contract will focus, and any such grant or contract shall specifically so identify such problems.

(As amended Pub. L. 98-288, § 8, May 21, 1984, 98 Stat. 191.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-288, § 8(1), (2), substituted "1984" for "1977", and struck out "During the fiscal year ending September 30, 1980—(1) in no event may in excess of $5,800,000 be used pursuant to grants and contracts under this part for the direct cost of supporting such volunteers; and (2) funds obligated pursuant to such grants and contracts for such cost may be used to support no greater number of years of volunteer service than the number of such years supported during the fiscal year ending September 30, 1979, pursuant to grants and contracts for such cost."

Subsec. (b)(2). Pub. L. 98-288, § 8(3), struck out "human, social, or environmental" after "poverty-related".

PART B—SERVICE-LEARNING PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5055, 5081 of this title; title 5 section 8332.

§ 4971. Congressional statement of purpose

The purpose of this part is to assist students, through service-learning programs, to undertake volunteer service in such a way as to enhance the educational value of the service experience, through participation in activities that strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems. This part provides for the University Year for ACTION (UYA) program of full-time volunteer service by students enrolled in institutions of higher education, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. The purpose of this part is to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems by enabling students at such cooperating institutions to perform meaningful and constructive volunteer service in connection with the satisfaction of such students' course work during their periods of service while attending such institutions, in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. Its purpose further is to provide technical assistance and training to encourage other students and faculty to engage in volunteer service on a part-time, self-supporting basis, to meet the needs of the poor in the surrounding community through expansion of service-learning programs and otherwise.

(As amended Pub. L. 98-288, § 9, May 21, 1984, 98 Stat. 191.)

AMENDMENTS

1984—Pub. L. 98-288 added "The purpose of this part is to assist students, through service-learning programs, to undertake volunteer service in such a way as to enhance the educational value of the service experience, through participation in activities that strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems." and substituted "provide technical assistance and training to encourage other students and faculty to engage in volunteer service on a part-time, self-supporting basis, to meet the needs of the poor in the surrounding community through expansion of service-learning programs and otherwise" for "encourage other students and faculty members to engage, on a part-time, self-supporting basis, in such volunteer service and work along with volunteers serving under this part; and to promote participation by such institutions in meeting the needs of the poor in the surrounding community through expansion of service-learning programs and otherwise. Its purpose further is to provide for a program of part-time or short-term service—learning by secondary and post-secondary school students to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4974 of this title.

§ 4972. Authority to operate University Year for ACTION program; institutional benefits affecting stipend for volunteers

Except as otherwise provided in this part, the Director is authorized to conduct or make grants and contracts for, or both, programs to carry out the purposes of this part in accordance with the authorities and subject to the restrictions in the provisions of part A of this subchapter, except for the provisions of sections 4953(f) and 4954(d) of this title, and except that the Director may, in accordance with regulations he shall prescribe, determine to reduce or eliminate the stipend for volunteers serving under this part on the basis of the value of benefits provided such volunteers by the institution in question (including the reduction or waiver of tuition).

(As amended Pub. L. 98-288, § 30(b)(1), May 21, 1984, 98 Stat. 197.)

AMENDMENTS

1984—Pub. L. 98-288 substituted "4953(f)" for "4953(d)".

§ 4974. Special service-learning programs

(a) Authority of Director to grant and contract

The Director is authorized to make grants and contracts for technical assistance, training, and projects which encourage and enable students in secondary, secondary vocational, and postsecondary schools to participate in service-learning programs on an in-school or out-of-school basis in assignments of a character and on such terms and conditions as are described in subsections (a) and (e) of section 4953 of this title. Any project assisted under this part shall meet the anti-poverty criteria of section 4971 of this title and contain an educational and service component.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98-288, § 10, May 21, 1984, 98 Stat. 191.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-288 in amending subsec. (a) generally, substituted "(e)" for "(c)", "technical assistance, training and projects" for "projects and programs" and added "Any project assisted under this part shall meet the anti-poverty criteria of section 4971 of this title and contain an educational and service component."

PART C—SPECIAL VOLUNTEER PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 4957, 5055, 5081 of this title; title 5 section 8332.

§ 4991. Congressional statement of purpose

This part provides for special emphasis and demonstration volunteer programs, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. The purpose of this part is to strengthen and supplement efforts to meet a broad range of needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs. It is the further purpose of this part to provide technical and financial assistance to encourage voluntary organizations and volunteer efforts at the national, State, and local level.

(As amended Pub. L. 98-288, § 11, May 21, 1984, 98 Stat. 191.)

AMENDMENTS

1984—Pub. L. 98-288 struck out "human, social, and environmental" after "broad range of", and added "It is the further purpose of this part to provide technical and financial assistance to encourage voluntary organizations and volunteer efforts at the national, State, and local level."

§ 4992. Authority to establish and operate special volunteer programs or demonstration programs

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Allowances, supports, services, and stipends for part-time and full-time volunteers

[*See main edition for text of* (*1*)]

(2) The Director, in accordance with regulations which the Director shall prescribe with respect to volunteers enrolled for periods of full-time service of not less than one year under this part—

[*See main edition for text of* (*A*)]

(B) to the extent that the terms and conditions of the service of such volunteers are of similar character to the terms and conditions of the service of volunteers enrolled under part A of this subchapter, shall apply to the service of such volunteers enrolled under this part the provisions of sections 4953(b) relating to low-income community volunteers, 4953(f), 4954(d), and 4955(a) of this title to the extent such provisions are applied to the service of volunteers enrolled under such part A.

(d) Establishment of criteria for grants and contracts; competitive process; multiple grants or contracts

(1) In carrying out programs authorized by this part, the Director shall establish criteria to make grants and enter into contracts, in each fiscal year, on the basis of merit and the equitable geographic distribution of programs.

(2) No grant or contract exceeding $50,000 shall be made under this part unless the grantee or contractor has been selected by a competitive process which includes public announcement of the availability of funds for such grant or contract, general criteria for the selection of recipients or contractors, and a description of the application process and application review process.

(3) Multiple grants or contracts to the same grantee or contractor within any one year to support activities having the same general purpose shall be deemed to be a single grant for the purpose of this subsection, but multiple grants or contracts to the same grantee or contractor to support clearly distinct activities shall be considered separate grants or contracts.

(As amended Pub. L. 98-288, §§ 12, 30(b)(2), May 21, 1984, 98 Stat. 192, 197.)

REFERENCES IN TEXT

Section 6012 of this title, referred to in subsec. (a)(2), was omitted in the general revision of chapter 75 (§ 6000 et seq.) of this title by Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662. See section 6042 of this title.

AMENDMENTS

1984—Subsec. (c)(2)(B). Pub. L. 98-288, § 30(b)(2), substituted "4953(f)" for "4953(d)".

Subsec. (d). Pub. L. 98-288, § 12, added subsec. (d).

§ 4993. Technical and financial assistance to Federal agencies, etc., for improvement of volunteer programs; purposes and methods of assistance

The Director may provide technical and financial assistance to Federal agencies, State and local governments and agencies, and private nonprofit organizations, which utilize or desire to utilize volunteers in connection with carrying out the purpose of this part. Such assistance may be used to facilitate and improve (1) methods of recruiting, training, or utilizing volunteers, (2) technical assistance and training programs, including the creation or expansion of private capabilities where possible and the development of voluntary organizations, with particular emphasis on low-income, minority, and community-based groups, or (3) the administration of volunteer programs. In providing such technical and financial assistance, the Director shall utilize, to the maximum extent feasible, existing programs, and shall seek to avoid duplication of existing programs in the public or private sectors.

(As amended Pub. L. 98-288, § 13, May 21, 1984, 98 Stat. 192.)

AMENDMENTS

1984—Pub. L. 98-288 substituted "(2) technical assistance and training programs, including the creation or expansion of private capabilities where possible and the development of voluntary organizations, with particular emphasis on low-income, minority, and community-based groups, or (3)" for "or (2)".

SUBCHAPTER II—NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3013, 5041, 5058, 5061, 5081 of this title.

PART A—RETIRED SENIOR VOLUNTEER PROGRAM

§ 5001. Grants and contracts for volunteer service projects

(a) Approval of programs; rules and regulations

In order to help retired persons to avail themselves of opportunities for volunteer service in their community, the Director is authorized to make grants to State agencies (established or designated pursuant to section 3025(a)(1) of this title) or grants to or contracts with other public and nonprofit private agencies and organizations to pay part or all of the costs for the development or operation, or both, of volunteer service programs under this section, if the Director determines, in accordance with regulations the Director shall prescribe, that—

[See main edition for text of (1) to (4)]

(b) Proportion of required local contribution; exceptions

In no event shall the required proportion of the local contribution (including in-kind contributions) for a grant or contract made under this section be more than 10 per centum in the first year of assistance under this section, 20 per centum in the second such year, and 30 per centum in any subsequent such years: *Provided, however,* That the Director may make exceptions in cases of demonstrated need, determined (in accordance with regulations which the Director shall prescribe) on the basis of the financial capability of a particular recipient of assistance under this section, to permit a lesser local contribution proportion than any required contribution proportion established by the Director in generally applicable regulations.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 98-288, § 14(a), (b), May 21, 1984, 98 Stat. 192.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-288, § 14(a), substituted "the Director" for "he" in two places in provisions before par. (1).

Subsec. (b). Pub. L. 98-288, § 14(b), substituted "and 30 per centum in any subsequent such years" for "30 per centum in the third such year, 40 per centum in the fourth such year, and 50 per centum in any subsequent such years".

PART B—FOSTER GRANDPARENT PROGRAM

§ 5011. Grants and contracts for individual service projects

(a) Foster Grandparent projects; amount

The Director is authorized to make grants to or contracts with public and nonprofit private agencies and organizations to pay part or all of the cost of development and operation of projects (including direct payments to individuals serving under this part) designed for the purpose of providing opportunities for low-income persons aged sixty or over to provide supportive person-to-person services in health, education, welfare, and related settings to children having exceptional needs, including services by individuals serving as "foster grandparents" to children receiving care in hospitals, homes for dependent and neglected children, or other establishments providing care for children with special needs. The Director may approve assistance in excess of 90 per centum of the costs of the development and operation of such projects only if the Director determines, in accordance with regulations the Director shall prescribe establishing objective criteria, that such action is required in furtherance of the purpose of this section. Provision for such assistance shall be effective as of September 19, 1972. In the case of any project with respect to which, prior to such date, a grant or contract has been made under section 3044b(a) [1] of this title or with respect to any project under the Foster Grandparent program in effect prior to September 17, 1969, contributions in cash or in kind from the Bureau of Indian Affairs, Department of the Interior, toward the cost of the project may be counted as part of the cost thereof which is met from non-Federal sources.

(b) Person-to-person services to children in an individual service project by public or private nonprofit agency; authority and criteria for determinations; mutual agreements between parties

[See main edition for text of (1)]

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[1] See References in Text note below.

(2) In the event that such an agency or organization determines that it is in the best interests of a mentally retarded child receiving, and of a particular foster grandparent providing, services in such a project, such relationship may be continued after the child reaches the chronological age of 21: *Provided*, That such child was receiving such services prior to attaining the chronological age of 21. If the particular foster grandparent subject to the determination under this paragraph becomes unavailable to serve after such determination is made, the agency or organization may select another foster grandparent.

[*See main edition for text of (3); (c)*]

(d) Domestic Volunteer Service; allowances, stipends, and other support

The Director, in accordance with regulations the Director shall prescribe, may provide to persons serving as volunteers under this part, such allowances, stipends, and other support as the Director determines are necessary to carry out the purpose of this part. Any stipend or allowance provided under this subsection shall not be less than $2.20 per hour, except that (1) no increase in the stipend or allowance shall be made pursuant to this sentence unless the funds appropriated for carrying out this part are sufficient to maintain for the fiscal year in question a number of participants to serve under this part at least equal to the number of such participants serving during the preceding fiscal year, and (2) in the event that sufficient appropriations for any fiscal year are not available to increase any such stipend or allowance provided to $2.20 per hour, the Director shall increase the stipend or allowance to such amount as appropriations for such year permit consistent with clause (1) of this exception.

(e) "Low-income person" and "person of low income" defined

For purposes of this part, the terms "low-income person" and "person of low income" mean—

(1) any person whose income is not more than 125 per centum of the poverty line defined in section 9902(2) of this title and adjusted by the Director in the manner described in such section; and

(2) any person whose income is not more than 100 per centum of such poverty line, as so adjusted and determined by the Director after taking into consideration existing poverty guidelines as appropriate to local situations.

Persons described in paragraph (2) shall be given special consideration for participation in projects under this part.

(As amended Pub. L. 98–288, § 14(c), May 21, 1984, 98 Stat. 192.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–288, § 14(c)(1), substituted "the Director" for "he" in two places.

Subsec. (b)(2). Pub. L. 98–288, § 14(c)(2), added "If the particular foster grandparent subject to the determination under this paragraph becomes unavailable to serve after such determination is made, the agency or organization may select another foster grandparent."

Subsec. (d). Pub. L. 98–288, § 14(c)(3), substituted "the Director" for "he" in two places and "$2.20" for "$2" in two places.

Subsec. (e). Pub. L. 98–288, § 14(c)(4), in amending subsec. (e) generally, substituted "poverty line defined in section 9902(2) of this title and adjusted by the Director in the manner described in such section" for "poverty line set forth in section 2971d of this title" and "any person whose income is not more than 100 per centum of such poverty line, as so adjusted and determined by the Director after taking into consideration existing poverty guidelines as appropriate to local situations" for "any person considered a poor or low-income person under section 5061(4) of this title".

PART C—SENIOR COMPANIONS PROGRAM

§ 5013. Grants and contracts

(a) Costs of project development and operation

The Director is authorized to make grants to or contracts with public and nonprofit private agencies and organizations to pay part or all of the cost of development and operation of projects (including direct payments to individuals serving under this part in the same manner as provided in section 5011(a) of this title) designed for the purpose of providing opportunities for low-income persons aged 60 or over to serve as "senior companions" to persons with exceptional needs. Senior companions may provide services designed to help older persons requiring long-term care, including services to persons receiving home health care, nursing care, home-delivered meals or other nutrition services; services designed to help persons deinstitutionalized from mental hospitals, nursing homes, and other institutions; and services designed to assist persons having developmental disabilities and other special needs for companionship.

(b) Application of other laws

The provisions of section 5011(d) of this title and section 5011(e) of this title and such other provisions of part B as the Director determines to be necessary shall apply to the provisions of this part.

(c) Senior companion projects to assist homebound elderly

(1) The Director is authorized to make grants or contracts for senior companion projects to assist homebound elderly to remain in their own homes and to enable institutionalized elderly to return to home care settings.

(2)(A) The Director is authorized to recruit, subject to subparagraph (B), senior companion volunteer trainers who on the basis of experience (such as, doctors, nurses, home economists, social workers) will be used to train senior companion volunteers to participate in and monitor initial and continuing needs assessments and appropriate in-home services for senior companion volunteer recipients. The needs assessments and in-home services shall be coordinated with and supplement existing community based home health and long-term care systems. The Director may also use senior companion volunteer leaders, who on the basis of experience as volunteers, special skills, and demonstrated leadership abilities may spend time in the program (in addition to their regular assignment) to assist newer senior companion volunteers in performing their assignments and in coordinating activities of such volunteers.

(B) Senior companion volunteer trainers recruited under subparagraph (A) of this paragraph shall not be paid stipends.

(3) The Director shall conduct an evaluation of the impact of the projects assisted under this subsection based upon a sample survey of projects so assisted. In the third year of such study, the Director shall prepare and submit a report to the Congress. Such evaluation study shall include information on—

(A) the extent to which costs of providing long-term care are reduced by using senior companion volunteers who receive stipends in the provision of long-term care services;

(B) the effectiveness of the provision of long-term care with the use of volunteers;

(C) the extent to which health care needs and health related costs of the senior companion volunteers themselves are affected because of their involvement in the project;

(D) the extent of coordination with other Federal and State efforts aimed at enabling older individuals to receive care in their own homes; and

(E) the effectiveness of using senior companion volunteer leaders and of involving senior companion volunteers based on the training of the volunteer leaders and volunteers.

(As amended Pub. L. 98-288, § 15, May 21, 1984, 98 Stat. 193.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-288 added subsec. (c).

PART D—GENERAL PROVISIONS

§ 5024. Use of locally generated contributions

Whenever locally generated contributions made to volunteer programs for older Americans under this subchapter are in excess of the amount required by the Director, the Director may not restrict the manner in which such contributions are expended if expenditures from locally generated contributions are not inconsistent with the provisions of this chapter.

(Pub. L. 93-113, title II, § 224, as added Pub. L. 98-288, § 16(a), May 21, 1984, 98 Stat. 194.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 396, as amended, known as the Domestic Volunteer Service Act of 1973, which enacted this chapter, amended section 3067 of this title and section 8332 of Title 5, Government Organization and Employees, repealed sections 2991, 2992 to 2992b, 2993 to 2993b, 2994 to 2994d, and 3044 to 3044e of this title, and enacted provisions set out as notes under sections 4951 and 5041 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4951 of this title and Tables.

SUBCHAPTER IV—ADMINISTRATION AND COORDINATION

§ 5041. ACTION Agency; establishment; officials of ACTION Agency: Director, Deputy Director, Associate Director and Deputy Associate Directors for Domestic and Anti-Poverty Operations, and Assistant Directors; appointment, compensation, and functions

There is hereby established in the executive branch of the Government an agency to be known as the ACTION Agency in order to provide a focal point for volunteerism at the national, State, and local level. Such Agency shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5. There shall also be in such agency a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5. The Deputy Director shall perform such functions as the Director shall from time to time prescribe, and shall act as Director of the ACTION Agency during the absence or disability of the Director. There shall also be in such agency one Associate Director who shall be appointed by the President with the advice and consent of the Senate, and shall be compensated at the rate provided for level 5 [1] of the Executive Schedule under section 5316 of title 5. Such Associate Director shall be designated "Associate Director for Domestic and Anti-Poverty Operations" and shall carry out operational responsibility for all programs authorized under this chapter. There shall also be in such agency two Assistant Directors, each of whom shall be appointed by the Director, and who shall report directly to the Associate Director for Domestic and Anti-Poverty Operations. One such Assistant Director shall be primarily responsible for VISTA and other antipoverty programs under subchapter I of this chapter, and one such Assistant Director shall be primarily responsible for the Older American Volunteer Programs under subchapter II of this chapter.

(As amended Pub. L. 98-288, § 17, May 21, 1984, 98 Stat. 194.)

AMENDMENTS

1984—Pub. L. 98-288 added "in order to provide a focal point for volunteerism at the national, State, and local level" before the period at the end of the first sentence and substituted "There shall also be in such agency one Associate Director who shall be appointed by the President with the advice and consent of the Senate, and shall be compensated at the rate provided for level 5 of the Executive Schedule under section 5316 of title 5. Such Associate Director shall be designated 'Associate Director for Domestic and Anti-Poverty Operations' and shall carry out operational responsibility for all programs authorized under this chapter. There shall also be in such agency two Assistant Directors, each of whom shall be appointed by the Director, and who shall report directly to the Associate Director for Domestic and Anti-Poverty Operations. One such Assistant Director shall be primarily responsible for VISTA and other antipoverty programs under subchapter I of this chapter, and one such Assistant Director shall be primarily responsible for the Older American Volunteer Programs under subchapter II of this chapter" for "There shall also be in such agency one Associate Director who shall be appointed by the President by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5. Such Associate Director shall be designated 'Associate Director for Domestic and Anti-Poverty Operations' and shall carry out operational responsibility for all programs authorized under this chapter. There shall also be in such agency no more than two Assistant Directors appointed by the President by and with the advice and consent of the Senate, who shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5. Each such Assistant Director shall perform such staff and support functions for such Associate Directors as the Director shall from time to time prescribe. There shall also be in such agency one Deputy Associate Director, under the Associate Director for Domestic and Anti-Poverty Operations, primarily responsible for Programs carried out under parts A and B of subchapter I of this chapter and one Deputy Associate Director, under the Associate Director for Domestic and Anti-Poverty Operations, primarily responsible for programs carried out under subchapter II of this chapter, each of whom shall be appointed by the Director."

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[1] So in original. Probably should be "V".

§ 5042. Authority of Director

In addition to the authority conferred upon him by other sections of this chapter, the Director is authorized to—

(1) Appointment and compensation of personnel

appoint in accordance with the Civil Service laws such personnel as may be necessary to enable the ACTION Agency to carry out its functions, and, except as otherwise provided herein, fix the compensation of such personnel in accordance with chapter 51 of title 5 except that the number of schedule C employees, individuals employed on a temporary basis at GS-8 or higher, experts, and consultants shall at no time exceed 8.5 per centum of the total number of individuals employed by the ACTION Agency;

[*See main edition for text of* (*2*) *to* (*12*)]

(13) Specific necessary or appropriate functions

establish such policies, standards, criteria, and procedures, prescribe such rules and regulations, enter into such contracts and agreements with public agencies and private organizations and persons, and make such payments (in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants otherwise authorized under this chapter, with necessary adjustments on account of overpayments and underpayments) as are necessary or appropriate to carry out the provisions of this chapter; and

(14) Other necessary or appropriate functions

generally perform such functions and take such steps, consistent with the purposes and provisions of this chapter, as he deems necessary or appropriate to carry out the provisions of this chapter.

(15) Redesignated (14)

(As amended Pub. L. 98-288, §§ 4(c)(2), 18(a), May 21, 1984, 98 Stat. 190, 194.)

REFERENCES IN TEXT

GS-8, referred to in par. (1), is a reference to GS-8 of the General Schedule, which is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1984—Par. (1). Pub. L. 98-288, § 18(a), added "except that the number of schedule C employees, individuals employed on a temporary basis at GS-8 or higher, experts, and consultants shall at no time exceed 8.5 per cenum of the total number of individuals employed by the ACTION Agency".

Pars. (13) to (15). Pub. L. 98-288, § 4(c)(2), redesignated pars. (14) and (15) as (13) and (14), respectively, and struck out former par. (13) which read: "provide or arrange for educational and vocational counseling of volunteers and recent former volunteers under this chapter to (A) encourage them to use in the national interest the skills and experience which they have derived from their training and service, particularly working in combating poverty as members of the helping professions, and (B) promote the development, and the placement therein of such volunteers, of appropriate opportunities for the use of such skills and experience;".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 18(b) of Pub. L. 98-288 provided: "The amendment made by subsection (a) [amending this section] shall take effect one year after the date of the enactment of this Act [May 21, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4958, 5044 of this title.

§ 5044. Special limitations

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Delegation of functions; compensation: conversion requirement; Peace Corps exceptions

Notwithstanding any other provision of law, the Director shall assign or delegate any substantial responsibility for carrying out programs under this chapter only to persons appointed or employed pursuant to clauses (1) and (2) of section 5042 of this title, and persons assigned or delegated such substantial responsibilities on October 1, 1973, and who are receiving compensation in accordance with provisions of law other than the applicable provisions of title 5 on such date shall, by operation of law on such date, be assigned a grade level pursuant to such latter provisions so as to fix the compensation of such persons under such authority at no less than their compensation rate on the day preceding such date.

[*See main edition for text of* (*g*)]

(As amended Pub. L. 98-288, § 19, May 21, 1984, 98 Stat. 195.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-288 struck out "and except as provided in the second sentence of this subsection" after "Notwithstanding any other provision of law" and struck out "The Director may personally make exceptions to the requirements set forth in the first sentence of this subsection for persons he finds will be assigned to carrying out functions under the Peace Corps Act (22 U.S.C. 2501 et seq.) within six months after October 1, 1973."

§ 5045. Repealed. Pub. L. 98-288, § 20(a), May 21, 1984, 98 Stat. 195

Section, Pub. L. 93-113, title IV, § 405, Oct. 1, 1973, 87 Stat. 409; Pub. L. 94-293, § 5(a), May 27, 1976, 90 Stat. 526; Pub. L. 96-470, title I, § 113, Oct. 19, 1980, 94 Stat. 2240; Pub. L. 96-533, title VI, § 602(b), Dec. 16, 1980, 94 Stat. 3156, provided for a National Voluntary Service Advisory Council.

EFFECTIVE DATE OF REPEAL

Section 20(a) of Pub. L. 98-288 provided in part that the repeal of this section is effective Jan. 1, 1986.

§ 5047. Report to President for transmittal to Congress

Not later than one hundred and twenty days after the end of each fiscal year, the Director shall prepare and submit to the President for transmittal by the President to the Congress a full and complete report on the activities of the ACTION Agency during such year. Such report shall reflect the findings and actions taken as a result of any evaluation conducted pursuant to section 5056 of this title.

(As amended Pub. L. 98-288, § 21, May 21, 1984, 98 Stat. 195.)

AMENDMENTS

1984—Pub. L. 98-288 added "Such report shall reflect the findings and actions taken as a result of any evaluation conducted pursuant to section 5056 of this title."

§ 5052. Suspension and termination of financial assistance; procedures; notice and hearing; emergency situations; refunding applications

(a) The Director is authorized, in accordance with the provisions of this section, to suspend further payments or to terminate payments under any contract or grant providing assistance under this chapter, whenever he determines there is a material failure to comply with the applicable terms and conditions of any such grant or contract. The Director shall prescribe procedures to insure that—

(1) assistance under this chapter shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) an application for refunding under this chapter may not be denied unless the recipient has been given (A) notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial, and (B) opportunity to show cause why such action should not be taken;

(3) in any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant or contract award, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and the Agency; and

(4) assistance under this chapter shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) In order to assure equal access to all recipients, such hearings or other meetings as may be necessary to fulfill the requirements of this section shall be held at locations convenient to the recipient agency.

(As amended Pub. L. 98-288, § 22, May 21, 1984, 98 Stat. 195.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-288, § 22(1), designated existing provisions as subsec. (a).

Subsec. (a)(1). Pub. L. 98-288, § 22(2), substituted a semicolon for "nor shall an application for refunding under this chapter be denied, unless the recipient has been given reasonable notice and opportunity to show why such action should not be taken; and".

Subsec. (a)(2) to (4). Pub. L. 98-288, § 22(3), (4), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (b). Pub. L. 98-288, § 22(5), added subsec. (b).

§ 5054. Distribution of benefits between rural and urban areas

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5056 of this title.

§ 5056. Evaluation of programs and projects

(a) General objectives; persons conducting the evaluation

The Director shall biennially measure and evaluate the impact of all programs authorized by this chapter, their effectiveness in achieving stated goals in general, and in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services. Evaluations shall be conducted by persons not immediately involved in the administration of the program or any project of such program being evaluated. Such evaluation shall also measure and evaluate compliance with the equitable distribution requirement of section 5054 of this title.

[*See main edition for text of* (b) *to* (*f*)]

(As amended Pub. L. 98-288, § 23, May 21, 1984, 98 Stat. 195.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-288 substituted "biennially" for "periodically" in first sentence, and substituted "or any project of such program being evaluated. Such evaluation shall also measure and evaluate compliance with the equitable distribution requirement of section 5054 of this title" for "or project evaluated".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5047 of this title.

§ 5057. Nondiscrimination

[*See main edition for text of* (a) *and* (b)]

(c)(1) The Director shall apply the nondiscrimination policies and authorities set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), in title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.), and in the Age Discrimination Act of 1975 (Public Law 94-135, title III; 42 U.S.C. 6101 et seq.) to applicants for enrollment for service as volunteers, and to volunteers serving, under this chapter. Any remedies available to individuals under such laws, other than the right of appeal to the Civil Service Commission authorized by section 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e-16], and transferred to the Equal Employment Opportunity Commission by Reorganization Plan Number 1 of 1978, shall be available to such applicants or volunteers.

[*See main edition for text of* (*2*)]

(As amended Pub. L. 98-288, § 30(a), May 21, 1984, 98 Stat. 197.)

Amendments

1984—Subsec. (c)(1). Pub. L. 98-288 struck out "and the Peace Corps Act (22 U.S.C. 2501 et seq.)" after "under this chapter".

§ 5058. Eligibility for other benefits

Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to subchapter II of this chapter shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, temporary disability, retirement, public assistance, workers' compensation, or similar benefit payments, or minimum wage laws. This section shall become effective with respect to all payments made after October 1, 1973.

(As amended Pub. L. 98-288, § 24, May 21, 1984, 98 Stat. 196.)

Amendments

1984—Pub. L. 98-288 added "workers' compensation," after "public assistance,".

§ 5059. Legal expenses

Notwithstanding any other provision of law and pursuant to regulations which the Director shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings to which full-time volunteers (or part-time volunteers when such proceeding arises directly out of the performance of activities pursuant to this chapter) serving under this chapter have been made parties.

(As amended Pub. L. 98-288, § 25, May 21, 1984, 98 Stat. 196.)

Amendments

1984—Pub. L. 98-288 struck out "or section 637(b)(1) of title 15" after "pursuant to this chapter".

§ 5060. Requirements for prescribing regulations

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Publication in Federal Register; effective date; opportunity to comment

(1) No proposed regulation prescribed pursuant to this chapter for the administration of any program carried out under this chapter may take effect until 30 calendar days after it is published in the Federal Register.

(2) During the 30-day period before the date upon which such regulation is to be effective, the Director shall, in accordance with the provisions of section 553 of title 5, offer any interested party an opportunity to make comment upon, and take exception to, such regulation and shall reconsider any such regulation upon which comment is made or to which exception is taken.

(d) Transmission of copy of regulation to Congress

Concurrently with the publication in the Federal Register of any final regulation, a copy of such final regulation shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. No such final regulation may take effect until 45 calendar days after such transmission.

[*See main edition for text of* (*e*)]

(As amended Pub. L. 98-288, § 26, May 21, 1984, 98 Stat. 196.)

Amendments

1984—Subsec. (c)(1). Pub. L. 98-288, § 26(1), substituted "No" for "Except as provided in paragraph (2)(B) of this subsection, no".

Subsec. (c)(2). Pub. L. 98-288, § 26(2), (3), struck out "(A)" after "(2)", and struck out subpar. (B) which read as follows: "If the Director determines that the 30-day requirement in paragraph (1) of this subsection would cause undue delay in the implementation of a regulation, thereby causing substantial hardship for the intended beneficiaries of any program carried out under this chapter, the Director may waive the application of such requirement and shall immediately submit a notice of such determination and waiver, including a statement of the reasons therefor, to the Committees."

Subsec. (d). Pub. L. 98-288, § 26(4), substituted "No" for "Except as is provided in the following sentence, no", and struck out "If the Director determines that such 45-day requirement would cause undue delay in the implementation of the regulation, thereby causing substantial hardship for the intended beneficiaries of any program carried out under this chapter, the Director may waive the application of such requirement and shall promptly submit a notice of such determination and waiver, including a statement of the reasons therefor, to the Committees."

SUBCHAPTER V—AUTHORIZATION OF APPROPRIATIONS

§ 5081. National Volunteer Antipoverty Programs

(a) There is authorized to be appropriated to carry out part A of subchapter I of this chapter $17,000,000 for fiscal year 1984, $20,000,000 for fiscal year 1985, and $25,000,000 for fiscal year 1986.

(b) There is authorized to be appropriated to carry out part B of subchapter I of this chapter $1,800,000 for the fiscal year 1984 and for each of the fiscal years 1985 and 1986.

(c) There is authorized to be appropriated to carry out part C of subchapter I of this chapter $1,984,000 for the fiscal year 1984 and for each of the fiscal years 1985 and 1986.

(d)(1) Of the amounts appropriated under this section for parts A, B, and C of subchapter I of this chapter, there shall first be available for part A of subchapter I of this chapter an amount not less than the amount necessary to provide—

(A) 2,000 years of volunteer service in fiscal year 1984;

(B) 2,200 years of volunteer service in fiscal year 1985; and

(C) 2,400 years of volunteer service in fiscal year 1986.

(2) For purposes of paragraph (1), the term "volunteer service" shall include training and other support required under this chapter for purposes of part A of subchapter I of this chapter.

(3) The requirement of paragraph (1)(A) shall not apply unless there is appropriated for subchapter I of this chapter for fiscal year 1984 an amount in addition to amounts available under Public Law 98-151.

(e) No part of the funds authorized under subsection (a) may be used to provide volunteers or assistance to any program or project authorized under part B or C of subchapter I of this chapter, or under subchapter II of this chapter, unless the program or project meets the antipoverty criteria of part A of subchapter I of this chapter.

(As amended Pub. L. 98-288, § 27(a), May 21, 1984, 98 Stat. 196.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(2), was in the original "this Act", meaning Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 396, as amended, known as the Domestic Volunteer Service Act of 1973, which enacted this chapter, amended section 3067 of this title and section 8332 of Title 5, Government Organization and Employees, repealed sections 2991, 2992 to 2992b, 2993 to 2993b, 2994 to 2994d, and 3044 to 3044e of this title, and enacted provisions set out as notes under sections 4951 and 5041 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4951 of this title and Tables.

Public Law 98-151, referred to in subsec. (d)(3), is Pub. L. 98-151, Nov. 14, 1983, 97 Stat. 964, which made further continuing appropriations for fiscal year 1984. For complete classification of Pub. L. 98-151 to the Code, see Tables.

AMENDMENTS

1984—Pub. L. 98-288 designated existing provisions as subsec. (a) and in subsec. (a) as so designated substituted "There is authorized to be appropriated to carry out part A of subchapter I of this chapter $17,000,000 for fiscal year 1984, $20,000,000 for fiscal year 1985, and $25,000,000 for fiscal year 1986" for "There is authorized to be appropriated to carry out subchapter I of this chapter $25,763,000 for fiscal year 1982 and $15,391,000 for fiscal year 1983. Of the amounts appropriated under this section, not less than $16,000,000 shall first be available for carrying out part A of subchapter I of this chapter for fiscal year 1982, and not less than $8,000,000 shall first be available for carrying out part A of subchapter I of this chapter for fiscal year 1983", and added subsecs. (b) to (e).

§ 5082. National Older Americans Volunteer Programs

(a) There is authorized to be appropriated $30,412,000 for fiscal year 1983, $29,700,000 for fiscal year 1984, $30,400,000 for fiscal year 1985, and $31,100,000 for fiscal year 1986 for the purpose of carrying out programs under part A of subchapter II of this chapter.

(b) There is authorized to be appropriated $52,650,000 for fiscal year 1983, $54,300,000 for fiscal year 1984, $56,700,000 for fiscal year 1985, and $58,700,000 for fiscal year 1986 for the purpose of carrying out programs under part B of subchapter II of this chapter.

(c) There is authorized to be appropriated $17,607,000 for fiscal year 1983, $27,800,000 for fiscal year 1984, $28,200,000 for fiscal year 1985, and $28,600,000 for fiscal year 1986 for the purpose of carrying out part C of subchapter II of this chapter.

(As amended Pub. L. 98-288, § 28, May 21, 1984, 98 Stat. 197.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-288, § 28(a), struck out "$28,691,000 for fiscal year 1982 and" after "to be appropriated", and added "$29,700,000 for fiscal year 1984, $30,400,000 for fiscal year 1985, and $31,100,000 for fiscal year 1986".

Subsec. (b). Pub. L. 98-288, § 28(b), struck out "$49,670,000 for fiscal year 1982 and" after "to be appropriated", and added "$54,300,000 for fiscal year 1984, $56,700,000 for fiscal year 1985, and $58,700,000 for fiscal year 1986".

Subsec. (c). Pub. L. 98-288, § 28(c), struck out "$16,610,000 for fiscal year 1982 and" after "to be appropriated", and added "$27,800,000 for fiscal year 1984, $28,200,000 for fiscal year 1985, and $28,600,000 for fiscal year 1986".

§ 5084. Administration and coordination

There is authorized to be appropriated for the administration of this chapter, as authorized in subchapter IV of this chapter, $25,800,000 for fiscal year 1984, $27,000,000 for fiscal year 1985, and $28,000,000 for fiscal year 1986.

(As amended Pub. L. 98-288, § 29, May 21, 1984, 98 Stat. 197.)

AMENDMENTS

1984—Pub. L. 98-288 substituted "$25,800,000 for fiscal year 1984, $27,000,000 for fiscal year 1985, and $28,000,000 for fiscal year 1986" for "$30,091,000 for fiscal year 1982 and $29,348,000 for fiscal year 1983".

CHAPTER 67—CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION REFORM

SUBCHAPTER I—CHILD ABUSE PREVENTION AND TREATMENT

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5102. Definitions.

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SUBCHAPTER I—CHILD ABUSE PREVENTION AND TREATMENT

§ 5101. National Center on Child Abuse and Neglect

(a) Establishment

The Secretary of Health and Human Services (hereinafter referred to in this subchapter as the "Secretary") shall establish an office to be known as the National Center on Child Abuse and Neglect (hereinafter referred to in this subchapter as the "Center").

(b) Functions

The Secretary, through the Center, shall—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) Study

study and investigate the national incidence of child abuse and neglect and make findings about any relationship between nonpayment of child support and between various other factors and child abuse and neglect, and the extent to which incidents of child abuse and neglect are increasing in number and severity, and, within two years after October 9, 1984, submit such findings to the appropriate Committees of the Congress together with such recommendations for administrative and legislative changes as are appropriate; and

(7) Reports

in consultation with the Advisory Board on Child Abuse and Neglect, annually prepare reports on efforts during the preceding two-year period to bring about coordination of the goals, objectives, and activities of agencies and organizations which have responsibilities for programs and activities related to child abuse and neglect, and, not later than March 1, 1985, and March 1 of each second year thereafter, submit such a report to the appropriate Committees of the Congress.

The Secretary shall establish research priorities for making grants or contracts under clause (5) of this subsection and, not less than sixty days before establishing such priorities, shall publish in the Federal Register for public comment a statement of such proposed priorities.

(c) Grant and contract authority

The functions of the Secretary under subsection (b) of this section may be carried out either directly or by way of grant or contract. Grants may be made under subsection (b)(5) of this section for periods of not more than three years. Any such grant shall be reviewed at least annually by the Secretary, utilizing peer review mechanisms to assure the quality and progress of research conducted under such grant.

[*See main edition for text of* (*d*)]

(e) Use of funds

No funds appropriated under this subchapter for any grant or contract may be used for any purpose other than that for which such funds were specifically authorized.

(Pub. L. 93-247, § 2, Jan. 31, 1974, 88 Stat. 4; Pub. L. 93-644, § 8(d)(1), Jan. 4, 1975, 88 Stat. 2310; Pub. L. 95-266, title I, § 101, Apr. 24, 1978, 92 Stat. 205; Pub. L. 98-457, title I, § 101, Oct. 9, 1984, 98 Stat. 1749.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-457, § 101(a), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (b)(6). Pub. L. 98-457, § 101(b), amended cl. (6) generally. Prior to amendment, cl. (6) read as follows: "make a complete and full study and investigation of the national incidence of child abuse and neglect, including a determination of the extent to which incidents of child abuse and neglect are increasing in number or severity; and".

Subsec. (b)(7). Pub. L. 98-457, § 101(b), amended cl. (7) generally. Prior to amendment, cl. (7) read as follows: "in consultation with Federal agencies serving on the Advisory Board on Child Abuse and Neglect (established by section 5105 of this title), prepare a comprehensive plan for seeking to bring about maximum coordination of the goals, objectives, and activities of all agencies and organizations which have responsibilities for programs and activities related to child abuse and neglect, and submit such plan to such Advisory Board not later than twelve months after April 24, 1978."

Subsec. (c). Pub. L. 98-457, § 101(c), substituted "The functions of the Secretary under subsection (b) of this section may be carried out" for "The Secretary may carry out his functions under subsection (b) of this section".

Subsec. (e). Pub. L. 98-457, § 101(d), added subsec. (e).

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-457 provided: "That this Act [enacting chapter 110 of this title, amending sections 5101 to 5106, 5111 to 5113, and 5115 of this title, and enacting provisions set out as notes under sections 5101 to 5103 and 10401 of this title] may be cited as the 'Child Abuse Amendments of 1984'."

CONSTRUCTION OF CHILD ABUSE AMENDMENTS OF 1984 WITH OTHER LAWS; SEPARABILITY

Section 127 of Pub. L. 98-457 provided that:

"(a) No provision of this Act or any amendment made by this Act [See Short Title of 1984 Amendment note above] is intended to affect any right or protection under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794].

"(b) No provision of this Act or any amendment made by this Act may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws.

"(c) If the provisions of any part of this Act or any amendment made by this Act or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5104, 5107, 5116d, 10407 of this title.

§ 5102. Definitions

For purposes of This [1] subchapter—

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[1] So in original. Probably should be "this".

(1) the term "child abuse and neglect" means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the State in question, by a person (including any employee of a residential facility or any staff person providing out-of-home care) who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary;

(2)(A) the term "sexual abuse" includes—

(i) the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct, or

(ii) the rape, molestation, prostitution, or other such form of sexual exploitation of children, or incest with children,

under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary; and

(B) for the purpose of this clause, the term "child" or "children" means any individual who has not or individuals who have not attained the age of eighteen; and

(3) the term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, (A) the infant is chronically and irreversibly comatose; (B) the provision of such treatment would (i) merely prolong dying, (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or (iii) otherwise be futile in terms of the survival of the infant; or (C) the provision of such treatment would be virtually futile in terms of the survivial of the infant and the treatment itself under such circumstances would be inhumane.

(As amended Pub. L. 98–457, title I, §§ 102, 121, Oct. 9, 1984, 98 Stat. 1750, 1752.)

AMENDMENTS

1984—Cl. (1). Pub. L. 98–457, § 121(1), designated provisions after opening phrase as cl. (1).

Pub. L. 98–457, § 102(1), inserted "(including any employee of a residential facility or any staff person providing out-of-home care)".

Cl. (2). Pub. L. 98–457, § 102(2), (3), added cl. (2).

Cl. (3). Pub. L. 98–457, § 121(2), (3), added cl. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 128 of part B (§§ 121–128) of title I of Pub. L. 98–457 provided that:

"(a) Except as provided in subsection (b), the provisions of this part or any amendment made by this part [amending sections 5102 and 5103 of this title and enacting provisions set out as notes under sections 5101 and 5103 of this title] shall be effective on the date of the enactment of this Act [Oct. 9, 1984].

"(b)(1) Except as provided in paragraph (2), the amendments made by sections 122 and 123(b) of this Act [enacting section 5103(b)(2)(K) and (4) of this title] shall become effective one year after the date of such enactment [Oct. 9, 1984].

"(2) In the event that, prior to such effective date, funds have not been appropriated pursuant to section 5 of the Act (as amended by section 104 of this Act) [section 5104 of this title] for the purpose of grants under section 4(c)(1) of the Act (as added by section 123(a) of this Act) [section 5103(c)(1) of this title], any State which has not met any requirement of section 4(b)(2)(K) of the Act (as added by section 122(3) of this Act) may be granted a waiver of such requirements for a period of not more than one year, if the Secretary finds that such State is making a good-faith effort to comply with such requirements."

§ 5103. Demonstration programs and projects

[*See main edition for text of* (*a*)]

(b) Grants to States; qualifications for assistance; reduction of awards; waiver of certain requirements

[*See main edition for text of* (*1*)]

(2) In order for a State to qualify for assistance under this subsection, such State shall—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) provide for methods to preserve the confidentiality of all records in order to protect the rights of the child, and the child's parents or guardians;

[*See main edition for text of* (*F*) *to* (*H*)]

(I) provide for dissemination of information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat instances of child abuse and neglect;

(J) to the extent feasible, insure that parental organizations combating child abuse and neglect receive preferential treatment; and

(K) within one year after October 9, 1984, have in place for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for (i) coordination and consultation with individuals designated by and within appropriate health-care facilities, (ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), and (iii) authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

If a State has failed to obligate funds awarded under this subsection within eighteen months after the date of award, the next award under this subsection made after the expiration of such period shall be reduced by an amount equal to the amount of such unobligated funds unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

(3)(A) Subject to subparagraph (B) of this paragraph, any State which on October 9, 1984, does not qualify for assistance under this subsection may be granted a waiver of any requirement under paragraph (2) of this subsection—

(i) for a period of not more than one year, if the Secretary makes a finding that such State is making a good-faith effort to comply with any such requirement, and for a second one-year period if the Secretary makes a finding that such State is making substantial progress to achieve such compliance; or

(ii) for a nonrenewable period of not more than two years in the case of a State the legislature of which meets only biennially, if the Secretary makes a finding that such State is making a good-faith effort to comply with any such requirement.

(B) No waiver under subparagraph (A) may apply to any requirement under paragraph (2)(K) of this subsection.

(4) Programs or projects related to child abuse and neglect assisted under part B of title IV of the Social Security Act [42 U.S.C. 620 et seq.] shall comply with the requirements set forth in clauses (B), (C), (E), (F), and (K) of paragraph (2).

(c) Additional grants to States; purpose; training and technical assistance; information and resource clearinghouses; use of funds

(1) The Secretary is authorized to make additional grants to the States for the purpose of developing, establishing, and operating or implementing—

(A) the procedures or programs required under clause (K) of subsection (b)(2) of this section;

(B) information and education programs or training programs for the purpose of improving the provision of services to disabled infants with life-threatening conditions for (i) professional and paraprofessional personnel concerned with the welfare of disabled infants with life-threatening conditions, including personnel employed in child protective services programs and health-care facilities, and (ii) the parents of such infants; and

(C) programs to help in obtaining or coordinating necessary services, including existing social and health services and financial assistance for families with disabled infants with life-threatening conditions, and those services necessary to facilitate adoptive placement of such infants who have been relinquished for adoption.

(2)(A) The Secretary shall provide, directly or through grants or contracts with public or private nonprofit organizations, for (i) training and technical assistance programs to assist States in developing, establishing, and operating or implementing programs and procedures meeting the requirements of clause (K) of subsection (b)(2) of this section; and (ii) the establishment and operation of national and regional information and resource clearinghouses for the purpose of providing the most current and complete information regarding medical treatment procedures and resources and community resources for the provision of services and treatment for disabled infants with life-threatening conditions (including compiling, maintaining, updating, and disseminating regional directories of community services and resources (including the names and phone numbers of State and local medical organizations) to assist parents, families, and physicians and seeking to coordinate the availability of appropriate regional education resources for health-care personnel).

(B) Not more than $1,000,000 of the funds appropriated for any fiscal year under section 5104 of this title may be used to carry out this paragraph.

(C) Not later than 210 days after October 9, 1984, the Secretary shall have the capability of providing and begin to provide the training and technical assistance described in subparagraph (A) of this paragraph.

(d) Prohibition of assistance for construction of facilities; lease or rental and alteration or repair of facilities

Assistance provided pursuant to this section shall not be available for construction of facilities; however, the Secretary is authorized to supply such assistance for the lease or rental of facilities where adequate facilities are not otherwise available, and for repair or minor remodeling or alteration of existing facilities.

(e) Criteria for equitable distribution of assistance

The Secretary shall establish criteria designed to achieve equitable distribution of assistance under this section among the States, among geographic areas of the Nation, and among rural and urban areas. To the extent possible, citizens of each State shall receive assistance from at least one project under this section.

(f)[2] Availability of assistance for prevention of child abuse and neglect

The Secretary, in consultation with the Advisory Board on Child Abuse and Neglect, shall ensure that a proportionate share of assistance under this subchapter is available for activities related to the prevention of child abuse and neglect.

(f)[2] "State" defined

For the purpose of this section, the term "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam and the Trust Territories of the Pacific.

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[2] So in original. There are two subsecs. designated (f).

(As amended Pub. L. 98-457, title I, §§ 103, 122, 123, Oct. 9, 1984, 98 Stat. 1750, 1752, 1753.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title IV of the Social Security Act is classified generally to Part B (§ 620 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1984—Subsec. (b)(2)(E). Pub. L. 98-457, § 103(a), substituted "and the child's parents" for "his parents".

Subsec. (b)(2)(K). Pub. L. 98-457, § 122, added subpar. (K).

Subsec. (b)(3). Pub. L. 98-457, § 103(b), substituted provisions relating to waiver of certain requirements for provisions which had required that programs or projects related to child abuse and neglect assisted under part A or B of title IV of the Social Security Act comply with the requirements of subsec. (b)(2)(B), (C), (E), and (F) of this section.

Subsec. (b)(4). Pub. L. 98-457, § 123(b), added par. (4).

Subsec. (c). Pub. L. 98-457, § 123(a)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-457, § 123(a)(1), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98-457, § 123(a)(1), redesignated former subsec. (d) as (e). Former subsec. (e), relating to availability of assistance, redesignated (f).

Pub. L. 98-457, § 103(c)(2), added subsec. (e). Former subsec. (e), relating to definition, redesignated (f).

Subsec. (f). Pub. L. 98-457, § 123(a)(1), redesignated subsec. (e), relating to availability of assistance, as (f).

Pub. L. 98-457, § 103(c)(1), redesignated subsec. (e), relating to definition, as (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 123(a) of Pub. L. 98-457 effective Oct. 9, 1984 and amendment by sections 122 and 123(b) of Pub. L. 98-457 effective one year after Oct. 9, 1984, with enumerated exceptions, see section 128 of Pub. L. 98-457, set out as a note under section 5102 of this title.

PROCEDURES AND PROGRAMS FOR RESPONDING TO REPORTS OF MEDICAL NEGLECT

Section 124 of part B (§§ 121-128) of title I of Pub. L. 98-457 provided that:

"(a)(1) Not later than 60 days after the date of the enactment of this Act [Oct. 9, 1984], the Secretary of Health and Human Services (hereinafter in this part referred to as the 'Secretary') shall publish proposed regulations to implement the requirements of section 4(b)(2)(K) of the Act (as added by section 122(3) of this Act) [42 U.S.C. 5103(b)(2)(K)].

"(2) Not later than 180 days after the date of the enactment of this Act and after completion of a process of not less than 60 days for notice and opportunity for public comment, the Secretary shall publish final regulations under this subsection.

"(b)(1) Not later than 60 days after the date of the enactment of this Act [Oct. 9, 1984], the Secretary shall publish interim model guidelines to encourage the establishment within health-care facilities of committees which would serve the purposes of educating hospital personnel and families of disabled infants with life-threatening conditions, recommending institutional policies and guidelines concerning the withholding of medically indicated treatment (as that term is defined in clause (3) of section 3 of the Act (as added by section 121(3) of this Act)) [42 U.S.C. 5102(3)] from such infants, and offering counsel and review in cases involving disabled infants with life-threatening conditions.

"(2) Not later than 180 days after the date of the enactment of this Act and after completion of a period of not less than 60 days for notice and opportunity for public comment, the Secretary shall publish the model guidelines."

REPORT ON IMPLEMENTATION OF PROVISIONS FOR SERVICES AND TREATMENT FOR DISABLED INFANTS

Section 126 of part B (§§ 121-128) of title I of Pub. L. 98-457 provided that: "Not later than October 1, 1987, the Secretary shall submit to the appropriate Committees of the Congress a detailed report on the implementation and the effects of the provisions of this part and the amendments made by it [amending sections 5102 and 5103 of this title and enacting provisions set out as notes under sections 5101 to 5103 of this title]."

§ 5104. Authorization of appropriations and funding requirements for child abuse and neglect and sexual abuse programs or projects

There are hereby authorized to be appropriated for the purposes of this subchapter $15,000,000 for the fiscal year ending June 30, 1974, $20,000,000 for the fiscal year ending June 30, 1975, $25,000,000 for the fiscal year ending June 30, 1976, and for the succeeding fiscal year, $25,000,000 for the fiscal year ending September 30, 1978, $27,500,000 for the fiscal year ending September 30, 1979, and $30,000,000 each for the fiscal years ending September 30, 1980, and September 30, 1981, respectively. There are hereby further authorized to be appropriated for the purposes of this subchapter $33,500,000 for fiscal year 1984, $40,000,000 for fiscal year 1985, $41,500,000 for fiscal year 1986, and $43,100,000 for fiscal year 1987. Of the funds appropriated for any fiscal year under this section except as provided in the succeeding sentence, (A) not less than $9,000,000 shall be available in each fiscal year to carry out section 5103(b) of this title (relating to State grants), (B) not less than $11,000,000 shall be available in each fiscal year to carry out sections 5103(a) (relating to demonstration or service projects), 5101(b)(1) and 5101(b)(3) (relating to information dissemination), 5101(b)(5) (relating to research), and 5103(c)(2) (relating to training, technical assistance, and information dissemination) of this title, giving special consideration to continued funding of child abuse and neglect programs or projects (previously funded by the Department of Health and Human Services) of national or regional scope and demonstated effectiveness, (C) $5,000,000 shall be available in each such year for grants and contracts under section 5103(a) of this title for identification, treatment, and prevention of sexual abuse, and (D) $5,000,000 shall be available in each such year for the purpose of making additional grants to the States to carry out the provisions of section 5103(c)(1) of this title. With respect to any fiscal year in which the total amount appropriated under this section is less than $30,000,000, funds shall first be available as provided in clauses (A) and (B) in the preceding sentence and of the remainder one-half shall be available as provided for in clause (C) and one-half as provided for in clause (D) in the preceding sentence.

(As amended Pub. L. 98-457, title I, § 104, Oct. 9, 1984, 98 Stat. 1751.)

AMENDMENTS

1984—Pub. L. 98-457, § 104(a), struck out the designation "(a)" before "There are hereby authorized", added provisions authorizing appropriations of $33,500,000 for fiscal year 1984, $40,000,000 for fiscal year 1985, $41,500,000 for fiscal year 1986, and $43,100,000 for fiscal year 1987, and substituted "this section except as provided in the succeeding sentence, (A) not less than $9,000,000 shall be available in each fiscal year to carry out section 5103(b) of this title (relating to State grants), (B) not less than $11,000,000 shall be available in each fiscal year to carry out sections 5103(a) (relating to demonstration or service projects), 5101(b)(1) and 5101(b)(3) (relating to information dissemination), 5101(b)(5) (relating to research), and 5103(c)(2) (relating to training, technical assistance, and information dissemination) of this title, giving special consideration to continued funding of child abuse and neglect programs or projects (previously funded by the Department of Health and Human Services) of national or regional scope and demonstated effectiveness, (C) $5,000,000 shall be available in each such year for grants and contracts under section 5103(a) of this title for identification, treatment, and prevention of sexual abuse, and (D) $5,000,000 shall be available in each such year for the purpose of making additional grants to the States to carry out the provisions of section 5103(c)(1) of this title. With respect to any fiscal year in which the total amount appropriated under this section is less than $30,000,000, funds shall first be available as provided in clauses (A) and (B) in the preceding sentence and of the remainder one-half shall be available as provided for in clause (C) and one-half as provided for in clause (D) in the preceding sentence" for "this section, not less than 50 per centum shall be used for making grants or contracts under sections 5101(b)(5) of this title (relating to research) and 5103(a) of this title (relating to demonstration or service projects), giving special consideration to continued Federal funding of child abuse and neglect programs or projects (previously funded by the Department of Health, Education, and Welfare) of national or regional scope and demonstrated effectiveness, of not less than 25 per centum shall be used for making grants or contracts under section 5103(b)(1) of this title (relating to grants to States) for the fiscal years ending September 30, 1978, and September 30, 1979, respectively, and not less than 30 per centum shall be used for making grants or contracts under section 5103(b)(1) of this title (relating to grants to States) for each of the fiscal years ending September 30, 1980, and September 30, 1981, respectively".

Pub. L. 98-457, § 104(b), struck out subsec. (b) which had authorized appropriations for the fiscal years ending Sept. 30, 1978, Sept. 30, 1979, Sept. 30, 1980, and Sept. 30, 1981, respectively, for the purpose of making grants and entering into contracts for programs and projects designed to prevent, identify, and treat sexual abuse of children.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5103 of this title.

§ 5105. Advisory Board on Child Abuse and Neglect

(a) Appointment; membership; representation from Federal agencies and general public; functions

The Secretary shall, within sixty days after January 31, 1974, appoint an Advisory Board on Child Abuse and Neglect (hereinafter referred to as the "Advisory Board"), which shall be composed of representatives from Federal agencies with responsibility for programs and activities related to child abuse and neglect, and not less than three members from the general public with experience or expertise in the field of child abuse and neglect. The Advisory Board shall assist the Secretary in coordinating programs and activities related to child abuse and neglect planned, administered, or assisted under this subchapter with such programs and activities planned, administered, or assisted by the Federal agencies whose representatives are members of the Advisory Board. The Advisory Board shall also assist the Secretary in the development of Federal standards for child abuse and neglect prevention and treatment programs and projects. The Advisory Board may be available, at the Secretary's request, to assist the Secretary in coordinating adoption-related activities of the Federal Government.

(b) Compensation; travel expenses and per diem

Members of the Advisory Board, other than those regularly employed by the Federal Government, while serving on business of the Advisory Board, shall be entitled to receive compensation at a rate not in excess of the daily equivalent payable to a GS-18 employee under section 5332 of title 5, including traveltime; and, while so serving away from their homes or regular places of business, they may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of such title for persons in the Government service employed intermittently.

(c) Redesignated (b)

(Pub. L. 93-247, § 6, Jan. 31, 1974, 88 Stat. 7; Pub. L. 95-266, title I, § 105, Apr. 24, 1978, 92 Stat. 207; Pub. L. 98-457, title I, § 105, Oct. 9, 1984, 98 Stat. 1751.)

REFERENCES IN TEXT

GS-18, referred to in subsec. (b), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-457, § 105(a), (b), struck out ", including the Office of Child Development, the Department of Education, the National Institute of Education, the National Institute of Mental Health, the National Institute of Child Health and Human Development, the Social and Rehabilitation Service, and the Health Services Administration," before "and not less than three members", and added provision that the Advisory Board may be available, at the Secretary's request, to assist the Secretary in coordinating adoption-related activities of the Federal Government.

Subsecs. (b), (c). Pub. L. 98-457, § 105(c), redesignated subsec. (c) as (b) and struck out former subsec. (b) which had required the Board to review the comprehensive plan submitted to it by the Center pursuant to section 5101(b)(7) of this title, make such changes as it deemed appropriate, and submit to the President and the Congress a final such plan not later than eighteen months after April 24, 1978.

§ 5106. Coordination of Federal programs; regulations; arrangements

The Secretary shall promulgate regulations and make such arrangements as may be necessary or appropriate to ensure that there is effective coordination among programs related to child abuse and neglect under this subchapter and other such programs which are assisted by Federal funds.

(As amended Pub. L. 98-457, title I, § 106, Oct. 9, 1984, 98 Stat. 1751.)

AMENDMENTS

1984—Pub. L. 98-457 substituted "among programs" for "between programs".

SUBCHAPTER II—ADOPTION OPPORTUNITIES

§ 5111. Congressional findings and declaration of purpose

The Congress hereby finds that the welfare of thousands of children in institutions and foster homes and disabled infants with life-threatening conditions may be in serious jeopardy and that some such children are in need of placement in permanent, adoptive homes; that many thousands of children remain in institutions or foster homes solely because of legal and other barriers to their placement in permanent, adoptive homes; that the majority of such children are of school age, handicapped, or both; that adoption may be the best alternative for assuring the healthy development of such children; that there are qualified persons seeking to adopt such children who are unable to do so because of barriers to their placement; and that, in order both to enhance the stability and love of the child's home environment and to avoid wasteful expenditures of public funds, such children should not have medically indicated treatment withheld from them, nor be maintained in foster care or institutions when adoption is appropriate and families for them can be found. It is, therefore, the purpose of this subchapter to facilitate the elimination of barriers to adoption and to provide permanent and loving home environments for children who would benefit by adoption, particularly children with special needs, including disabled infants with life-threatening conditions, by—

[*See main edition for text of (1)*]

(2) providing a mechanism for the Department of Health and Human Services to—

(A) promote quality standards for adoption services, pre-placement, post-placement, and post-legal adoption counseling, and standards to protect the rights of children in need of adoption;

(B) coordinate with other Federal departments and agencies, including the Bureau of the Census, to provide for a national adoption and foster care information data-gathering and analysis system; and

(C) maintain a national adoption exchange to bring together children who would benefit by adoption and qualified prospective adoptive parents who are seeking such children.

(Pub. L. 95-266, title II, § 201, Apr. 24, 1978, 92 Stat. 208; Pub. L. 98-457, title II, § 201, Oct. 9, 1984, 98 Stat. 1755.)

AMENDMENTS

1984—Pub. L. 98-457, § 201(a), (b)(1), in provisions before par. (1), inserted "the welfare of thousands of children in institutions and foster homes and disabled infants with life-threatening conditions may be in serious jeopardy and that some such children are in need of placement in permanent, adoptive homes, that" and substituted "should not have medically indicated treatment withheld from them, nor be maintained in foster care" for "should not be maintained in foster care" and "children with special needs, including disabled infants with life-threatening conditions, by" for "children with special needs by".

Par. (2). Pub. L. 98-457, § 201(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "providing a mechanism for the Department of Health and Human Services to (A) promote quality standards for adoption services (including pre-placement, post-placement, and post-adoption counseling and standards to protect the rights of children in need of adoption), and (B) provide for a national adoption and foster care information data gathering and analysis system and a national adoption information exchange system to bring together children who would benefit by adoption and qualified prospective adoptive parents who are seeking such children."

§ 5112. Model adoption legislation and procedures

(a) Issuance and publication of proposals based on recommendations of panel; comments by interested individuals, etc., and consultations; issuance and publication of final version; prohibition against conflict with interstate compacts

Not later than eighteen months after April 24, 1978, the Secretary of Health and Human Services (hereinafter referred to as the "Secretary") shall issue, based on the recommendations of the panel described in subsection (b) of this section, proposed model adoption legislation and procedures and publish such proposal in the Federal Register for comment. After soliciting and giving due consideration to the comments of interested individuals, groups, and organizations and consulting further with such panel, the Secretary shall issue and publish model adoption legislation and procedures which shall not conflict with the provisions of any interstate compact in operation pursuant to which States are making, supervising, or regulating placements of children.

[*See main edition for text of (b)*]

(c) Encouragement and facilitation of enactment of comprehensive adoption assistance legislation and establishment of model provisions

The Secretary shall take such steps as he or she deems necessary to encourage and facilitate the enactment in each State of comprehensive adoption assistance legislation and the establishment in each State of the model legislation and procedures published pursuant to subsection (a) of this section. The Secretary shall coordinate efforts to improve State legislation with national, State, and local child and family services organizations, including organizations representative of minorities and adoptive families.

(d) Review of legislation and procedures; facilitation of adoption opportunities for disabled infants with life-threatening conditions

The Secretary shall review all model adoption legislation and procedures published under this section and propose such changes as are considered appropriate to facilitate adoption opportunities for disabled infants with life-threatening conditions.

(Pub. L. 95-266, title II, § 202, Apr. 24, 1978, 92 Stat. 208; Pub. L. 98-457, title II, § 202, Oct. 9, 1984, 98 Stat. 1756.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-457, § 202(a), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (c). Pub. L. 98-457, § 202(b), added provision requiring the Secretary to coordinate efforts to improve State legislation with national, State, and local child and family services organizations, including organizations representative of minorities and adoptive families.

Subsec. (d). Pub. L. 98-457, § 202(c), added subsec. (d).

§ 5113. Information and service functions by appropriate administrative arrangement; establishment in Department of Health and Human Services; implementation authorities

(a) The Secretary shall establish in the Department of Health and Human Services an appropriate administrative arrangement to provide a centralized focus for planning and coordinating of all departmental activities affecting adoption and foster care and for carrying out the provisions of this subchapter. The Secretary shall make available such consultant services and personnel, together with appropriate administrative expenses, as are necessary for carrying out such purposes, including services to facilitate the adoption of children with special needs and particularly of disabled infants with life-threatening conditions and services to couples considering adoption of children with special needs.

(b) In connection with carrying out the provisions of this subchapter, the Secretary shall—

(1) provide (after consultation with other appropriate Federal departments and agencies, including the Bureau of the Census and appropriate State and local agencies) for the establishment and operation of a Federal adoption and foster care data-gathering and analysis system;

[*See main edition for text of* (*2*) *and* (*3*)]

(4) provide (directly or by grant to or contract with public or private nonprofit agencies or organizations, including adoptive family groups and minority groups) for the provision of technical assistance in the planning, improving, developing, and carrying out of programs and activities relating to adoption;

(5) encourage involvement of corporations and small businesses in supporting adoption as a positive family-strengthening option, including the establishment of adoption benefit programs for employees who adopt children;

(6) continue to study the nature, scope, and effects of the placement of children in adoptive homes (not including the homes of stepparents or relatives of the child in question) by persons or agencies which are not licensed by or subject to regulation by any governmental entity; and

(7) consult with other appropriate Federal departments and agencies in order to promote maximum coordination of the services and benefits provided under programs carried out by such departments and agencies with those carried out by the Secretary, and provide for the coordination of such aspects of all programs within the Department of Health and Human Services relating to adoption.

(Pub. L. 95-266, title II, § 203, Apr. 24, 1978, 92 Stat. 209; Pub. L. 98-457, title II, § 203, Oct. 9, 1984, 98 Stat. 1756.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-457, § 203(a), (b)(1), substituted "Health and Human Services" for "Health, Education, and Welfare" and added provision requiring the Secretary to make available services to facilitate the adoption of children with special needs and particularly of disabled infants with life-threatening conditions and services to couples considering adoption of children with special needs.

Subsec. (b). Pub. L. 98-457, § 203(c)(1), substituted "this subchapter" for "subsection (a) of this section" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-457, § 203(c)(2), substituted "provide (after consultation with other appropriate Federal departments and agencies, including the Bureau of the Census and appropriate State and local agencies) for the establishment and operation of a Federal adoption and foster care data-gathering and analysis system" for "provide (directly or by grant to or contract with public or private nonprofit agencies and organizations) for the establishment and operation of a national adoption and foster care data gathering and analysis system utilizing data collected by States pursuant to requirements of law".

Subsec. (b)(4). Pub. L. 98-457, § 203(c)(3)(A), substituted "adoptive family groups and minority groups" for "parent groups".

Subsec. (b)(5), (6). Pub. L. 98-457, § 203(c)(3)(B), (C), added pars. (5) and (6). Former par. (5) redesignated (7).

Subsec. (b)(7). Pub. L. 98-457, § 203(c)(3)(C), (D), redesignated former par. (5) as (7) and substituted therein "Health and Human Services" for "Health, Education, and Welfare".

§ 5115. Authorization of appropriations

There are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1978, such sums as may be necessary for the succeeding three fiscal years, and $5,000,000 for each of the fiscal years 1984, 1985, 1986, and 1987, to carry out this subchapter.

(As amended Pub. L. 98-457, title II, § 204, Oct. 9, 1984, 98 Stat. 1757.)

AMENDMENTS

1984—Pub. L. 98-457 added provisions authorizing appropriations of $5,000,000 for each of the fiscal years 1984, 1985, 1986, and 1987.

SUBCHAPTER III—STATE FUNDING MECHANISMS

§ 5116. Congressional findings and statement of purpose

(a) The Congress finds that—

(1) disturbing increases have occurred in recent years in the numbers of younger Americans who are abused;

(2) many children who run away from home, who fall prey to pornography and prostitution, who suffer from a dependency on alcohol and drugs, and who become juvenile offenders, have been victims of child abuse;

(3) research has shown that abuse tends to repeat itself, and many times parents who abuse their children were once victims themselves;

(4) given the increased demand for treatment and crisis intervention in child abuse and neglect cases, Federal funds distributed to States are most often used for treatment and little is left for prevention efforts;

(5) since 1980 some States have begun to recognize the critical need for prevention efforts, and trust funds (generated by surcharges on marriage licenses, birth certificates or divorce actions, or by special checkoffs on income tax returns) are being established to allow such States to pay for child abuse and neglect prevention activities despite depressed State economies and budget cutbacks;

(6) in recognition of the increased cases of child abuse and neglect, other States have established significant funds for child abuse and neglect prevention activities through direct appropriations; and

(7) the Nation cannot afford to ignore the importance of preventing child abuse.

(b) It is the purpose of this subchapter, by providing for Federal challenge grants, to encourage States to establish and maintain trust funds or other funding mechanisms, including appropriations to support child abuse and neglect prevention activities.

(Pub. L. 98-473, title IV, § 402, Oct. 12, 1984, 98 Stat. 2197.)

§ 5116a. Definitions

As used in this subchapter—

(1) the term "Secretary" means the Secretary of Health and Human Services; and

(2) the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 98-473, title IV, § 403, Oct. 12, 1984, 98 Stat. 2197.)

§ 5116b. Grants authorized

(a) Authority of Secretary

The Secretary is authorized, in accordance with the provisions of this subchapter, to make grants to eligible States.

(b) Payments; fiscal years

Payments under this subchapter may be made in any fiscal year following the fiscal year in which any State has collected funds for child abuse and neglect prevention activities through a trust fund or other funding mechanism.

(c) Authorization of appropriations

There is authorized to be appropriated such sums as are necessary to carry out the provisions of this subchapter for the fiscal year 1985 and for each of the four succeeding fiscal years.

(Pub. L. 98-473, title IV, § 404, Oct. 12, 1984, 98 Stat. 2197.)

§ 5116c. State eligibility

Any State is eligible for a grant under this subchapter for any fiscal year if such State has established or maintained in the previous fiscal year a trust fund or other funding mechanism, including appropriations, which is available only for child abuse and neglect prevention activities, including activities which—

(1) provide statewide educational and public informational seminars for the purpose of developing appropriate public awareness regarding the problems of child abuse and neglect;

(2) encourage professional persons and groups to recognize and deal with problems of child abuse and neglect;

(3) make information about the problems of child abuse and neglect available to the public and organizations and agencies which deal with problems of child abuse and neglect; and

(4) encourage the development of community prevention programs, including—

(A) community-based educational programs on parenting, prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, coping with family stress, personal safety and sexual abuse prevention training for children, and self-care training for latchkey children; and

(B) community-based programs relating to crisis care, aid to parents, child-abuse counseling, peer support groups for abusive or potentially abusive parents and their children, lay health visitors, respite or crisis child care, and early identification of families where the potential for child abuse and neglect exists.

(Pub. L. 98-473, title IV, § 405, Oct. 12, 1984, 98 Stat. 2198.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5116d of this title.

§ 5116d. Limitations

(a) Grant amount; "children" defined

(1) Any grant made to any eligible State under this subchapter in any fiscal year shall be equal to the lesser of—

(A) 25 percent of the total amount made available by such State for child abuse and neglect prevention activities and collected in the previous fiscal year in a trust fund (excluding any interest income from the principal of such fund) or through any other funding mechanism, including appropriations; or

(B) an amount equal to 50 cents times the number of children residing in such State according to the most current data available to the Secretary.

(2) For purposes of clause (B) of paragraph (1), the term "children" means individuals who have not attained the age of majority, as defined by such State.

(b) Application; contents; approval; Secretary; notice of disapproval; hearing

(1) No grant may be made to any eligible State unless an application is made to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems essential to carry out the purposes and provisions of this subchapter. Each application shall—

(A) specify that the trust fund advisory board, or in States without a trust fund mechanism, the State liaison agency to the National Center on Child Abuse and Neglect, established by section 5101 of this title, will be responsible for administering and awarding of the Federal grants to eligible recipients carrying out activities described in section 5116c of this title;[1]

(B) provide assurances that any assistance received under this subchapter shall not be used as a source for non-Federal funds for the matching requirements of any other provision of Federal law; and

(C) provide for keeping records and making such reasonable reports as the Secretary deems essential to carry out the purposes and provisions of this subchapter.

(2) The Secretary shall approve any application that meets the requirements of this subsection, and the Secretary shall not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove and opportunity for a hearing with respect to the disapproval.

(Pub. L. 98-473, title IV, § 406, Oct. 12, 1984, 98 Stat. 2198.)

References in Text

Section 5116c of this title, referred to in subsec. (b)(1)(A), was in the original "section 5" which has been translated as reading "section 405", meaning section 405 of Pub. L. 98-473, as the probable intent of Congress.

Section Referred to in Other Sections

This section is referred to in section 5116g of this title.

§ 5116e. Withholding

Whenever the Secretary, after reasonable notice to any State and opportunity for hearing within the State, finds that there has been a failure to comply with any provision of this subchapter, the Secretary shall notify the State that further payments will not be made under this subchapter until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, no further payments shall be made under this subchapter.

(Pub. L. 98-473, title IV, § 407, Oct. 12, 1984, 98 Stat. 2199.)

§ 5116f. Audit

The Comptroller General of the United States, and any of his duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any applicant and any other entity receiving assistance under this subchapter that are pertinent to the sums received and disbursed under this subchapter.

(Pub. L. 98-473, title IV, § 408, Oct. 12, 1984, 98 Stat. 2199.)

§ 5116g. Report to Congress

The Secretary shall prepare and submit to the Congress at the end of each year a compilation and analysis of any reports submitted by eligible States under section 5116d(b)(1)(C) of this title.[1]

(Pub. L. 98-473, title IV, § 409, Oct. 12, 1984, 98 Stat. 2199.)

References in Text

Section 5116d of this title, referred to in text, was in the original "section 6" which has been translated as reading "section 406", meaning section 406 of Pub. L. 98-473, as the probable intent of Congress.

CHAPTER 68—DISASTER RELIEF

Chapter Referred to in Other Sections

This chapter is referred to in sections 1382a, 3030, 3231, 4003, 7704, 9601 of this title; title 7 sections 1421, 1427, 1427a, 1961, 1964; title 12 section 1715*l*; title 15 section 636; title 16 section 1536; title 23 section 125; title 26 sections 165, 5064, 5708; title 38 section 1820.

CHAPTER 69—COMMUNITY DEVELOPMENT

Chapter Referred to in Other Sections

This chapter is referred to in sections 1437*o*, 1439, 1440, 1452b, 3013, 9816 of this title; title 12 sections 1464, 1701u, 1701x, 1715z, 1715z-13; title 40 App. section 214.

§ 5301. Congressional findings and declaration of purpose

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Decent housing, suitable living environment, and economic opportunities for persons of low and moderate income; community development activities which may be supported by Federal assistance

The primary objective of this chapter and of the community development program of each grantee under this chapter is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 51 percent of the aggregate of the Federal assistance provided under section 5306 of this title and, if applicable, the funds received as a result of a guarantee under section 5308 of this title, shall be used for the support of activities that benefit persons of low and moderate income, and the Federal assistance provided in this chapter is for the support of community development activities which are directed toward the following specific objectives—

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[1] See References in Text note below.

[*See main edition for text of (1) to (9)*]

It is the intent of Congress that the Federal assistance made available under this chapter not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

[*See main edition for text of (d)*]

(As amended Pub. L. 98-181, title I, § 101(a), Nov. 30, 1983, 97 Stat. 1159.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-181, § 101(a)(1), inserted "and of the community development program of each grantee under this chapter" in provisions preceding par. (1).

Pub. L. 98-181, § 101(a)(2), inserted in provisions preceding par. (1) "not less than 51 percent of the aggregate of the Federal assistance provided under section 5306 of this title and, if applicable, the funds received as a result of a guarantee under section 5308 of this title, shall be used for the support of activities that benefit persons of low and moderate income, and".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-479, § 1, Oct. 17, 1984, 98 Stat. 2218, provided: "That this Act [amending sections 1437a, 1437b, 1437d, 1437f, 1437h, 1437*l*, 1437*o*, 1438 to 1440, 1452, 1455, 1456, 1471, 1472, 1480, 1481, 1483, 1485, 1487, 1490, 1490a to 1490c, 1493, 2414, 3337, 3535, 3541, 3936, 3938, 4016, 4017, 4101, 4105, 4124, 4502, 5302, 5304 to 5306, 5308, 5312, 5317, 5318, 5403, 6863, 8004, 8010, and 8107 of this title, sections 1425a, 1457, 1701c, 1701h, 1701q, 1701s, 1701x, 1701z-2, 1701z-13, 1702, 1705, 1706e, 1709, 1713, 1715d, 1715h, 1715*l*, 1715n, 1715y, 1715z, 1715z-1, 1715z-1a, 1715z-5 to 1715z-9, 1717, 1719, 1721, 1723a, 1723g, 1723h, 1732, 1735f-5, 1735*f*-6, 1749, 1749a, 1749c, 1749aaa, 1749aaa-3, 1749bbb-8, 1749bbb-13, 1749bbb-17, 1750c, 1757, 2706, 2709, 3612, and 3618 of Title 12, Banks and Banking, and sections 1635 and 1715 of Title 15, Commerce and Trade, enacting provisions set out as notes under sections 1472 and 5305 of this title and sections 1715b, 1732 and 3618 of Title 12, and amending provisions set out as notes under sections 602, 5316, and 5318 of this title and section 1701z-6 of Title 12] may be cited as the 'Housing and Community Development Technical Amendments Act of 1984'."

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

Section 817 of Pub. L. 93-383, as amended by Pub. L. 98-181, title III, § 302(c), Nov. 30, 1983, 97 Stat. 1206, provided that: "Assistance provided for in this Act [see Short Title note above] the National Housing Act, [12 U.S.C. 1701 et seq.], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the Housing Act of 1949 [42 U.S.C. 1441 et seq.], the Demonstration Cities and Metropolitan Development Act of 1966 [see Short Title note set out under section 3301 of this title], the Housing and Urban Development Acts of 1965, 1968, 1969, and 1970 [see Short Title notes set out under section 1701 of Title 12, Banks and Banking], and section 17 of the United States Housing Act of 1937 [42 U.S.C. 1437*o*] shall not be withheld or made subject to conditions or preference by reason of the tax-exempt status of bonds or other obligations issued or to be issued to provide financing for use in connection with such assistance, except where otherwise expressly provided or authorized by law."

§ 5302. General provisions

(a) Definitions

As used in this chapter—

[*See main edition for text of (1) and (2)*]

(3) The term "metropolitan area" means a standard metropolitan statistical area as established by the Office of Management and Budget.

(4) The term "metropolitan city" means (A) a city within a metropolitan area which is the central city of such area, as defined and used by the Office of Management and Budget, or (B) any other city, within a metropolitan area, which has a population of fifty thousand or more. In order to permit an orderly transition of each city losing its classification as a metropolitan city by reason of the population data of the 1980 decennial census or revisions in the designation of metropolitan areas or central cities, any city classified as or deemed by law to be a metropolitan city for purposes of assistance under any section of this chapter for fiscal year 1983 shall retain such qualification for purposes of receiving such assistance through March 17, 1986. Any unit of general local government that becomes eligible to be classified as a metropolitan city for fiscal year 1984 or 1985 may, upon submission of written notification to the Secretary, defer its classification as a metropolitan city for all purposes under this chapter for fiscal years 1984, 1985, and 1986 if such unit of general local government elects to have its population included in an urban county under subsection (d) of this section.

[*See main edition for text of (5)*]

(6) The term "urban county" means any county within a metropolitan area which (A) is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government, and either (B) has a combined population of two hundred thousand or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (i) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded or (ii) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities or (C) has a population in excess of one hundred thousand, a population density of at least five thousand persons per square mile, and contains within its boundaries no incorporated places as defined by the United

States Bureau of Census. In order to permit an orderly transition of each county losing its classification as an urban county by reason of a decrease in population, any county classified as or deemed to be an urban county under this paragraph for purposes of receiving assistance under any section of this chapter for fiscal year 1983 shall retain such qualification for purposes of receiving such assistance through March 17, 1986, or for such longer period covered by a cooperation agreement entered into during fiscal year 1984, except that the provisions of this sentence shall not apply with respect to any county losing its classification as an urban county by reason of the election of any unit of general local government included in such county to have its population excluded under clause (B)(i) of the first sentence or to not renew a cooperation agreement under clause (B)(ii) of such sentence. Notwithstanding the combined population amount set forth in clause (B) of the first sentence, a county shall also qualify as an urban county for purposes of assistance under section 5306 of this title if such county (A) complies with all other requirements set forth in the first sentence; (B) has, according to the most recent available decennial census data, a combined population between 190,000 and 199,999, inclusive, (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county; (C) had a population growth rate of not less than 15 percent during the most recent 10-year period measured by applicable censuses; and (D) has submitted data satisfactory to the Secretary that it has a combined population of not less than 200,000 (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county.

[See main edition for text of (7) and (8)]

(9) The term "extent of poverty" means the number of persons whose incomes are below the poverty level. Poverty levels shall be determined by the Secretary pursuant to criteria provided by the Office of Management and Budget, taking into account and making adjustments, if feasible and appropriate and in the sole discretion of the Secretary, for regional or area variations in income and cost of living, and shall be based on data referable to the same point or period in time.

[See main edition for text of (10) to (16)]

(17) The term "Indian tribe" means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) [25 U.S.C. 450 et seq.] or under chapter 67 of title 31.

[See main edition for text of (18) and (19)]

(20)(A) The terms "persons of low and moderate income" and "low- and moderate-income persons" mean families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. The term "persons of low income" means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. The term "persons of moderate income" means families and individuals whose incomes exceed 50 percent, but do not exceed 80 percent, of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. For purposes of such terms, the area involved shall be determined in the same manner as such area is determined for purposes of assistance under section 1437f of this title.

(B) The Secretary may establish percentages of median income for any area that are higher or lower than the percentages set forth in subparagraph (A), if the Secretary finds such variations to be necessary because of unusually high or low family incomes in such area.

(21) The term "buildings for the general conduct of government" means city halls, county administrative buildings, State capitol or office buildings, or other facilities in which the legislative or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low- and moderate-income areas that house various nonlegislative functions or services provided by government at decentralized locations.

(b) Basis and modification of definitions

Where appropriate, the definitions in subsection (a) of this section shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available ninety days prior to the beginning of such fiscal year. The Secretary may by regulation change or otherwise modify the meaning of the terms defined in subsection (a) of this section in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

[See main edition for text of (c)]

(d) Local governments, inclusion in urban county population

With respect to program years beginning with the program year for which grants are made available from amounts appropriated for fiscal year 1982 under section 5303 of this title, the population of any unit of general local government which is included in that of an urban county as provided in subsection (a)(6)(B) of this section shall be included in the population of such urban county for three program years beginning with the program year in which its population was first so included and shall not otherwise be eligible for a grant under section 5306 of this title as a separate entity, unless the urban county does not receive a grant for any year during such three-year period. During any such three-year period, the population of any unit of general local government which is not included in that of the urban county for the first year shall not be eligible for such inclusion in the second or third year, except where the unit of general local government loses the designation of metropolitan city.

[*See main edition for text of* (*e*)]

(As amended Pub. L. 98-181, title I, § 102, Nov. 30, 1983, 97 Stat. 1159; Pub. L. 98-479, title I, § 101(a)(1)-(4), title II, § 203(*l*)(1), Oct. 17, 1984, 98 Stat. 2218, 2219, 2231; Pub. L. 99-120, § 5(a), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99-156, § 5(a), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99-219, § 5(a), Dec. 26, 1985, 99 Stat. 1731.)

References in Text

Sections 4512 and 4513 of this title, referred to in subsec. (a)(1), were repealed by Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239.

The Housing and Urban Development Act of 1968, referred to in subsec. (a)(1), is Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IV of the Housing and Urban Development Act of 1968, which was classified principally to chapter 48 (§ 3901 et seq.) of this title, was repealed, with certain exceptions which were omitted from the Code, by Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1701 of Title 12, Banks and Banking, and Tables.

Amendments

1985—Subsec. (a)(4). Pub. L. 99-219, § 5(a)(1), substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156, § 5(a)(1), substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120, § 5(a)(1), substituted "through November 14, 1985" for "for fiscal years 1984 and 1985".

Subsec. (a)(6). Pub. L. 99-219, § 5(a)(2), substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156, § 5(a)(2), substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120, § 5(a)(2), substituted "through November 14, 1985" for "for fiscal years 1984 and 1985".

1984—Subsec. (a)(4). Pub. L. 98-479, § 101(a)(1), in last sentence, struck out "while its population is included in an urban county for such fiscal year" after "fiscal year 1984 or 1985", and substituted "elects" for "continues" and "an" for "such" before "urban county".

Subsec. (a)(6). Pub. L. 98-479, § 101(a)(2), added ", except that the provisions of this sentence shall not apply with respect to any county losing its classification as an urban county by reason of the election of any unit of general local government included in such county to have its population excluded under clause (B)(i) of the first sentence or to not renew a cooperation agreement under clause (B)(ii) of such sentence" at end of second sentence, ", (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county" at end of cl. (B) in last sentence, and "(excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county" at end of cl. (D) in last sentence.

Subsec. (a)(17). Pub. L. 98-479, § 203(*l*)(1), substituted "chapter 67 of title 31" for "the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512)".

Subsec. (a)(20). Pub. L. 98-479, § 101(a)(3), in amending par. (20) generally, designated existing provisions as subpar. (A) and substituted "mean families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families" for "have the meaning given the term 'lower income families' in section 1437a(b)(2) of this title", substituted "whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families" for "has the meaning given the term 'very low-income families' in such section", added "The term 'persons of moderate income' means families and individuals whose incomes exceed 50 percent, but do not exceed 80 percent, of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families", and added subpar. (B).

Subsec. (a)(21). Pub. L. 98-479, § 101(a)(4), substituted "capitol" for "capital", and added a comma after "or office buildings".

1983—Subsec. (a)(3). Pub. L. 98-181, § 102(d), substituted "Office of Management and Budget" for "Department of Commerce".

Subsec. (a)(4). Pub. L. 98-181, § 102(d), substituted "Office of Management and Budget" for "Department of Commerce".

Pub. L. 98-181, § 102(a), substituted provision authorizing retention of classification as metropolitan cities through fiscal year 1985 of any cities classified as deemed to be such for purposes of assistance for fiscal year 1983 for provision that any city which had been classified as a metropolitan city under this paragraph because the population of such city exceeded fifty thousand would be so classified until the decennial census indicated that the population of such city was less than fifty thousand or until September 30, 1983, whichever was later, and added provision permitting any units of general local government which become eligible to be classified as metropolitan cities for fiscal years 1984 and 1985 while their population is included in an urban county for such fiscal year to defer such classification through fiscal year 1986 if such unit of general local government continues to have its population included in such urban county under subsec. (d) of this section.

Subsec. (a)(6). Pub. L. 98-181, § 102(b), substituted provision permitting retention of classification as urban counties through fiscal year 1985 of any counties classified or deemed to be such for purposes of assistance under this chapter for fiscal year 1983, and allowing a county to qualify as an urban county upon meeting certain conditions despite failing to meet the requirements of cl. (B) of the first sentence for provision that any urban county qualifying as such in fiscal year 1981 which did not meet the population requirements of cl. (B) of the first sentence would be considered to meet such requirements through Sept. 30, 1983, and would not be subject to subsec. (d) of this section through such date.

Subsec. (a)(9). Pub. L. 98-181, § 102(d), substituted "Office of Management and Budget" for "Department of Commerce".

Subsec. (a)(20), (21). Pub. L. 98-181, § 102(c), added pars. (20) and (21).

Subsec. (b). Pub. L. 98-181, § 102(d), substituted "Office of Management and Budget" for "Department of Commerce" in two places.

Pub. L. 98-181, § 102(e), struck out provisions that no data from the 1980 Decennial Census, except those relating to population and poverty, would be taken into account for purposes of sections 5306 and 5318 of this title and that no revision to the criteria for establishing a metropolitan area or defining a central city of such an area published after January 1, 1983, would be taken into account for purposes of this chapter, except that any area or city which would newly qualify as a metropolitan area or central city of such an area by reason of such revision would be so qualified.

Subsec. (d). Pub. L. 98-181, § 102(f), added exception where the unit of general local government loses the designation of metropolitan city.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437o, 5306, 5318 of this title.

§ 5303. Grants to States, units of general local government and Indian tribes; authorizations

The Secretary is authorized to make grants to States, units of general local government, and Indian tribes to carry out activities in accordance with the provisions of this chapter. There are authorized to be appropriated for purposes of assistance under sections 5306 and 5307 of this title not to exceed $3,468,000,000 for each of the fiscal years 1984, 1985, and 1986. Sums appropriated pursuant to this section shall remain available until expended.

(As amended Pub. L. 98-181, title I, § 103, Nov. 30, 1983, 97 Stat. 1161.)

AMENDMENTS

1983—Pub. L. 98-181 substituted provisions authorizing appropriations for purposes of assistance under sections 5306 and 5307 of this title of not to exceed $3,468,000,000 for each of the fiscal years 1984, 1985, and 1986 for provision which had authorized appropriations of not to exceed $4,166,000,000 for each of the fiscal years 1982 and 1983.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

§ 5304. Statement of activities and review

(a) Statement of objectives and projected use of funds by grantee prerequisite to receipt of grant; publication of proposals by grantees; notice and comment

(1) Prior to the receipt in any fiscal year of a grant under section 5306(b) of this title by any metropolitan city or urban county, under section 5306(d) of this title by any State, or under section 5306(d)(2)(B) of this title by any unit of general local government, the grantee shall have prepared a final statement of community development objectives and projected use of funds and shall have provided the Secretary with the certifications required in subsection (b) of this section and, where appropriate, subsection (c) of this section. In the case of metropolitan cities and urban counties receiving grants pursuant to section 5306(b) of this title and in the case of units of general local government receiving grants pursuant to section 5306(d)(2)(B) of this title, the statement of projected use of funds shall consist of proposed community development activities. In the case of States receiving grants pursuant to section 5306(d) of this title, the statement of projected use of funds shall consist of the method by which the States will distribute funds to units of general local government. In all cases, beginning in fiscal year 1984, the statement required in this subsection shall include a description of the use of funds made available under section 5306 of this title in fiscal year 1982 and thereafter (or, beginning in fiscal year 1985, such use since preparation of the last statement prepared pursuant to this subsection) together with an assessment of the relationship of such use to the community development objectives identified in the statement prepared pursuant to this subsection for such previous fiscal years and to the requirements of subsection (b)(3) of this section.

(2) In order to permit public examination and appraisal of such statements, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the grantee shall in a timely manner—

(A) furnish citizens or, as appropriate, units of general local government information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the grantee for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities;

(B) publish a proposed statement in such manner to afford affected citizens or, as appropriate, units of general local government an opportunity to examine its content and to submit comments on the proposed statement and on the community development performance of the grantee;

(C) hold one or more public hearings to obtain the views of citizens on community development and housing needs;

(D) provide citizens or, as appropriate, units of general local government with reasonable access to records regarding the past use of funds received under section 5306 of this title by the grantee; and

(E) provide citizens or, as appropriate, units of general local government with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds received under section 5306 of this title from one eligible activity to another or in the method of distribution of such funds.

In preparing the final statement, the grantee shall consider any such comments and views and may, if deemed appropriate by the grantee, modify the proposed statement. The final statement shall be made available to the public, and a copy shall be furnished to the Secretary together with the certifications required under subsection (b) of this section and, where appropriate, subsection (c) of this section. Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same procedures required in this paragraph for the preparation and submission of such statement.

(b) Certification of enumerated criteria by grantee to Secretary

Any grant under section 5306 of this title shall be made only if the grantee certifies to the satisfaction of the Secretary that—

(1) the grantee is in full compliance with the requirements of subsection (a)(2)(A), (B), and (C) of this section and has made the final statement available to the public;

(2) the grant will be conducted and administered in conformity with Public Law 88-352 [42 U.S.C. 2000a et seq.] and Public Law 90-284, and the grantee will affirmatively further fair housing;

(3) the projected use of funds has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight, and the projected use of funds may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs, except that the aggregate use of funds received under section 5306 of this title and, if applicable, as a result of a guarantee under section 5308 of this title, during a period specified by the grantee of not more than 3 years, shall principally benefit persons of low and moderate income in a manner that ensures that not less than 51 percent of such funds are used for activities that benefit such persons during such period;

(4) it has developed a community development plan, for the period specified by the grantee under paragraph (3), that identifies community development and housing needs and specifies both short- and long-term community development objectives that have been developed in accordance with the primary objective and requirements of this chapter;

(5) the grantee will not attempt to recover any capital costs of public improvements assisted in whole or part under section 5306 of this title or with amounts resulting from a guarantee under section 5308 of this title by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (A) funds received under section 5306 of this title are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this chapter; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient funds received under section 5306 of this title to comply with the requirements of subparagraph (A); and

(6) the grantee will comply with the other provisions of this chapter and with other applicable laws.

(c) Special certifications required for certain grants

(1) Any grant made under section 5306(b) of this title shall be made only if the unit of general local government certifies that it is following a current housing assistance plan which has been approved by the Secretary and which—

(A) accurately surveys the condition of the housing stock in the community (including the number of vacant and abandoned dwelling units) and assesses the housing assistance needs of lower income persons (including elderly and handicapped persons, large families, owners of homes requiring rehabilitation assistance, and persons displaced or to be displaced) residing in or expected to reside in the community as a result of existing or projected changes in employment opportunities and population in the community (and those elderly persons residing in or expected to reside in the community), or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary, and identifies housing stock which is in a deteriorated condition, including the impact of conversion of rental housing to condominium or cooperative ownership on such needs;

[*See main edition for text of* (*B*) *and* (*C*), (*2*)]

(d) Submission of performance and evaluation report by grantee to Secretary; contents; availability for citizen comment; annual review and audit by Secretary of program implementation; adjustments in amount of annual grants

Each grantee shall submit to the Secretary, at a time determined by the Secretary, a performance and evaluation report concerning the use of funds made available under section 5306 of this title, together with an assessment by the grantee of the relationship of such use to the objectives identified in the grantee's statement under subsection (a) of this section and to the requirements of subsection (b)(3) of this section. Such report shall also be made available to the citizens in each grantee's jurisdiction in sufficient time to permit such citizens to comment on such report prior to its submission, and in such manner and at such times as the grantee may determine. The grantee's report shall indicate its programmatic accomplishments, the nature of and reasons for changes in the grantee's program objectives, indications of how the grantee would change its programs as a result of its experiences, and an evaluation of the extent to which its funds were used for activities that benefited low- and moderate-income persons. The report shall include a summary of any comments received by the grantee from citizens in its jurisdiction respecting its program. The Secretary shall encourage and assist national associations of grantees eligible under section 5306(d)(2)(B) of this title, national associations of States, and national associations of units of general local government in nonentitlement areas to develop and recommend to the Secretary, within one year after November 30, 1983, uniform recordkeeping, performance reporting, and evaluation reporting, and auditing requirements for such grantees, States, and units of general local government, respectively. Based on the Secretary's approval of these recommendations, the Secretary shall establish such requirements for use by such grantees, States, and units of general local government. The Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine—

[*See main edition for text of* (*1*) *and* (*2*)]

The Secretary may make appropriate adjustments in the amount of the annual grants in accordance with the Secretary's findings under this subsection. With respect to assistance made available to units of general local government under section 5306(d) of this title, the Secretary may adjust, reduce, or withdraw such assistance, or take other action as appropriate in accordance with the Secretary's reviews and audits under this subsection, except that funds already expended on eligible activities under this chapter shall not be recaptured or deducted from future assistance to such units of general local government.

[*See main edition for text of* (*e*) *and* (*f*)]

(g) Payments; revolving loan fund: establishment in private financial institution for rehabilitation activities; standards for payments: criteria

(1) Units of general local government receiving assistance under this chapter may receive funds, in one payment, in an amount not to exceed the total amount designated in the grant (or, in the case of a unit of general local government receiving a distribution from a State pursuant to section 5306(d) of this title, not to exceed the total amount of such distribution) for use in establishing a revolving loan fund which is to be established in a private financial institution and which is to be used to finance rehabilitation activities assisted under this chapter. Rehabilitation activities authorized under this section shall begin within 45 days after receipt of such payment and substantial disbursements from such fund must begin within 180 days after receipt of such payment.

[*See main edition for text of* (*2*); (*h*)]

(i) Retention of program income; condition of distribution

Notwithstanding any other provision of law, any unit of general local government may retain any program income that is realized from any grant made by the Secretary, or any amount distributed by a State, under section 5306 of this title if (1) such income was realized after the initial disbursement of the funds received by such unit of general local government under such section; and (2) such unit of general local government has agreed that while the unit of general local government is participating in a community development program under this chapter it will utilize the program income for eligible community development activities in accordance with the provisions of this chapter. A State may require as a condition of any amount distributed by such State under section 5306(d) of this title that a unit of general local government shall pay to such State any such income to be used by such State to fund additional eligible community development activities, except that such State shall waive such condition to the extent such income is applied to continue the activity from which such income was derived.

(j) Provision of benefits to displaced persons

Each grantee shall provide for reasonable benefits to any person involuntarily and permanently displaced as a result of the use of assistance received under this chapter to acquire or substantially rehabilitate property.

(As amended Pub. L. 98-181, title I, §§ 101(b), 104, Nov. 30, 1983, 97 Stat. 1159, 1161; Pub. L. 98-479, title I, § 101(a)(5)-(7), Oct. 17, 1984, 98 Stat. 2219.)

AMENDMENTS

1984—Subsec. (a)(2)(E). Pub. L. 98-479, § 101(a)(5), added "or in the method of distribution of such funds".

Subsec. (b)(5)(B). Pub. L. 98-479, § 101(a)(6), substituted "moderate" for "low and moderate income who are not persons of very low" before "income, the grantee certifies".

Subsec. (d). Pub. L. 98-479, § 101(a)(7), struck out the comma between "which" and "its funds" in third sentence, and added "general" before "local" after "and units of" in fifth sentence, and before "local" in sixth sentence.

1983—Subsec. (a)(1). Pub. L. 98-181, § 104(a), added provision that the statement must include a description of the use of funds made available under section 5306 of this title in fiscal year 1982 and thereafter (or, beginning with fiscal year 1985, such use since preparation of the last statement under this subsection) together with an assessment of the relationship of such use to the community development objectives identified in the statement prepared pursuant to this subsection for previous fiscal years and to the requirements of subsec. (b)(3) of this section.

Subsec. (a)(2). Pub. L. 98-181, § 104(b)(1), in provisions preceding subpar. (A) substituted "shall in a timely manner" for "shall".

Pub. L. 98-181, § 104(b)(6), added at end thereof "Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same procedures required in this paragraph for the preparation and submission of such statement".

Subsec. (a)(2)(A). Pub. L. 98-181, § 104(b)(2), substituted "citizens or, as appropriate, units of general local government" for "citizens", and inserted ", including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the grantee for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities".

Subsec. (a)(2)(D), (E). Pub. L. 98-181, § 104(b)(3)-(5), added subpars. (D) and (E).

Subsec. (b)(2). Pub. L. 98-181, § 104(c)(1), added requirement that the grantee affirmatively further fair housing.

Subsec. (b)(3). Pub. L. 98-181, § 101(b), added provision that the aggregate use of funds received under section 5306 of this title and, if applicable, as a result of a guarantee under section 5308 of this title, during a period specified by the grantee of not more than 3 years, shall principally benefit persons of low and moderate income in a manner that ensures that not less than 51 percent of such funds are used for activities that benefit such persons during such period.

Subsec. (b)(4) to (6). Pub. L. 98-181, § 104(c)(2)-(4), added pars. (4) and (5) and redesignated former par. (4) as (6).

Subsec. (c)(1)(A). Pub. L. 98-181, § 104(d), inserted "(including the number of vacant and abandoned dwelling units)".

Subsec. (d). Pub. L. 98-181, § 104(e), in provisions preceding par. (1), substituted "performance and evaluation report" for "performance report"; substituted "subsection (a) of this section and to the requirements of subsection (b)(3) of this section" for "subsection (a) of this section"; and added provision requiring that the report be made available for citizen comment prior to submission, that the report summarize such comments and indicate programmatic accomplishments, changes in programs and objectives, and an evaluation of the extent to which funds were used to benefit low- and moderate-income persons, and requiring the Secretary to establish uniform recordkeeping, performance and evaluation reporting, and requirements for grantees, States, and local governments, based on the Secretary's approval of recommendations made by such grantees and State and local governments.

Subsec. (g)(1). Pub. L. 98-181, § 104(f), added "and substantial disbursements from such fund must begin within 180 days after receipt of such payment".

Subsecs. (i), (j). Pub. L. 98-181, § 104(g), added subsecs. (i) and (j).

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1437*o*, 1439, 5306, 5316 of this title.

§ 5305. Activities eligible for assistance

(a) Enumeration of eligible activities

Activities assisted under this chapter may include only—

[*See main edition for text of* (*1*)]

(2) the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements;

[*See main edition for text of* (*3*) *to* (*7*)]

(8) provision of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this chapter, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 per centum of the amount of any assistance to a unit of general local government under this chapter may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this chapter for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount;

[*See main edition for text of* (*9*) *to* (*13*)]

(14) activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property; (B) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (C) planning;

(15) grants to neighborhood-based nonprofit organizations, local development corporations, or entities organized under section 681(d) of title 15 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 5301(c) of this title, and grants to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in section 1437a(b)(3) of this title) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

(16) activities necessary to the development of a comprehensive community-wide energy use strategy, which may include items such as—

[*See main edition for text of* (*A*) *to* (*H*)]

(I) a projection of the savings in scarce fossil fuel consumption and the development and use of renewable energy resources that will result from implementation of the energy use strategy;

(17) provision of assistance to private, for-profit entities, when the assistance is necessary or appropriate to carry out an economic development project; and

(18) the rehabilitation or development of housing assisted under section 1437*o* of this title.

(b) Reimbursement of Secretary for administrative services connected with rehabilitation of properties

Upon the request of the recipient of assistance under this chapter, the Secretary may agree to perform administrative services on a reimbursable basis on behalf of such recipient in connection with loans or grants for the rehabilitation of properties as authorized under subsection (a)(4) of this section.

(c) Activities benefiting persons of low and moderate income

(1) In any case in which an assisted activity described in paragraph (14) or (17) of subsection (a) of this section is identified as principally benefiting persons of low and moderate income, such activity shall—

(A) be carried out in a neighborhood consisting predominately of persons of low and moderate income and provide services for such persons; or

(B) involve facilities designed for use predominately by persons of low and moderate income; or

(C) involve employment of persons, a majority of whom are persons of low and moderate income.

(2) In any case in which an assisted activity described in subsection (a) of this section is designed to serve an area generally and is clearly designed to meet identified needs of persons of low and moderate income in such area, such activity shall be considered to principally benefit persons of low and moderate income if (A) not less than 51 percent of the residents of such area are persons of low and moderate income; or (B) in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income.

(3) Any assisted activity under this chapter that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such persons.

(As amended Pub. L. 98-181, title I, § 105(a), (b)(1), (c)-(e), title III, § 302(a), Nov. 30, 1983, 97 Stat. 1163, 1164, 1206; Pub. L. 98-479, title I, § 101(a)(8), (9)(A), Oct. 17, 1984, 98 Stat. 2219.)

References in Text

Pub. L. 98-8, referred to in subsec. (a)(8), is Pub. L. 98-8, Mar. 24, 1983, 97 Stat. 13. Provisions of that Act relating to assistance under this chapter are not classified to the Code. For complete classification of this Act to the Code, see Tables.

Amendments

1984—Subsec. (a)(8). Pub. L. 98-479, § 101(a)(8)(A), added "fiscal year 1982 or".

Subsec. (a)(15). Pub. L. 98-479, § 101(a)(8)(B), substituted "and" for "including" before "grants to neighborhood-based nonprofit organizations".

Subsec. (c)(2)(B). Pub. L. 98-479, § 101(a)(9)(A), substituted "in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income" for "in any jurisdiction having no areas meeting the requirements of subparagraph (A), the area served by such activity has a larger proportion of persons of low and moderate income than not less than 75 percent of the other areas in the jurisdiction of the recipient".

1983—Subsec. (a)(2). Pub. L. 98-181, § 105(a), amended par. (2) generally, adding exception for buildings for the general conduct of government, and striking out provisions which enumerated types of public works, facilities, and site or other improvements, including neighborhood facilities, centers for the handicapped, senior centers, historic properties, etc.

Subsec. (a)(8). Pub. L. 98-181, § 105(b)(1), substituted "not more than 15 per centum" for "not more than 10 per centum" and inserted at the end thereof "unless such unit of general local government used more than 15 percent of the assistance received under this chapter for fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount".

Subsec. (a)(14). Pub. L. 98-181, § 105(c), substituted "public facilities (except for buildings for the general conduct of government)" for "public facilities".

Subsec. (a)(15). Pub. L. 98-181, § 105(d), added provision for assistance for shared housing facilities for elderly families, as defined in section 1437a(b)(3) of this title.

Subsec. (a)(18). Pub. L. 98-181, § 302(a), added par. (18).

Subsec. (c). Pub. L. 98-181, § 105(e), added subsec. (c).

Effective Date of 1984 Amendment

Section 101(a)(9)(B) of Pub. L. 98-479 provided that: "The amendment made by subparagraph (A) [amending subsec. (c)(2) of this section] shall take effect upon the enactment of this Act [Oct. 17, 1984] and shall be implemented through an interim instruction issued by the Secretary of Housing and Urban Development. Not later than June 1, 1985, the Secretary of Housing and Urban Development shall issue a final regulation regarding the provisions of such amendment."

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

Waiver of Limitation on Amount of Funds Which May Be Used in Fiscal Years 1982, 1983, and 1984 for Public Service Activities

Section 303(b) of Pub. L. 97-35, as amended Pub. L. 98-181, title I, § 105(b)(2), Nov. 30, 1983, 97 Stat. 1164, provided that: "In fiscal years 1982 and 1983, the Secretary may waive the limitation on the amount of funds which may be used for public services activities under section 105(a)(8) of the Housing and Community Development Act of 1974, as amended by this Act [subsec. (a)(8) of this section], in the case of a unit of general local government which, during fiscal year 1981, allocated more than 10 per centum of funds received under title I of the Housing and Community Development Act of 1974 [this chapter] for such activities."

§ 5306. Allocation and distribution of funds

[*See main edition for text of* (*a*)]

(b) Computation of amount allocated to metropolitan cities and urban counties

[*See main edition for text of* (*1*) *to* (*5*)]

(6)(A) Where data are available, the amount determined under paragraph (1) for a metropolitan city that has been formed by the consolidation of one or more metropolitan cities with an urban county shall be equal to the sum of the amounts that would have been determined under paragraph (1) for the metropolitan city or cities and the balance of the consolidated government, if such consolidation had not occurred. This paragraph shall apply only to any consolidation that—

(i) included all metropolitan cities that received grants under this section for the fiscal year preceding such consolidation and that were located within the urban county;

(ii) included the entire urban county that received a grant under this section for the fiscal year preceding such consolidation; and

(iii) took place on or after January 1, 1983.

(B) The population growth rate of all metropolitan cities referred to in section 5302(a)(12) of this title shall be based on the population of (i) metropolitan cities other than consolidated governments the grant for which is determined under this paragraph; and (ii) cities that were metropolitan cities before their incorporation into consolidated governments. For purposes of calculating the entitlement share for the balance of the consolidated government under this paragraph, the entire balance shall be considered to have been an urban county.

(c) Reallocation of undistributed funds within same metropolitan area as original allocation; amount and calculation of reallocation grant

(1) Except as provided in paragraph (2), any amounts allocated to a metropolitan city or an urban county pursuant to the preceding provisions of this section which are not received by the city or county for a fiscal year because of failure to meet the requirements of section 5304(a), (b), or (c) of this title, or which become available as a result of actions under section 5304(d) or 5311 of this title, shall be reallocated in the succeeding fiscal year to the other metropolitan cities and urban counties in the same metropolitan area which certify to the satisfaction of the Secretary that they would be adversely affected by the loss of such amounts from the metropolitan area. The amount of the share of funds reallocated under this paragraph for any metropolitan city or urban county shall bear the same ratio to the total of such reallocated funds in the metropolitan area as the amount of funds awarded to the city or county for the fiscal year in which the reallocated funds become available bears to the total amount of funds awarded to all metropolitan cities and urban counties in the same metropolitan area for that fiscal year, except that—

[*See main edition for text of* (*A*)]

(B) in reallocating amounts resulting from an action under section 5304(d) of this title or section 5311 of this title, a city or county against whom any such action was taken in a fiscal year shall be excluded from a calculation of share for purposes of reallocating, in the succeeding year, the amounts becoming available as a result of such action; and

[*See main edition for text of* (*C*)]

Any amounts allocated under subsection (b) of this section which become available for reallocation and for which no metropolitan city or urban county qualifies under this paragraph shall be added to amounts available for allocation under such subsection (b) of this section in the succeeding fiscal year.

[*See main edition for text of* (*2*)]

(3) Notwithstanding the provisions of paragraph (1), the Secretary may upon request transfer responsibility to any metropolitan city for the administration of any amounts received, but not obligated, by the urban county in which such city is located if (A) such city was an included unit of general local government in such county prior to the qualification of such city as a metropolitan city; (B) such amounts were designated and received by such county for use in such city prior to the qualification of such city as a metropolitan city; and (C) such city and county agree to such transfer of responsibility for the administration of such amounts.

(d) Allocation among States for nonentitlement areas; amount and calculation of grants; distributions by State or Secretary; certain distributions made pursuant to prior provisions; certifications required by Governor enumerated; responsibility for administration and administrative expenses; reallocation; exclusion of Indian tribes in certain computations; certifications required of units of general local government in nonentitlement areas; applicability of this chapter and other law

[*See main edition for text of* (*1*)]

(2)(A) Amounts allocated under paragraph (1) shall be distributed to units of general local government located in nonentitlement areas of the State to carry out activities in accordance with the provisions of this chapter—

(i) by a State that has elected, in such manner and at such time as the Secretary shall prescribe, to distribute such amounts, consistent with the statement submitted under section 5304(a) of this title; or

[*See main edition for text of* (*ii*)]

Any election to distribute funds made after the close of fiscal year 1984 is permanent and final. Notwithstanding any provision of this chapter, the Secretary shall make grants from amounts authorized for use in nonentitlement areas by the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1981, in accordance with the provisions of this chapter which governed grants with respect to such amounts, as such provisions existed prior to October 1, 1981. Any amounts under the preceding sentence (except amounts for which preapplications have been approved by the Secretary prior to October 1, 1981, and which have been obligated by January 1, 1982) which are or become available for obligation after fiscal year 1981 shall be available for distribution in the State in which the grants from such amounts were made, by the State or by the Secretary, whichever is distributing the State allocation in the fiscal year in which such amounts are or become available.

(B) The Secretary shall distribute amounts allocated under paragraph (1) if the State has not elected to distribute such amounts.

(C) To receive and distribute amounts allocated under paragraph (1), the Governor must certify that the State, with respect to units of general local government in nonentitlement areas—

[*See main edition for text of* (*i*) *and* (*ii*)]

(iii) will not refuse to distribute such amounts to any unit of general local government on the basis of the particular eligible activity selected by such unit of general local government to meet its community development needs, except that this clause may not be considered to prevent a State from establishing priorities in distributing such amounts on the basis of the activities selected; and

[*See main edition for text of* (*iv*)]

(D) To receive and distribute amounts allocated under paragraph (1), the Governor of each State shall certify that each unit of general local government to be distributed funds will be required to identify its community development and housing needs, including the needs of low and moderate income persons, and the activities to be undertaken to meet such needs.

(3)(A) If the State receives and distributes such amounts, it shall be responsible for the administration of funds so distributed. The State shall pay from its own resources all administrative expenses incurred by the State in carrying out its responsibilities under this chapter or section 1437o(e)(1) of this title, except that from the amounts received for distribution in nonentitlement areas, the State may deduct an amount to cover such expenses not to exceed the sum of $102,000 plus 50 percent of any such expenses in excess of $100,000. Amounts deducted in excess of $100,000 shall not exceed 2 percent of the amount so received.

[*See main edition for text of* (*B*)]

(C) Any amounts allocated for use in a State under paragraph (1) that are not received by the State for any fiscal year because of failure to meet the requirements of subsection (a) or (b) of section 5304 of this title or to make the certifications required in subparagraphs (C) and (D) of paragraph (2), or that become available as a result of actions against the State under section 5304(d) or 5311 of this title, shall be added to amounts allocated to all States under paragraph (1) for the succeeding fiscal year.

(D) Any amounts allocated for use in a State under paragraph (1) that become available as a result of actions under section 5304(d) or 5311 of this title against units of general local government in nonentitlement areas of the State or as a result of the closeout of a grant made by the Secretary under this section in nonentitlement areas of the State shall be added to amounts allocated to the State under paragraph (1) for the fiscal year in which the amounts become so available.

(4) In computing amounts under paragraph (1), Indian tribes shall be excluded.

(5) No amount may be distributed by any State or the Secretary under this subsection to any unit of general local government located in a nonentitlement area unless such unit of general local government certifies that—

(A) it will minimize displacement of persons as a result of activities assisted with such amounts;

(B) its program will be conducted and administered in conformity with Public Law 88-352 [42 U.S.C. 2000a et seq.] and Public Law 90-284, and that it will affirmatively further fair housing;

(C) it will provide for opportunities for citizen participation, hearings, and access to information with respect to its community development program that are comparable to those required of grantees under section 5304(a)(2) of this title; and

(D) it will not attempt to recover any capital costs of public improvements assisted in whole or part under this section or with amounts resulting from a guarantee under section 5308 of this title by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (i) funds received under this section are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this chapter; or (ii) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary or such State, as the case may be, that it lacks sufficient funds received under this section to comply with the requirements of clause (i).

(6) Any activities conducted with amounts received by a unit of general local government under this subsection shall be subject to the applicable provisions of this chapter and other Federal law in the same manner and to the same extent as activities conducted with amounts received by a unit of general local government under subsection (a) of this section.

[*See main edition for text of* (*e*)]

(f) Pro rata adjustment of entitlement amounts

If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section is insufficient to provide the amounts to which metropolitan cities and urban counties would be entitled under subsection (b) of this section, and funds are not otherwise appropriated to meet the deficiency, the Secretary shall meet the deficiency through a pro rata reduction of all amounts determined under subsection (b) of this section. If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section exceeds the amounts to which metropolitan cities and urban counties would be entitled under subsection (b) of this section, the Secretary shall distribute the excess through a pro rata increase of all amounts determined under subsection (b) of this section.

(As amended Pub. L. 98-181, title I, § 106, Nov. 30, 1983, 97 Stat. 1164; Pub. L. 98-479, title I, § 101(a)(10)-(12), Oct. 17, 1984, 98 Stat. 2219, 2220.)

REFERENCES IN TEXT

Public Law 88-352, referred to in subsec. (d)(5), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Public Law 90-284, referred to in subsec. (d)(5), is Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73, as amended, popularly known as the Civil Rights Act of 1968. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1984—Subsec. (d)(2)(A). Pub. L. 98-479, § 101(a)(10)(A), substituted "the State" for "a State that has elected, in such manner and at such time as the Secretary shall prescribe" in provisions preceding cl. (i).

Subsec. (d)(2)(A)(i). Pub. L. 98-479, § 101(a)(10)(B), substituted "a State that has elected, in such manner and at such time as the Secretary shall prescribe, to distribute such amounts" for "the State".

Subsec. (d)(3)(A). Pub. L. 98-479, § 101(a)(11)(A), added "or section 1437o(e)(1) of this title".

Subsec. (d)(3)(C). Pub. L. 98-479, § 101(a)(11)(B), added "or to make the certifications required in subparagraphs (C) and (D) of paragraph (2)".

Subsec. (d)(5)(D)(ii). Pub. L. 98-479, § 101(a)(12), substituted "moderate" for "low and moderate income who are not persons of very low" before "income, the grantee certifies".

1983—Subsec. (b)(6). Pub. L. 98-181, § 106(a), added par. (6).

Subsec. (c)(1)(B). Pub. L. 98-181, § 106(b), substituted "a city or county against whom any such action was taken in a fiscal year shall be excluded from a calculation of share for purposes of reallocating in the succeeding year," for "the city or county against whom any such action was taken shall be excluded from the calculation of shares for purposes of reallocating".

Subsec. (c)(3). Pub. L. 98-181, § 106(c), added par. (3).

Subsec. (d)(2)(A). Pub. L. 98-181, § 106(d)(1), substituted "a State that has elected, in such manner and at such time as the Secretary shall prescribe" for "the State" in provisions preceding cl. (i), and inserted, following cl. (ii), "Any election to distribute funds made after the close of fiscal year 1984 is permanent and final."

Subsec. (d)(2)(B). Pub. L. 98-181, § 106(d)(2), substituted provisions requiring the Secretary to distribute amounts allocated under par. (1) if the State has not elected to distribute such amounts, for provisions which required the Secretary to distribute such amounts where the State had elected, in such manner and before such time as prescribed by the Secretary, not to distribute such amounts, or the State had failed to submit the certifications described in subpar. (C).

Subsec. (d)(2)(C)(iii). Pub. L. 98-181, § 106(e), amended cl. (iii) generally, substituting provisions requiring certification by the Governor that the State will not refuse to distribute funds to any local government unit on the basis of the particular activity selected to meet its community development needs, except that a State may establish priorities in distributing such amounts, for provisions requiring the Governor to certify that the State would provide funds for community development activities in an amount of at least 10 per centum of the amounts allocated for use in the State pursuant to par. (1).

Subsec. (d)(2)(D). Pub. L. 98-181, § 106(f), added subpar. (D).

Subsec. (d)(3)(A). Pub. L. 98-181, § 106(g), substituted provisions that the State may deduct an amount to cover such expenses not to exceed the sum of $102,000 plus 50 percent of any such expenses in excess of $100,000, and that the amounts deducted in excess of $100,000 shall not exceed 2 percent of the amount so received, for provisions that the State could deduct an amount not to exceed 50 per centum of the costs incurred by the State in carrying out such responsibilities, and that amounts so deducted could not exceed 2 per centum of the amount so received.

Subsec. (d)(3)(C), (D). Pub. L. 98-181, § 106(h), amended subpar. (C) generally, substituting provisions requiring that amounts which are to be reallocated because of failure to meet requirements of section 5304(a), (b) of this title or because of action under section 5304(d) or 5311 of this title be added to amounts allocated to all States for the succeeding fiscal year for provisions that amounts reallocated because of action under section 5304(d) or section 5311 of this title were to be added to amounts available for distribution in the State in the same fiscal year, in the case of actions against units of general local government, or to amounts available for distribution in the succeeding fiscal year, in the case of action against the State, and struck out provision for distribution of such funds by either the State or the Secretary and adding subpar. (D).

Subsec. (d)(5), (6). Pub. L. 98-181, § 106(i), added pars. (5) and (6).

Subsec. (f). Pub. L. 98-181, § 106(j), amended subsec. (f) generally, substituting provisions for pro rata reduction of all amounts determined under subsec. (b) in the event of a deficiency for provisions for reduction of all basic grant entitlement funds provided pursuant to this section in the event of a deficiency, and added provision for distribution of excess amounts.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5301, 5302, 5303, 5304, 5307, 5308, 5312 of this title.

§ 5307. Discretionary fund

(a) Amount; grants as supplementary

Of the total amount approved in appropriation Acts under section 5303 of this title for each of the fiscal years 1984, 1985, and 1986, not more than $68,200,000 for each such fiscal year may be set aside in a special discretionary fund for grants under subsection (b) of this section. Grants under this section are in addition to any other grants which may be made under this chapter to the same entities for the same purposes.

(b) Permissible uses of funds

From amounts set aside under subsection (a) of this section, the Secretary is authorized to make grants—

[*See main edition for text of (1) and (2)*]

(3) to Indian tribes;

(4) to States, units of general local government, Indian tribes, or areawide planning organizations for the purpose of providing technical assistance in planning, developing, and administering assistance under this chapter; to groups designated by such governmental units to assist them in carrying out assistance under this chapter; to qualified groups for the purpose of assisting more than one such governmental unit to carry out assistance under this chapter; and to States and units of general local government for implementing special projects otherwise authorized under this chapter; and the Secretary may also provide technical assistance, directly or through contracts, to such governmental units and groups; and

(5) to States and units of general local government for the purpose of allocating amounts to any such State or unit of general local government that is determined by the Secretary to have received insufficient amounts under section 5306 of this title as a result of a miscalculation of its share of funds under such section.

[*See main edition for text of (c)*]

(d) Satisfactory assurances required, special assurances required of Indian tribes

(1) Except as provided in paragraph (2), no grant may be made under this section or section 5318 of this title and no assistance may be made available under section 1437*o* of this title unless the grantee provides satisfactory assurances that its program will be conducted and administered in conformity with Public Law 88-352 [42 U.S.C. 2000a et seq.] and Public Law 90-284.

[*See main edition for text of (2)*]

(3) The Secretary may accept a certification from the grantee or applicant that it has complied with the requirements of paragraph (1) or (2), as appropriate.

(As amended Pub. L. 98-181, title I, § 107, title III, § 302(b), Nov. 30, 1983, 97 Stat. 1167, 1206.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181, § 107(a), substituted provisions permitting not more than $68,200,000 for each of the fiscal years 1984, 1985, and 1986 to be set aside in a special discretionary fund for grants under subsection (b) of this section, for provisions permitting not more than $60,000,000 to be set aside for each of the fiscal years 1982 and 1983 in such a fund.

Subsec. (b)(4). Pub. L. 98-181, § 107(b), amended par. (4) generally, adding provisions authorizing the Secretary to provide assistance to groups designated by certain enumerated governmental units to assist in carrying out this chapter, to qualified groups for the purpose of assisting more than one such governmental unit and to provide technical assistance, directly or through contracts, to such governmental units and groups.

Subsec. (b)(5). Pub. L. 98-181, § 107(c), added par. (5).

Subsec. (d)(1). Pub. L. 98-181, § 302(b)(1), added provisions relating to section 1437*o* of this title, and substituted "grantee" for "applicant".

Subsec. (d)(3). Pub. L. 98-181, § 302(b)(2), added "grantee or" before "applicant".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5303, 5306, 5308 of this title.

§ 5308. Guarantee and commitment to guarantee loans for acquisition of property

(a) Authority of Secretary; issuance of obligations by units of general local government or designated public agencies; form, denomination, maturity, and conditions of notes or other obligations

The Secretary is authorized, upon such terms and conditions as the Secretary may prescribe, to guarantee and make commitments to guarantee, only to such extent or in such amounts as provided in appropriation Acts, the notes or other obligations issued by units of general local government, or by public agencies designated by such units of general local government, for the purposes of financing acquisition of real property or the rehabilitation of real property owned by the unit of general local government (including such related expenses as the Secretary may permit by regulation). A guarantee under this section may be used to assist a grantee in obtaining financing only if the grantee has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee. Notes or other obligations guaranteed pursuant to this section shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary. Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities, to the authority provided in this section, and to any funding limitation approved in appropriation Acts, the Secretary shall enter into commitments during fiscal year 1984 to guarantee notes and obligations under this section with an aggregate principal amount of $225,000,000.

[*See main edition for text of (b) to (f)*]

(g) Issuance of obligations by Secretary to Secretary of Treasury to satisfy authorized guarantee obligations; establishment of maturities and rates of interest and purchase of obligations by Secretary of Treasury

The Secretary may issue obligations to the Secretary of the Treasury in an amount outstanding at any one time sufficient to enable the Secretary to carry out his obligations under guarantees authorized by this section. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Secretary issued under this section, and for such purposes is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which such securities may be issued under such chapter are extended to include the purchases of the Secretary's obligations hereunder.

[*See main edition for text of (h) to (k)*]

(As amended Pub. L. 98-181, title I, § 108, Nov. 30, 1983, 97 Stat. 1168; Pub. L. 98-479, title II, §§ 203(*l*)(2), 204(k)(1), Oct. 17, 1984, 98 Stat. 2231, 2233.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-479, § 203(*l*)(2), substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as now or hereafter in force" and "such chapter" for "such Act".

Subsec. (h). Pub. L. 98-479, § 204(k)(1), substituted "subsection (j)" for "subsection (g)".

1983—Subsec. (a). Pub. L. 98-181 added provision that a guarantee under this section may be used to assist a grantee in obtaining financing only if the grantee has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee, and substituted provisions requiring the Secretary to enter into commitments during fiscal year 1984 to guarantee notes and obligations under this section with an aggregate principal amount of $225,000,000, notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities, for provisions prohibiting the Secretary from entering into commitments during fiscal year 1981 to guarantee under this section notes and other obligations with an aggregate principal amount in excess of $300,000,000.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5301, 5304, 5306 of this title; title 31 section 1305.

§ 5312. Use of grants for settlement of outstanding urban renewal loans of units of general local government

[*See main edition for text of (a) and (b)*]

(c) Repealed. Pub. L. 98-479, title I, § 101(a)(13)(A), Oct. 17, 1984, 98 Stat. 2220

(As amended Pub. L. 98-181, title I, § 109, Nov. 30, 1983, 97 Stat. 1168; Pub. L. 98-479, title I, § 101(a)(13)(A), Oct. 17, 1984, 98 Stat. 2220.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-479 struck out subsec. (c) which related to retention of program income and prerequisites.

1983—Subsec. (c). Pub. L. 98-181 added subsec. (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

§ 5316. Transition provisions

[*See main edition for text of (a)*]

(b) Final date in fiscal year for submission of application for grant; establishment by Secretary

In the case of funds available for any fiscal year, the Secretary shall not consider any statement under section 5304(a) of this title, unless such statement is submitted on or prior to such date as the Secretary shall establish as the final date for submission of statements for that year.

(As amended Pub. L. 98-181, title I, § 110(a), Nov. 30, 1983, 97 Stat. 1168.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-181 substituted "prior to such date" for "prior to such date (in that fiscal year)", and "for that year" for "in that year".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 110(b) of part A (§§ 101-110) of title I of Pub. L. 98-181, as amended by Pub. L. 98-479, title I, § 101(b)(1), Oct. 17, 1984, 98 Stat. 2220, provided that: "The amendments made by this part [amending sections 5301 to 5308, 5312, and 5316 of this title and provisions set out as a note under section 5305 of this title] shall apply only to funds available for fiscal year 1984 and thereafter."

§ 5317. Liquidation of superseded or inactive programs

The Secretary is authorized to transfer the assets and liabilities of any program which is superseded or inactive by reason of this chapter to the revolving fund for liquidating programs established pursuant to title II of the Independent Offices Appropriation Act, 1955 (Public Law 83-428; 68 Stat. 272, 295) [12 U.S.C. 1701g-5].

(As amended Pub. L. 98-479, title II, § 204(k)(2), Oct. 17, 1984, 98 Stat. 2233.)

AMENDMENTS

1984—Pub. L. 98-479 substituted "title II of the Independent Offices Appropriation Act, 1955 (Public Law 83-428; 68 Stat. 272, 295)" for "title II of the Independent Offices Appropriation Act of 1965 (Public Law 81-428; 68 Stat. 272, 295)".

§ 5318. Urban development action grants

(a) Authorization; purpose; amount

The Secretary is authorized to make urban development action grants to cities and urban counties which are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery. Of the total amount approved in appropriation Acts under section 5303 of this title for each of the fiscal years 1982 and 1983, not more than $500,000,000 shall be available for each of the fiscal years 1982 and 1983 for grants under this section. There are authorized to be appropriated to carry out the provisions of this section not to exceed $440,000,000 for each of the fiscal years 1984, 1985, and 1986, and any amount appropriated under this sentence shall remain available until expended.

(b) Eligibility of cities and urban counties; criteria and standards; regulations

(1) Urban development action grants shall be made only to cities and urban counties which have, in the determination of the Secretary, demonstrated results in providing housing for low- and moderate-income persons and in providing equal opportunity in housing and employment for low- and moderate-income persons and members of minority groups. The Secretary shall issue regulations establishing criteria in accordance with the preceding sentence and setting forth minimum standards for determining the level of economic distress of cities and urban counties for eligibility for such grants. These standards shall take into account factors such as the age of housing; the extent of poverty; the extent of population lag; growth of per capita income; and the extent of unemployment, job lag, or surplus labor. Any city that has a population of less than 50,000 persons and is not the central city of a metropolitan area, and that was eligible for fiscal year 1983 under this paragraph for assistance under this section, shall continue to be eligible for such assistance until the Secretary revises the standards for eligibility for such cities under this paragraph and includes the extent of unemployment, job lag, or labor surplus as a standard of distress for such cities. The Secretary shall make such revision as soon as practicable following November 30, 1983.

(2) A city or urban county which fails to meet the minimum standards established pursuant to paragraph (1) shall be eligible for assistance under this section if it meets the requirements of the first sentence of such paragraph and—

(A) in the case of a city with a population of fifty thousand persons or more or an urban county, contains an area (i) composed of one or more contiguous census tracts, enumeration districts, neighborhood statistics areas, or block groups, as defined by the United States Bureau of the Census, having at least a population of ten thousand persons or 10 per centum of the population of the city or urban county; (ii) in which at least 70 per centum of the residents have incomes below 80 per centum of the median income of the city or urban county; and (iii) in which at least 30 per centum of the residents have incomes below the national poverty level; or

(B) in the case of a city with a population of less than fifty thousand persons, contains an area (i) composed of one or more contiguous census tracts, enumeration districts, neighborhood statistics areas, or block groups or other areas defined by the United States Bureau of the Census or for which data certified by the United States Bureau of the Census are available having at least a population of two thousand five hundred persons or 10 per centum of the population of the city, whichever is greater; (ii) in which at least 70 per centum of the residents have incomes below 80 per centum of the median income of the city; and (iii) in which at least 30 per centum of the residents have incomes below the national poverty level.

The Secretary shall use up to, but not more than, 20 per centum of the funds appropriated for use in any fiscal year under this section for the purpose of making grants to cities and urban counties eligible under this paragraph.

(c) Applications; documentation of eligibility; proposed plan; assurance of notice and comment; assurance of consideration on historical landmarks

Applications for assistance under this section shall—

[*See main edition for text of* (1) *and* (2)]

(3) contain a certification satisfactory to the Secretary that the applicant, prior to submission of its application, (A) has held public hearings to obtain the views of citizens, particularly residents of the area in which the proposed activities are to be carried out; (B) has analyzed the impact of these proposed activities on the residents, particularly those of low and moderate income, of the residential neighborhood, and on the neighborhood in which they are to be carried out; and (C) has made available the analysis described in clause (B) to any interested person or organization residing or located in the neighborhood in which the proposed activities are to be carried out; and

[*See main edition for text of* (4)]

(d) Mandatory selection criteria

(1) Except in the case of a city or urban county eligible under subsection (b)(2) of this section, the Secretary shall establish selection criteria for a national competition for grants under this section which must include (A) as the primary criterion, the comparative degree of economic distress among applicants, as measured (in the case of a metropolitan city or urban county) by the differences in the extent of growth lag, the extent of poverty, and the adjusted age of housing in the metropolitan city or urban county; (B) other factors determined to be relevant by the Secretary in assessing the comparative degree of economic deterioration in cities and urban counties; and (C) at least the following other criteria: demonstrated performance of the city or urban county in housing and community development programs; the extent to which the grant will stimulate economic recovery by leveraging private investment; the number of permanent jobs to be created and their relation to the amount of grant funds requested; the proportion of permanent jobs accessible to lower income persons and minorities, including persons who are unemployed; the impact of the proposed activities on the fiscal base of the city or urban county and its relation to the amount of grant funds requested; the extent to which State or local government funding or special economic incentives have been committed; and the feasibility of accomplishing the proposed activities in a timely fashion within the grant amount available.

[*See main edition for text of* (2); (*e*) *to* (*h*)]

(i) Minimum percentage of funds to be allocated to certain noncentral cities; application by consortia of cities of less than 50,000 population

Not less than 25 per centum of the funds made available for grants under this section shall be used for cities with populations of less than fifty thousand persons which are not central cities of a metropolitan statistical area. The Secretary shall encourage cooperation by geographically proximate cities of less than 50,000 population by permitting consortia of such cities, which may also include county governments that are not urban counties, to apply for grants on behalf of a city that is otherwise eligible for assistance under this section. Any grants awarded to such consortia shall be administered in compliance with eligibility requirements applicable to individual cities.

[*See main edition for text of* (*j*) *to* (*m*)]

(n) Territories and tribes included in term "city"

(1) For the purposes of this section, the term "city" includes Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and Indian tribes.

(2) The Secretary may not approve a grant to an Indian tribe under this section unless the tribe (A) is located on a reservation or in an Alaskan Native Village, and (B) is an eligible recipient under chapter 67 of title 31.

[*See main edition for text of* (o)]

(p) Unincorporated portions of urban counties

An unincorporated portion of an urban county that is approved by the Secretary as an identifiable community for purposes of this section is eligible for a grant under subsection (b)(2) of this section if such portion meets the eligibility requirements contained in the first sentence of subsection (b)(1) of this section and the requirements of subsection (b)(2)(B) of this section (applied to the population of the portion of the urban county) and if it otherwise complies with the provisions of this section.

(q) Technical assistance grants

Of the amounts appropriated for purposes of this section for any fiscal year, not more than $2,500,000 may be used by the Secretary to make technical assistance grants to States or their agencies, municipal technical advisory services operated by universities, or State associations of counties or municipalities, to enable such entities to assist units of general local government described in subsection (i) of this section in developing, applying for assistance for, and implementing programs eligible for assistance under this section.

(r) Nondiscrimination by Secretary among types of programs

In providing assistance under this section, the Secretary may not discriminate among programs on the basis of the particular type of activity involved, whether such activity is primarily a neighborhood, industrial, or commercial activity.

(As amended Pub. L. 98-181, title I, § 121, Nov. 30, 1983, 97 Stat. 1168; Pub. L. 98-454, title VI, § 601(c), Oct. 5, 1984, 98 Stat. 1736; Pub. L. 98-479, title II, § 203(*l*)(3), Oct. 17, 1984, 98 Stat. 2231.)

AMENDMENTS

1984—Subsec. (n)(1). Pub. L. 98-454 added reference to American Samoa and the Northern Mariana Islands.

Subsec. (n)(2). Pub. L. 98-479 substituted "chapter 67 of title 31" for "the State and Local Fiscal Assistance Act of 1972".

1983—Subsec. (a). Pub. L. 98-181, § 121(a), added authorizations for appropriations not to exceed $440,000,000 for each of the fiscal years 1984, 1985, and 1986.

Subsec. (b)(1). Pub. L. 98-181, § 121(b), substituted "the extent of unemployment, job lag, or surplus labor" for "where data are available, the extent of unemployment and job lag", and added provisions for continued eligibility for assistance of any city with a population of less than 50,000 persons, other than a central city of a metropolitan area, which until the Secretary revises the standards for eligibility for such cities and includes the extent of unemployment, job lag, or labor surplus as a standard of distress for such cities, and provisions requiring the Secretary to make such revision as soon as possible following Nov. 30, 1983.

Subsec. (b)(2)(A)(i), (B)(i). Pub. L. 98-181, § 121(c), inserted "neighborhood statistics areas," after "enumeration districts,".

Subsec. (c)(3)(C). Pub. L. 98-181, § 121(d), added cl. (C).

Subsec. (d)(1). Pub. L. 98-181, § 121(e), substituted "criteria for a national competition" for "criteria" in provisions preceding cl. (A).

Subsec. (i). Pub. L. 98-181, § 121(f), added provisions relating to applications by consortia of cities less than 50,000 population.

Subsecs. (p) to (r). Pub. L. 98-181, § 121(g), added subsecs. (p) to (r).

NEIGHBORHOOD DEVELOPMENT DEMONSTRATION

Section 123 of Pub. L. 98-181, as amended by Pub. L. 98-479, title I, § 101(b)(2), (3), Oct. 17, 1984, 98 Stat. 2220, provided that:

"(a) For the purposes of this section:

"(1) The term 'eligible neighborhood development activity' means—

"(A) creating permanent jobs in the neighborhood;

"(B) establishing or expanding businesses within the neighborhood;

"(C) developing, rehabilitating, or managing neighborhood housing stock;

"(D) developing delivery mechanisms for essential services that have lasting benefit to the neighborhood; or

"(E) planning, promoting, or financing voluntary neighborhood improvement efforts.

"(2) The term 'eligible neighborhood development organization' means—

"(A) an entity organized as a private, voluntary, nonprofit corporation under the laws of the State in which it operates;

"(B) an organization that is responsible to residents of its neighborhood through a governing body, not less than 51 per centum of the members of which are residents of the area served;

"(C) an organization that has conducted business for at least three years prior to the date of application for participation;

"(D) an organization that operates within an area that meets the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974 [this section]; and

"(E) an organization that conducts one or more eligible neighborhood development activities that have as their primary beneficiaries low- and moderate-income persons, as defined in section 102(a)(20) of the Housing and Community Development Act of 1974 [42 U.S.C. 5302(a)(20)].

"(3) The term 'Secretary' means the Secretary of Housing and Urban Development.

"(b)(1) The Secretary shall carry out, in accordance with this section, a demonstration program to determine the feasibility of supporting eligible neighborhood development activities by providing Federal matching funds to eligible neighborhood development organizations on the basis of the monetary support such organizations have received from individuals, businesses, and nonprofit or other organizations in their neighborhoods prior to receiving assistance under this section.

"(2) The Secretary shall accept applications from eligible neighborhood development organizations for participation in the demonstration program. Eligible organizations may participate in more than one year of the program, but shall be required to submit a new application and to compete in the selection process for each program year. Not more than 30 per centum of the grants may be for multiyear awards.

"(3) From the pool of eligible neighborhood development organizations submitting applications for participation in a given program year, the Secretary shall select participating organizations in an appropriate number through a competitive selection process. To be selected, an applicant shall—

"(A) have demonstrated measurable achievements in one or more of the activities specified in subsection (a)(1);

"(B) specify a business plan for accomplishing one or more of the activities specified in subsection (a)(1); and

"(C) specify a strategy for achieving greater long term private sector support.

"(c) The Secretary shall award grants under this section among the eligible neighborhood development organizations submitting applications for such grants on the basis of—

"(1) the degree of economic distress of the neighborhood involved;

"(2) the extent to which the proposed activities will benefit persons of low and moderate income;

"(3) the extent of neighborhood participation in the proposed activities, as indicated by the proportion of the households and businesses in the neighborhood involved that are members of the eligible neighborhood development organization involved; and

"(4) the extent of voluntary contributions available for the purpose of subsection (e)(4), except that the Secretary shall waive the requirement of this subparagraph in the case of an application submitted by a small eligible neighborhood development organization, an application involving activities in a very low-income neighborhood, or an application that is especially meritorious.

"(d) The Secretary shall consult with an informal working group representative of eligible neighborhood organizations with respect to the implementation and evaluation of the program established in this section.

"(e)(1) The Secretary shall assign each participating organization a defined program year, during which time voluntary contributions from individuals, businesses, and nonprofit or other organizations in the neighborhood shall be eligible for matching.

"(2) Subject to paragraph (3), at the end of each three-month period occurring during the program year, the Secretary shall pay to each participating neighborhood development organization the product of—

"(A) the aggregate amount of voluntary contributions that such organization certifies to the satisfaction of the Secretary it received during such three-month period; and

"(B) the matching ratio established for such test neighborhoods under paragraph (4).

"(3) The Secretary shall pay not more than $50,000 under this Act [section] to any participating neighborhood development organization during a single program year.

"(4) For purposes of paragraph (2), the Secretary shall, for each participating organization, determine an appropriate ratio by which monetary contributions made to participating neighborhood development organizations will be matched by Federal funds. The highest such ratios shall be established for neighborhoods having the smallest number of households or the greatest degree of economic distress.

"(5) The Secretary shall insure that—

"(A) grants and other forms of assistance may be made available under this section only if the application contains a certification by the unit of general local government within which the neighborhood to be assisted is located that such assistance is not inconsistent with the housing and community development plans of such unit, except that the failure of a unit of general local government to respond to a request for a certification within thirty days after the request is made shall be deemed to be a certification; and

"(B) eligible neighborhood development activities comply with all applicable provisions of the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.].

"(6) To carry out this section, the Secretary—

"(A) may issue regulations as necessary;

"(B) shall utilize, to the fullest extent practicable, relevant research previously conducted by Federal agencies, State and local governments, and private organizations and persons;

"(C) shall disseminate information about the kinds of activities, forms of organizations, and fund-raising mechanisms associated with successful programs;

"(D) shall undertake any other activity the Secretary deems necessary to carry out this section, which shall include an evaluation and report to Congress on the demonstration and may include the performance of research, planning, and administration, either directly, or when in the Secretary's judgment such activity will be carried out more effectively, more rapidly, or at less cost, by contract or grant; and

"(E) may use not more than 5 per centum of the funds appropriated for administrative or other expenses in connection with the demonstration.

"(f) The Secretary shall submit to the Congress—

"(1) not later than three months after the end of each fiscal year in which payments are made under this section, an interim report containing a summary of the activities carried out under this section during such fiscal year and any preliminary findings or conclusions drawn from the demonstration program; and

"(2) not later than March 15 of the year after the end of the last fiscal year in which such payments are made, a final report containing a summary of all activities carried out under this section, the evaluation required in subsection (e)(6)(D) and any findings, conclusions, or recommendations for legislation drawn from the demonstration program.

"(g) For purposes of carrying out this section, there are authorized to be appropriated not to exceed $2,000,000 for each of the fiscal years 1984 and 1985."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5306, 5307, 5313, 5320 of this title; title 12 section 1715z; title 26 section 103.

CHAPTER 70—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1472 of this title; title 12 section 1703.

§ 5402. Definitions

Section Referred to in Other Sections

This section is referred to in title 12 sections 1701j-3, 3802; title 15 section 78c; title 26 section 168.

§ 5403. Construction and safety standards

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Amendment or revocation by Secretary; effective date

The Secretary may by order amend or revoke any Federal manufactured home construction or safety standard established under this section. Such order shall specify the date on which such amendment or revocation is to take effect, which shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later date is in the public interest, and publishes his reasons for such finding.

[*See main edition for text of* (*f*) *to* (*h*)]

(As amended Pub. L. 98-479, title II, § 204(*l*), Oct. 17, 1984, 98 Stat. 2233.)

Amendments

1984—Subsec. (e). Pub. L. 98-479 substituted "that" for "than" before "an earlier or later date".

Section Referred to in Other Sections

This section is referred to in sections 5405, 5409 of this title; title 12 section 1703.

CHAPTER 72—JUVENILE JUSTICE AND DELINQUENCY PREVENTION

SUBCHAPTER II—PROGRAMS AND OFFICES

Part A—Juvenile Justice and Delinquency Prevention Office

Sec.
5617 to 5619. Repealed.

Part C—National Institute for Juvenile Justice and Delinquency Prevention

5655. Repealed.
5657. Additional functions of the Institute.
    (a) Scope of review.
    (b) Development of model State legislation.

SUBCHAPTER III—RUNAWAY AND HOMELESS YOUTH

Part A—Grants Program

5714a. Assistance to potential grantees.
5714b. Lease of surplus Federal facilities for use as runaway and homeless youth centers.
    (a) Conditions of lease arrangements.
    (b) Period of availability; rent-free use; structural changes: Federal ownership and consent.

Part C—Authorization of Appropriations

5741. Repealed.
5751. Authorization of appropriations.
    (a) Amounts authorized for programs and activities.
    (b) Consultative and coordinating requirements.
    (c) Conditions for use of funds.

SUBCHAPTER IV—MISSING CHILDREN

Sec.
5771. Findings.
5772. "Missing child" and "Administrator" defined.
5773. Duties and functions of the Administrator.
    (a) Description of activities.
    (b) Grants or contracts for toll-free telephone line, national resource center and clearinghouse; periodic national incidence studies.
    (c) Independent status of other Federal agencies.
5774. Advisory Board.
    (a) Establishment; number and qualification of members.
    (b) Appointment; meetings; Chairman.
    (c) Duties and functions of Advisory Board.
    (d) Travel and per diem expenses; reimbursement.
5775. Grants.
    (a) Authority of Administrator; description of research, demonstration projects, and service programs.
    (b) Priorities of grant applicants.
    (c) Non-Federal fund expenditures requisite for receipt of Federal assistance.
5776. Criteria for grants.
5777. Authorization of appropriations.

Chapter Referred to in Other Sections

This chapter is referred to in section 3797 of this title.

SUBCHAPTER I—GENERALLY

§ 5601. Congressional statement of findings

(a) The Congress hereby finds that—

(1) juveniles accounted for almost half the arrests for serious crimes in the United States in 1974 and for less than one-third of such arrests in 1983;

(2) understaffed, overcrowded juvenile courts, probation services, and correctional facilities and inadequately trained staff in such courts, services, and facilities are not able to provide individualized justice or effective help;

(3) present juvenile courts, foster and protective care programs, and shelter facilities are inadequate to meet the needs of children, who, because of this failure to provide effective services, may become delinquents;

[*See main edition for text of* (*4*)]

(5) juvenile delinquency can be reduced through programs designed to keep students in elementary and secondary schools through the prevention of unwarranted and arbitrary suspensions and expulsions;

[*See main edition for text of* (*6*) *to* (*8*); (*b*)]

(As amended Pub. L. 98-473, title II, § 611, Oct. 12, 1984, 98 Stat. 2107.)

Amendments

1984—Subsec. (a)(1). Pub. L. 98-473, § 611(1), substituted "accounted" for "account" and "in 1974 and for less than one-third of such arrests in 1983" for "today".

Subsec. (a)(2). Pub. L. 98-473, § 611(2), added "and inadequately trained staff in such courts, services, and facilities".

Subsec. (a)(3). Pub. L. 98-473, § 611(3), struck out "the countless, abandoned, and dependent" before "children, who".

Subsec. (a)(5). Pub. L. 98-473, § 611(4), substituted "reduced" for "prevented".

Effective Date of 1984 Amendment

Section 670 of division II (§§ 610-670) of chapter VI of title II of Pub. L. 98-473 provided that:

"(a) Except as provided in subsection (b), this division and the amendments made by this division [see Short Title of 1984 Amendment note below] shall take effect on the date of the enactment of this joint resolution [Oct. 12, 1984] or October 1, 1984, whichever occurs later.

"(b) Paragraph (2) of section 331(c) of the Runaway and Homeless Youth Act, as added by section 657(d) of this division [section 5751(c)(2) of this title], shall not apply with respect to any grant or payment made before the effective date of this joint resolution [Oct. 12, 1984]."

Short Title of 1984 Amendment

Section 610 of division II (§§ 610-670) of chapter VI of title II of Pub. L. 98-473 provided that: "This Division [enacting sections 5714a, 5714b, and 5771 to 5777 of this title, amending sections 5601 to 5603, 5611, 5612, 5614, 5616, 5632 to 5635, 5637, 5638, 5651, 5653, 5654, 5657, 5659, 5661, 5671, 5672, 5702, 5711 to 5714, and 5751 of this title, repealing sections 5617, 5655, and 5741 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984'."

Short Title

Section 401 of Pub. L. 93-415, as added by Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2125, provided that: "This title [enacting subchapter IV of this chapter] may be cited as the Missing Children's Assistance Act."

§ 5602. Congressional declaration of purpose and policy

(a) It is the purpose of this chapter—

(1) to provide for the thorough and ongoing evaluation of all federally assisted juvenile delinquency programs;

[*See main edition for text of (2) and (3)*]

(4) to establish a centralized research effort on the problems of juvenile delinquency, including the dissemination of the findings of such research and all data related to juvenile delinquency;

[*See main edition for text of (5) and (6)*]

(7) to establish a Federal assistance program to deal with the problems of runaway and homeless youth; and

[*See main edition for text of (8); (b)*]

(As amended Pub. L. 98-473, title II, § 612, Oct. 12, 1984, 98 Stat. 2108.)

Amendments

1984—Subsec. (a)(1). Pub. L. 98-473, § 612(1), substituted "ongoing" for "prompt".

Subsec. (a)(4). Pub. L. 98-473, § 612(2), substituted "the dissemination of" for "an information clearinghouse to disseminate".

Subsec. (a)(7). Pub. L. 98-473, § 612(3), added "and homeless".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5603. Definitions

For purposes of this chapter—

[*See main edition for text of (1) and (2)*]

(3) the term "juvenile delinquency program" means any program or activity related to juvenile delinquency prevention, control, diversion, treatment, rehabilitation, planning, education, training, and research, including drug and alcohol abuse programs; the improvement of the juvenile justice system; and any program or activity to help prevent juvenile delinquency;

(4)(A) the term "Bureau of Justice Assistance" means the bureau established by section 3741 of this title;

(B) the term "Office of Justice Programs" means the office established by section 3711 of this title;

[*See main edition for text of (C) and (D), (5)*]

(6) the term "law enforcement and criminal justice" means any activity pertaining to crime prevention, control, or reduction or the enforcement of the criminal law, including, but not limited to police efforts to prevent, control, or reduce crime or to apprehend criminals, activities of courts having criminal jurisdiction and related agencies (including prosecutorial and defender services), activities of corrections, probation, or parole authorities, and programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction;

[*See main edition for text of (7) to (13)*]

(14) the term "serious crime" means criminal homicide, forcible rape or other sex offenses punishable as a felony, mayhem, kidnapping, aggravated assault, robbery, larceny or theft punishable as a felony, motor vehicle theft, burglary or breaking and entering, extortion accompanied by threats of violence, and arson punishable as a felony;

(15) the term "treatment" includes but is not limited to medical, educational, special education, social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public, including services designed to benefit addicts and other users by eliminating their dependence on alcohol or other addictive or nonaddictive drugs or by controlling their dependence and susceptibility to addiction or use; and

(16) the term "valid court order" means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court

order only if they received their full due process rights as guaranteed by the Constitution of the United States.

(As amended Pub. L. 98-473, title II, § 613, Oct. 12, 1984, 98 Stat. 2108.)

Amendments

1984—Par. (3). Pub. L. 98-473, § 613(1), struck out "for neglected, abandoned, or dependent youth and other youth" before "to help" and added "juvenile" after "prevent".

Par. (4)(A). Pub. L. 98-473, § 613(2), substituted " 'Bureau of Justice Assistance' means the bureau established by section 3741 of this title" for " 'Office of Justice Assistance, Research, and Statistics' means the office established by section 3781(a) of this title".

Par. (4)(B). Pub. L. 98-473, § 613(2), substituted " 'Office of Justice Programs' means the office established by section 3711 of this title" for " 'Law Enforcement Assistance Administration' means the administration established by section 3711 of this title".

Par. (6). Pub. L. 98-473, § 613(3), substituted "services)," for "services," before "activities of".

Par. (14). Pub. L. 98-473, § 613(4)(A), added "or other sex offenses punishable as a felony".

Par. (16). Pub. L. 98-473, § 613(4)(B)-(6), added par. (16).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

SUBCHAPTER II—PROGRAMS AND OFFICES

Part A—Juvenile Justice and Delinquency Prevention Office

Part Referred to in Other Sections

This part is referred to in sections 5638, 5671 of this title.

§ 5611. Establishment

(a) Placement within Department of Justice under general authority of Attorney General

There is hereby established an Office of Juvenile Justice and Delinquency Prevention (hereinafter in this division [1] referred to as the "Office") within the Department of Justice under the general authority of the Attorney General.

(b) Administrator; head, appointment, authorities, etc.

The Office shall be headed by an Administrator (hereinafter in this subchapter referred to as the "Administrator") appointed by the President, by and with the advice and consent of the Senate, from among individuals who have had experience in juvenile justice programs. The Administrator is authorized to prescribe regulations consistent with this chapter to award, administer, modify, extend, terminate, monitor, evaluate, reject, or deny all grants and contracts from, and applications for, funds made available under this subchapter. The Administrator shall report to the Attorney General through the Assistant Attorney General who heads the Office of Justice Programs under part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3711 et seq.].

(c) Deputy Administrator; appointment, functions, etc.

There shall be in the Office a Deputy Administrator who shall be appointed by the Attorney General and whose function shall be to supervise and direct the National Institute for Juvenile Justice and Delinquency Prevention established by section 5651 of this title. The Deputy Administrator shall also perform such functions as the Administrator may from time to time assign or delegate and shall act as the Administrator during the absence or disability of the Administrator.

(As amended Pub. L. 98-473, title II, § 620, Oct. 12, 1984, 98 Stat. 2108.)

References in Text

This division, referred to in subsec. (a), probably means division II (§§ 610-670) of chapter VI of title II of Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 2107, which made numerous amendments to this chapter. For complete classification of this division to the Code, see Short Title of 1984 Amendment note set out under section 5601 of this title and Tables.

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (b), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended, part A of title I of which is classified generally to subchapter I (§ 3711 et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

Amendments

1984—Subsec. (a). Pub. L. 98-473, in amending subsec. (a) generally, substituted provisions relating to the establishment of the Office of Juvenile Justice and Delinquency Prevention for former provisions which also provided for the establishment of the Office and its administration by an Administrator.

Subsec. (b). Pub. L. 98-473, in amending subsec. (b) generally, substituted provisions relating to the functions and duties of the Administrator for former provisions which related to administration of the program.

Subsec. (c). Pub. L. 98-473, in amending subsec. (c) generally, substituted provisions relating to the Deputy Administrator for former provisions which related to the nomination of the Administrator by the President.

Subsec. (d). Pub. L. 98-473, in amending section generally, struck out subsec. (d) which related to the powers of the Administrator. See subsec. (b) of this section.

Subsec. (e). Pub. L. 98-473, in amending section generally, struck out subsec. (e) which related to the Deputy Administrator. See subsec. (c) of this section.

Subsec. (f). Pub. L. 98-473, in amending section generally, struck out subsec. (f) which related to supervision of the National Institute for Juvenile Justice and Delinquency Prevention.

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[1] See References in Text note below.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

Section Referred to in Other Sections

This section is referred to in sections 5603, 5651 of this title; title 39 section 3220.

§ 5612. Personnel

(a) Selection; employment; compensation

The Administrator is authorized to select, employ, and fix the compensation of such officers and employees, including attorneys, as are necessary to perform the functions vested in the Administrator and to prescribe their functions.

[See main edition for text of (b)]

(c) Personnel from other agencies

Upon the request of the Administrator, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of its personnel to the Administrator to assist the Administrator in carrying out the functions of the Administrator under this chapter.

[See main edition for text of (d)]

(As amended Pub. L. 98-473, title II, § 621, Oct. 12, 1984, 98 Stat. 2109.)

Amendments

1984—Subsec. (a). Pub. L. 98-473, § 621(a), substituted "the Administrator" for "him" before "and to prescribe".

Subsec. (c). Pub. L. 98-473, § 621(b), substituted "the Administrator" for "him" before "in carrying out" and "the functions of the Administrator" for "his functions".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5614. Concentration of Federal efforts

(a) Implementation of policy by Administrator; consultation with Council and Advisory Committee

The Administrator shall implement overall policy and develop objectives and priorities for all Federal juvenile delinquency programs and activities relating to prevention, diversion, training, treatment, rehabilitation, evaluation, research, and improvement of the juvenile justice system in the United States. In carrying out the functions of the Administrator, the Administrator shall consult with the Council and the National Advisory Committee for Juvenile Justice and Delinquency Prevention.

(b) Duties of Administrator

In carrying out the purposes of this chapter, the Administrator shall—

[See main edition for text of (1)]

(2) assist operating agencies which have direct responsibilities for the prevention and treatment of juvenile delinquency in the development and promulgation of regulations, guidelines, requirements, criteria, standards, procedures, and budget requests in accordance with the policies, priorities, and objectives the Administrator establishes;

[See main edition for text of (3)]

(4) implement Federal juvenile delinquency programs and activities among Federal departments and agencies and between Federal juvenile delinquency programs and activities and other Federal programs and activities which the Administrator determines may have an important bearing on the success of the entire Federal juvenile delinquency effort;

(5) develop annually with the assistance of the Advisory Committee and the Coordinating Council and submit to the President and the Congress, after the first year following October 3, 1977, prior to December 31, an analysis and evaluation of Federal juvenile delinquency programs conducted and assisted by Federal departments and agencies, the expenditures made, the results achieved, the plans developed, and problems in the operations and coordination of such programs and a brief but precise comprehensive plan for Federal juvenile delinquency programs, with particular emphasis on the prevention of juvenile delinquency and the development of programs and services which will encourage increased diversion of juveniles from the traditional juvenile justice system, which analysis and evaluation shall include recommendations for modifications in organization, management, personnel, standards, budget requests, and implementation plans necessary to increase the effectiveness of these programs;

(6) provide technical assistance and training assistance to Federal, State, and local governments, courts, public and private agencies, institutions, and individuals, in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs; and

(7) provide for the auditing of monitoring systems required under section 5633(a)(15) of this title to review the adequacy of such systems.

[See main edition for text of (c) and (d)]

(e) Third annual report of Administrator; contents

The third such annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) of this section shall contain, in addition to the comprehensive plan required by subsection (b)(5) of this section, a detailed statement of procedures to be used with respect to the submission of juvenile delinquency development statements to the Administrator by Federal agencies under subsection (*l*) of this section. Such statement submitted by the Administrator shall include a description of information, data, and analyses which shall be contained in each such development statement.

(f) Information, reports, studies, and surveys from other agencies

The Administrator may require, through appropriate authority, Federal departments and agencies engaged in any activity involving any Federal juvenile delinquency program to provide the Administrator with such information and reports, and to conduct such studies and surveys, as the Administrator may deem to be necessary to carry out the purposes of this part.

(g) Delegation of functions

The Administrator may delegate any of the functions of the Administrator under this subchapter, to any officer or employee of the Office.

[*See main edition for text of* (*h*)]

(i) Transfer of funds to other agencies

The Administrator is authorized to transfer funds appropriated under this section to any agency of the Federal Government to develop or demonstrate new methods in juvenile delinquency prevention and rehabilitation and to supplement existing delinquency prevention and rehabilitation programs which the Administrator finds to be exceptionally effective or for which the Administrator finds there exists exceptional need.

[*See main edition for text of* (*j*) *and* (*k*)]

(*l*) Annual juvenile delinquency development statements of other agencies; procedure; contents; review by Administrator

(1) The Administrator shall require through appropriate authority each Federal agency which administers a Federal juvenile delinquency program which meets any criterion developed by the Administrator under subsection (d)(1) of this section to submit annually to the Council a juvenile delinquency development statement. Such statement shall be in addition to any information, report, study, or survey which the Administrator may require under subsection (f) of this section.

(2) Each juvenile delinquency development statement submitted to the Administrator under paragraph (1) shall be submitted in accordance with procedure established by the Administrator under subsection (e) of this section and shall contain such information, data, and analyses as the Administrator may require under subsection (e) of this section. Such analyses shall include an analysis of the extent to which the juvenile delinquency program of the Federal agency submitting such development statement conforms with and furthers Federal juvenile delinquency prevention and treatment goals and policies.

(3) The Administrator shall review and comment upon each juvenile delinquency development statement transmitted to the Administrator under paragraph (1). Such development statement, together with the comments of the Administrator, shall be included by the Federal agency involved in every recommendation or request made by such agency for Federal legislation which significantly affects juvenile delinquency prevention and treatment.

[*See main edition for text of* (*m*)]

(As amended Pub. L. 98-473, title II, § 622, Oct. 12, 1984, 98 Stat. 2109.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, § 622(a), substituted "the functions of the Administrator" for "his functions".

Subsec. (b)(2), (4). Pub. L. 98-473, § 622(b)(1), (2), substituted "the Administrator" for "he".

Subsec. (b)(7). Pub. L. 98-473, § 622(b)(3)-(5), added par. (7).

Subsec. (e). Pub. L. 98-473, § 622(c), substituted "subsection (*l*)" for "subsection ('*l*')".

Subsec. (f). Pub. L. 98-473, § 622(d), substituted "the Administrator" for "him" before "with such information" and for "he" before "may deem to be".

Subsec. (g). Pub. L. 98-473, § 622(e), substituted "the functions of the Administrator" for "his functions".

Subsec. (i). Pub. L. 98-473, § 622(f), substituted "section" for "subchapter" and "the Administrator" for "he" before "finds there exists".

Subsec. (*l*)(1). Pub. L. 98-473, § 622(g)(1), substituted "subsection (d)(1) of this section" for "section 5614(d)(1) of this title" and "subsection (f) of this section" for "section 5614(f) of this title".

Subsec. (*l*)(2). Pub. L. 98-473, § 622(g)(2), substituted "paragraph (1)" for "subsection ('*l*')" and "subsection (e) of this section" for "section 5614(e) of this title" in two places.

Subsec. (*l*)(3). Pub. L. 98-473, § 622(g)(3), substituted "the Administrator" for "him" after "transmitted to" and "paragraph (1)" for "subsection ('*l*')".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5616. Coordinating Council on Juvenile Justice and Delinquency Prevention

(a) Establishment; membership

(1) There is hereby established, as an independent organization in the executive branch of the Federal Government a Coordinating Council on Juvenile Justice and Delinquency Prevention (hereinafter referred to as the "Council") composed of the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Office of Community Services, the Director of the Office of Drug Abuse Policy, the Director of the ACTION Agency, the Director of the Bureau of Prisons, the Commissioner of the Bureau of Indian Affairs, the Director for the Office of Special Education and Rehabilitation Services, the Commissioner for the Administration for Children, Youth, and Families, and the Director of the Youth Development Bureau, or their respective designees, the Assistant Attorney General who heads the Office of Justice Programs, the Director of the Bureau of Justice Assistance, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Deputy Administrator of the Institute for Juvenile Justice and Delinquency Prevention, the Director of the National Institute of Justice, and representatives of such other agencies as the President shall designate.

[*See main edition for text of* (*2*); (*b*)]

(c) Functions

The function of the Council shall be to coordinate all Federal juvenile delinquency programs and, in consultation with the Advisory Board on Missing Children, all Federal programs relating to missing and exploited children. The Council shall make recommendations to the President, and to the Congress, at least annually with respect to the coordination of overall policy and development of objectives and priorities for all Federal juvenile delinquency programs and activities. The Council is authorized to review the programs and practices of Federal agencies and report on the degree to which Federal agency funds are used for purposes which are consistent or inconsistent with the mandates of section 5633(a)(12)(A) and (13) of this title. The Council shall review, and make recommendations with respect to, any joint funding proposal undertaken by the Office of Juvenile Justice and Delinquency Prevention and any agency represented on the Council.

[*See main edition for text of* (*d*)]

(e) Appointment of personnel or staff support by Administrator

The Administrator shall, with the approval of the Council, appoint such personnel or staff support as the Administrator considers necessary to carry out the purposes of this subchapter.

[*See main edition for text of* (*f*)]

(g) Authorization of appropriations

To carry out the purposes of this section there is authorized to be appropriated such sums as may be necessary, not to exceed $200,000 for each fiscal year.

(As amended Pub. L. 98–473, title II, § 623, Oct. 12, 1984, 98 Stat. 2110.)

Amendments

1984—Subsec. (a)(1). Pub. L. 98–473, § 623(a), substituted "Office of Community Services" for "Community Services Administration", "Assistant Attorney General who heads the Office of Justice Programs" for "Director of the Office of Justice Assistance, Research, and Statistics", and "Director of the Bureau of Justice Assistance" for "Administrator of the Law Enforcement Assistance Administration".

Subsec. (c). Pub. L. 98–473, § 623(b), substituted "delinquency programs and, in consultation with the Advisory Board on Missing Children, all Federal programs relating to missing and exploited children" for "delinquency programs".

Subsec. (e). Pub. L. 98–473, § 623(c), substituted "the Administrator" for "he" before "considers necessary".

Subsec. (g). Pub. L. 98–473, § 623(d), substituted "$200,000" for "$500,000".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

§ 5617. Repealed. Pub. L. 98–473, title II, § 624, Oct. 12, 1984, 98 Stat. 2111

Section, Pub. L. 93–415, title II, § 207, as added Pub. L. 96–509, § 9, Dec. 8, 1980, 94 Stat. 2753, related to the establishment and functions of the National Advisory Committee for Juvenile Justice and Delinquency Prevention.

Effective Date of Repeal

Section repealed effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Part B—Federal Assistance for State and Local Programs

Part Referred to in Other Sections

This part is referred to in section 5671 of this title.

SUBPART I—FORMULA GRANTS

§ 5631. Authority to make grants

[*See main edition for text*]

(As amended Pub. L. 98–473, title II, § 625(a), Oct. 12, 1984, 98 Stat. 2111.)

Amendments

1984—Pub. L. 98–473 amended section catchline.

§ 5632. Allocation of funds

[*See main edition for text of* (*a*)]

(b) Reallocation of unobligated funds

Except for funds appropriated for fiscal year 1975, if any amount so allotted remains unobligated at the end of the fiscal year, such funds shall be reallocated in a manner equitable and consistent with the purpose of this part. Funds appropriated for fiscal year 1975 may be obligated in accordance with subsection (a) of this section until June 30, 1976, after which time they may be reallocated. Any amount so reallocated shall be in addition to the amounts already allotted and available to the State, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands for the same period.

[*See main edition for text of* (*c*) *and* (*d*)]

(As amended Pub. L. 98–473, title II, § 625(b), Oct. 12, 1984, 98 Stat. 2111.)

Amendments

1984—Subsec. (b). Pub. L. 98–473 substituted "the Trust Territory" for "and the Trust Territory" and added ", and the Commonwealth of the Northern Mariana Islands" after "Pacific Islands".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as a note under section 5601 of this title.

§ 5633. State plans

(a) Requirements

In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, and the State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

(1) designate the State agency described in section 5671(c)(1) of this title as the sole agency for supervising the preparation and administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) has or will have authority, by legislation if necessary, to implement such plan in conformity with this part;

(3) provide for an advisory group appointed by the chief executive of the State to carry out the functions specified in subparagraph (F) and to participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action and (A) which shall consist of not less than 15 and not more than 33 persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice, (B) which shall include locally elected officials, representation of units of local government, law enforcement and juvenile justice agencies such as law enforcement, correction or probation personnel, and juvenile or family court judges, and public agencies concerned with delinquency prevention or treatment such as welfare, social services, mental health, education, special education, or youth services departments, (C) which shall include (i) representatives of private organizations, including those with a special focus on maintaining and strengthening the family unit, those representing parents or parent groups, those concerned with delinquency prevention and treatment and with neglected or dependent children, and those concerned with the quality of juvenile justice, education, or social services for children; (ii) representatives of organizations which utilize volunteers to work with delinquents or potential delinquents; (iii) representatives of community based delinquency prevention or treatment programs; (iv) representatives of business groups or businesses employing youth; (v) youth workers involved with alternative youth programs; and (vi) persons with special experience and competence in addressing the problems of the family, school violence and vandalism, and learning disabilities, (D) a majority of whose members (including the chairman) shall not be full-time employees of the Federal, State, or local government, (E) at least one-fifth of whose members shall be under the age of 24 at the time of appointment, and at least 3 of whose members shall have been or shall currently be under the jurisdiction of the juvenile justice system; and (F) which (i) shall, consistent with this subchapter, advise the State agency designated under paragraph (1) and its supervisory board; (ii) shall submit to the Governor and the legislature at least annually recommendations with respect to matters related to its functions, including State compliance with the requirements of paragraphs (12), (13), and (14); (iii) shall have an opportunity for review and comment on all juvenile justice and delinquency prevention grant applications submitted to the State agency designated under paragraph (1), except that any such review and comment shall be made no later than 30 days after the submission of any such application to the advisory group; (iv) may be given a role in monitoring State compliance with the requirements of paragraphs (12), (13), and (14), in advising on State agency designated under paragraph (1) and local criminal justice advisory board composition, and in review of the progress and accomplishments of juvenile justice and delinquency prevention projects funded under the comprehensive State plan; and (v) shall contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system;

[*See main edition for text of (4) to (8)*]

(9) provide for the active consultation with and participation of private agencies in the development and execution of the State plan; and provide for coordination and maximum utilization of existing juvenile delinquency programs and other related programs, such as education, special education, health, and welfare within the State;

(10) provide that not less than 75 per centum of the funds available to such State under section 5632 of this title, other than funds made available to the State advisory group under section 5632(d) of this title, whether expended directly by the State, by the unit of general local government or combination thereof, or through grants and contracts with public or private agencies, shall be used for advanced techniques in developing, maintaining, and expanding programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to confinement in secure detention facilities and secure correctional facilities, to encourage a diversity of alternatives within the juvenile justice system, to establish and adopt juvenile justice standards, and to provide programs for juveniles, including those processed in the criminal justice system, who have committed serious crimes, particularly programs which are designed to improve sentencing procedures, provide resources necessary for informed dispositions, provide for effective rehabilitation, and facilitate the coordination of services between the juvenile justice and criminal justice systems. These advanced techniques include—

[*See main edition for text of (A) to (D)*]

(E) educational programs or supportive services designed to encourage delinquent youth and other youth to remain in elementary and secondary schools or in alternative learning situations, including programs to counsel delinquent youth and other youth regarding the opportunities which education provides;

(F) expanded use of probation and recruitment and training of probation officers, other professional and paraprofessional personnel and volunteers to work effectively with youth and their families;

(G) youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

(H) statewide programs through the use of subsidies or other financial incentives to units of local government designed to—

(i) remove juveniles from jails and lockups for adults;

(ii) replicate juvenile programs designated as exemplary by the National Institute of Justice;

(iii) establish and adopt, based on the recommendations of the National Advisory Committee for Juvenile Justice and Delinquency Prevention made before October 12, 1984, standards for the improvement of juvenile justice within the State;

(iv) increase the use of nonsecure community-based facilities and discourage the use of secure incarceration and detention; or

(v) involve parents and other family members in addressing the delinquency-related problems of juveniles;

(I) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles;

(J) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of juveniles;

(K) programs and projects designed to provide for the treatment of juveniles' dependence on or abuse of alcohol or other addictive or nonaddictive drugs; and

(L) law-related education programs and projects designed to prevent juvenile delinquency;

[*See main edition for text of* (*11*) *to* (*13*)]

(14) provide that, beginning after the five-year period following December 8, 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1989, promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which—

(i) are outside a Standard Metropolitan Statistical Area,

(ii) have no existing acceptable alternative placement available, and

(iii) are in compliance with the provisions of paragraph (13).[1]

[*See main edition for text of* (*15*) *and* (*16*)]

(17) provide assurance that consideration will be given to and that assistance will be available for approaches designed to strengthen and maintain the family units of delinquent and other youth to prevent juvenile delinquency. Such approaches should include the involvement of grandparents or other extended family members when possible and appropriate;

(18) provide for procedures to be established for protecting the rights of recipients of services and for assuring appropriate privacy with regard to records relating to such services provided to any individual under the State plan;

(19) provide that fair and equitable arrangements shall be made to protect the interests of employees affected by assistance under this chapter and shall provide for the terms and conditions of such protective arrangements established pursuant to this section, and such protective arrangements shall, to the maximum extent feasible, include, without being limited to, such provisions as may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements or otherwise;

(B) the continuation of collective-bargaining rights;

(C) the protection of individual employees against a worsening of their positions with respect to their employment;

(D) assurances of employment to employees of any State or political subdivision thereof who will be affected by any program funded in whole or in part under provisions of this chapter; and

(E) training or retraining programs;

(20) provide for such fiscal control and fund accounting procedures necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter;

(21) provide reasonable assurance that Federal funds made available under this part for any period will be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs described in this part, and will in no event replace such State, local, and other non-Federal funds;

(22) provide that the State agency designated under paragraph (1) will from time to time, but not less often than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan,

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[1] So in original. The period probably should be a semicolon.

including the survey of State and local needs, which it considers necessary; and

(23) contain such other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of the programs assisted under this subchapter.

(b) Approval by State agency

The State agency designated under subsection (a)(1) of this section, after receiving and considering the advice and recommendations of the advisory group referred to in subsection (a) of this section, shall approve the State plan and any modification thereof prior to submission to the Administrator.

(c) Approval by Administrator; compliance with statutory requirements

The Administrator shall approve any State plan and any modification thereof that meets the requirements of this section. Failure to achieve compliance with the requirement of subsection (a)(12)(A) of this section within the three-year time limitation shall terminate any State's eligibility for funding under this subpart unless the Administrator determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 per centum of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding two additional years. Failure to achieve compliance with the requirements of subsection (a)(14) of this section, within the 5-year time limitation shall terminate any State's eligibility for funding under this subpart, unless the Administrator determines that (1) the State is in substantial compliance with such requirements through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed 3 additional years.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-473, title II, § 626, Oct. 12, 1984, 98 Stat. 2111.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(19), was in the original "this Act", meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, § 626(a)(9), (10), struck out provision after the numbered paragraphs, which had read: "such plan may at the discretion of the Associate Administrator be incorporated into the plan specified in section 3743 of this title. Such plan shall be modified by the State, as soon as practicable after December 8, 1980, in order to comply with the requirements of paragraph (14)."

Subsec. (a)(1). Pub. L. 98-473, § 626(a)(1), substituted "agency described in section 5671(c)(1) of this title" for "criminal justice council established by the State under section 3742(b)(1) of this title".

Subsec. (a)(2). Pub. L. 98-473, § 626(a)(2), struck out "(hereafter referred to in this part as the 'State criminal justice council')" before "has or will have authority".

Subsec. (a)(3)(C). Pub. L. 98-473, § 626(a)(3)(A), in amending subpar. (C) generally, designated provisions following "representatives of private organizations" as cl. (i) and added ", including those with a special focus on maintaining and strengthening the family unit", designated provisions following "which utilize" as cl. (ii) and added "representatives of organizations which", added cl. (iii), designated provisions following "business groups as cl. (iv), designated the remainder of subpar. (C) as cl. (v) and substituted "family, school violence and vandalism, and learning disabilities," for "school violence and vandalism and the problem of learning disabilities; and organizations which represent employees affected by this chapter,".

Subsec. (a)(3)(F). Pub. L. 98-473, § 626(a)(3)(B)(i), substituted "agency designated under paragraph (1)" for "criminal justice council" in three places.

Subsec. (a)(3)(F)(ii). Pub. L. 98-473, § 626(a)(3)(B)(ii), substituted "paragraphs (12), (13), and (14)" for "paragraph (12)(A) and paragraph (13)".

Subsec. (a)(3)(F)(iv). Pub. L. 98-473, § 626(a)(3)(B)(iii), substituted "paragraphs (12), (13), and (14)" for "paragraph (12)(A) and paragraph (13)" and struck out "in advising on the State's maintenance of effort under section 3793a of this title," before "and in review".

Subsec. (a)(9). Pub. L. 98-473, § 626(a)(4), added "special education,".

Subsec. (a)(10). Pub. L. 98-473, § 626(a)(5)(A), in provisions preceding subpar. (A), substituted "programs for juveniles, including those processed in the criminal justice system," for "programs for juveniles" and "provide for effective rehabilitation, and facilitate the coordination of services between the juvenile justice and criminal justice systems" for "and provide for effective rehabilitation".

Subsec. (a)(10)(E). Pub. L. 98-473, § 626(a)(5)(B), added ", including programs to counsel delinquent youth and other youth regarding the opportunities which education provides".

Subsec. (a)(10)(F). Pub. L. 98-473, § 626(a)(5)(C), added "and their families".

Subsec. (a)(10)(H)(iii). Pub. L. 98-473, § 626(a)(5)(D)(i), substituted "National Advisory Committee for Juvenile Justice and Delinquency Prevention made before October 12, 1984, standards for the improvement of juvenile justice within the State;" for "Advisory Committee, standards for the improvement of juvenile justice within the State; or".

Subsec. (a)(10)(H)(v). Pub. L. 98-473, § 626(a)(5)(D)(ii), (iii), added cl. (v).

Subsec. (a)(10)(I). Pub. L. 98-473, § 626(a)(5)(E), struck out "and" at the end.

Subsec. (a)(10)(J). Pub. L. 98-473, § 626(a)(5)(F), struck out "juvenile gangs and their members" and added "gangs whose membership is substantially composed of juveniles".

Subsec. (a)(10)(K), (L). Pub. L. 98-473, § 626(a)(5)(G), added subpars. (K) and (L).

Subsec. (a)(14). Pub. L. 98-473, § 626(a)(6), in amending par. (14) generally, added ", through 1989," after "shall" and substituted provisions relating to exceptions for former provisions which related to the special needs of areas characterized by low population density with respect to the detention of juveniles and exceptions for temporary detention in adult facilities of juveniles accused of serious crimes against persons.

Subsec. (a)(17), (18). Pub. L. 98-473, § 626(a)(11), (12), added par. (17) and redesignated former par. (17) as (18). Former par. (18) redesignated (19).

Subsec. (a)(19). Pub. L. 98-473, § 626(a)(11), redesignated par. (18) as (19). Former par. (19) redesignated (20).

Pub. L. 98-473, § 626(a)(7), in provisions preceding (A), substituted "shall be" for "are" after "arrangements" and substituted "chapter and shall provide for the terms and conditions of such protective arrangements established pursuant to this section, and such" for "chapter. Such", added "and" at end of subpar. (D), substituted a semicolon for the period at the end of subpar. (E), and struck out the last sentence, which had read: "The State plan shall provide for the terms and conditions of the protection arrangements established pursuant to this section;".

Subsec. (a)(20), (21). Pub. L. 98-473, § 626(a)(11), redesignated pars. (19) and (20) as (20) and (21), respectively. Former par. (21) redesignated (22).

Subsec. (a)(22). Pub. L. 98-473, § 626(a)(11), redesignated par. (21) as (22). Former par. (22) redesignated (23).

Pub. L. 98-473, § 626(a)(8), substituted "agency designated under paragraph (1)" for "criminal justice council".

Subsec. (a)(23). Pub. L. 98-473, § 626(a)(11), redesignated par. (22) as (23).

Subsec. (b). Pub. L. 98-473, § 626(b), substituted "agency designated under subsection (a)(1) of this section" for "criminal justice council designated pursuant to section 5633(a) of this title" and "subsection (a) of this section" for "section 5633(a) of this title".

Subsec. (c). Pub. L. 98-473, § 6(c), substituted "3" for "2" before "additional years".

Subsec. (d). Pub. L. 98-473, § 626(d), made a conforming amendment to the reference to sections 3783, 3784, and 3785 of this title to reflect the renumbering of the corresponding sections of the original act.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5614, 5616, 5632, 5635, 5637, 5638, 5651, 5671 of this title.

SUBPART II—SPECIAL EMPHASIS PREVENTION AND TREATMENT PROGRAMS

§ 5634. Authority to make grants and contracts

(a) Grants and contracts to public and private agencies, organizations, etc.; purposes; limitations

From not less than 15 percent, but not more than 25 percent, of the funds appropriated for a fiscal year to carry out this part, the Administrator shall, by making grants to and entering into contracts with public and private nonprofit agencies, organizations, institutions, or individuals provide for each of the following during each fiscal year:

(1) developing and maintaining community-based alternatives to traditional forms of institutionalization of juvenile offenders;

(2) developing and implementing effective means of diverting juveniles from the traditional juvenile justice and correctional system, including restitution and reconciliation projects which test and validate selected arbitration models, such as neighborhood courts or panels, and increase victim satisfaction while providing alternatives to incarceration for detained or adjudicated delinquents;

(3) developing and supporting programs stressing advocacy activities aimed at improving services to youth impacted by the juvenile justice system, including services which encourage the improvement of due process available to juveniles in the juvenile justice system;

(4) developing model programs to strengthen and maintain the family unit in order to prevent or treat juvenile delinquency;

(5) developing and implementing special emphasis prevention and treatment programs relating to juveniles who commit serious crimes (including such crimes committed in schools), including programs designed to deter involvement in illegal activities or to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of juveniles; and

(6) developing and implementing further a coordinated, national law-related education program of delinquency prevention, including training programs for persons responsible for the implementation of law-related education programs in elementary and secondary schools.

(b) Grants from special emphasis funds

From any special emphasis funds remaining available after grants and contracts are made under subsection (a) of this section, but not to exceed 10 percent of the funds appropriated for a fiscal year to carry out this part, the Administrator is authorized, by making grants to and entering into contracts with public and private nonprofit agencies, organizations, institutions, or individuals, to develop and implement new approaches, techniques, and methods designed to—

(1) improve the capability of public and private agencies and organizations to provide services for delinquents and other youth to help prevent juvenile delinquency;

(2) develop and implement, in coordination with the Secretary of Education, model programs and methods to keep students in elementary and secondary schools, to prevent unwarranted and arbitrary suspensions and expulsions, and to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

(3) develop, implement, and support, in conjunction with the Secretary of Labor, other public and private agencies and organizations and business and industry programs for youth employment;

(4) develop and support programs designed to encourage and enable State legislatures to consider and further the purposes of this subchapter, both by amending State laws if necessary, and devoting greater resources to those purposes;

(5) develop and implement programs relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement personnel and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles;

(6) develop statewide programs through the use of subsidies or other financial incentives designed to—

(A) remove juveniles from jails and lockups for adults;

(B) replicate juvenile programs designated as exemplary by the National Institute of Justice; or

(C) establish and adopt, based upon the recommendations of the National Advisory Committee for Juvenile Justice and Delinquency Prevention made before October 12, 1984, standards for the improvement of juvenile justice within each State involved;

(7) develop and implement model programs, relating to the special education needs of delinquent and other youth, which develop locally coordinated policies and programs among education, juvenile justice, and social service agencies.

(c) Availability of funds for private agencies, etc.

Not less than 30 percent of the funds available for grants and contracts under this section shall be available for grants to and contracts with private nonprofit agencies, organizations, or institutions which have had experience in dealing with youth.

(d) Assistance for disadvantaged youth

Assistance provided under this section shall be available on an equitable basis to deal with female, minority, and disadvantaged youth, including mentally, emotionally, or physically handicapped youth.

(e) Grants to address problems of juvenile delinquency in territories and possessions of United States

Not less than 5 percent of the funds available for grants and contracts under this section shall be available for grants and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(As amended Pub. L. 98-473, title II, § 627, Oct. 12, 1984, 98 Stat. 2114.)

AMENDMENTS

1984—Pub. L. 98-473 amended section generally. Prior to amendment, section read as follows:

"(a) The Administrator is authorized to make grants to and enter into contracts with public and private agencies, organizations, institutions, or individuals to—

"(1) develop and implement new approaches, techniques, and methods with respect to juvenile delinquency programs;

"(2) develop and maintain community-based alternatives to traditional forms of institutionalization;

"(3) develop and implement effective means of diverting juveniles from the traditional juvenile justice and correctional system, including restitution projects which test and validate selected arbitration models, such as neighborhood courts or panels, and increase victim satisfaction while providing alternatives to incarceration for detained or adjudicated delinquents;

"(4) improve the capability of public and private agencies and organizations to provide services for delinquents and other youth to help prevent delinquency;

"(5) develop statewide programs through the use of subsidies or other financial incentives designed to—

"(A) remove juveniles from jails and lockups for adults;

"(B) replicate juvenile programs designated as exemplary by the National Institute of Justice; or

"(C) establish and adopt, based upon recommendations of the Advisory Committee, standards for the improvement of juvenile justice within the State;

"(6) develop and implement, in coordination with the Secretary of Education, model programs and methods to keep students in elementary and secondary schools and to prevent unwarranted and arbitrary suspensions and expulsions and to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

"(7) develop and support programs stressing advocacy activities aimed at improving services to youth impacted by the juvenile justice system;

"(8) develop, implement, and support, in conjunction with the Secretary of Labor, other public and private agencies and organizations and business and industry programs for youth employment;

"(9) improve the juvenile justice system to conform to standards of due process;

"(10) develop and support programs designed to encourage and enable State legislatures to consider and further the purposes of this chapter, both by amending State laws where necessary, and devoting greater resources to those purposes;

"(11) develop and implement programs relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement personnel and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles; and

"(12) develop and implement special emphasis prevention and treatment programs relating to juveniles who commit serious crimes.

"(b) Twenty-five per centum of the funds appropriated for each fiscal year pursuant to this part shall be available only for special emphasis prevention and treatment grants and contracts made pursuant to this section.

"(c) At least 30 per centum of the funds available for grants and contracts made pursuant to this section shall be available for grants and contracts to private nonprofit agencies, organizations, or institutions who have had experience in dealing with youth.

"(d) Assistance provided pursuant to this section shall be available on an equitable basis to deal with disadvantaged youth, including females, minority youth, and mentally retarded and emotionally or physically handicapped youth.

"(e) At least 5 percent of the funds available for grants and contracts made pursuant to this section shall be available for grants and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5635, 5637, 5638, 5651 of this title.

§ 5635. Applications for grants and contracts

[See main edition for text of (a)]

(b) Contents

In accordance with guidelines established by the Administrator, each such application shall—

(1) provide that the program for which assistance is sought will be administered by or under the supervision of the applicant;

(2) set forth a program for carrying out one or more of the purposes set forth in section 5634 of this title (such purpose or purposes shall be specifically identified in such application);

(3) provide for the proper and efficient administration of such program;

(4) provide for regular evaluation of the program;

(5) indicate that the applicant has requested the review of the application from the State planning agency and local agency designated in section 5633 of this title (if such State or local agency exists) and indicate the response of such agency to the request for review and comment on the application;

(6) provide that regular reports on the program shall be sent to the Administrator and to the State planning agency and local agency;

(7) provide for such fiscal control and fund accounting procedures as may be necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter; and

(8) attach a copy of the response of the State agency or the local agency to the request for review and comment on the application.

(c) Approval by Administrator; criteria

In determining whether or not to approve applications for grants and for contracts under section 5634 of this title, the Administrator shall consider—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) the increase in capacity of the public and private agency, institution, or individual to provide services to address juvenile delinquency and juvenile delinquency prevention;

(5) the extent to which the proposed project serves communities which have high rates of youth unemployment, school dropout, and delinquency; and

(6) the adverse impact that may result from the restriction of eligibility, based upon population, for cities with a population greater than forty thousand, located within States which have not [1] city with a population over two hundred and fifty thousand.

(d) New programs; selection through competitive process; exceptions; peer review determinations

(1)(A) Except as provided in subparagraph (B) new programs selected after October 12, 1984, for assistance through grants or contracts under section 5634 of this title or part C of this subchapter shall be selected through a competitive process to be established by rule by the Administrator. As part of such process, the Administrator shall announce in the Federal Register the availability of funds for such assistance, the general criteria applicable to the selection of applicants to receive such assistance, and a description of the procedures applicable to submitting and reviewing applications for such assistance.

(B) The competitive process described in subparagraph (A) shall not be required if—

(i) the Administrator has made a written determination that the proposed program is not within the scope of any program announcement or any announcement expected to be issued, but can otherwise be supported by a grant or contract in accordance with section 5634 of this title or part C of this subchapter, and if the proposed program is of such outstanding merit, as determined through peer review conducted under paragraph (2), that the award of a grant or contract without competition is justified; or

(ii) the Administrator makes a written determination, which shall include the factual and other bases thereof, that the applicant is uniquely qualified to provide proposed training services as provided in section 5654 of this title, and other qualified sources are not capable of carrying out the proposed program.

(C) In each case where a program is selected for assistance without competition pursuant to the exception provided in subparagraph (B), the Administrator shall promptly so notify the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate. Such notification shall include copies of the Administrator's determination under clause (i) or clause (ii) of such subparagraph and the peer review determination required under paragraph (2).

(2) New programs selected after October 12, 1984, for assistance through grants or contracts under section 5634 of this title shall be reviewed before selection and thereafter as appropriate through a formal peer review process utilizing experts (other than officers and employees of the Department of Justice) in fields related to the subject matter of the proposed program. Such process shall be established by the Administrator in consultation with the Directors and other appropriate officials of the National Science Foundation and the National Institute of Mental Health. Before implementation, the Administrator shall submit such process to such Directors, each of whom shall prepare and furnish to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate a final report containing their comments on such process as proposed to be established.

(3) The Administrator, in establishing the processes required under paragraphs (1) and (2), shall provide for emergency expedited consideration of program proposals when necessary to avoid any delay which would preclude carrying out the program.

(e) Application by city

No city should be denied an application solely on the basis of its population.

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[1] So in original. Probably should be "no".

(f) Transmission of notification of grants and contracts

Notification of grants and contracts made under section 5634 of this title (and the applications submitted for such grants and contracts) shall, upon being made, be transmitted by the Administrator, to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate.

(As amended Pub. L. 98-473, title II, § 628, Oct. 12, 1984, 98 Stat. 2116.)

Amendments

1984—Subsec. (b)(2). Pub. L. 98-473, § 628(a)(1), added "(such purpose or purposes shall be specifically identified in such application)".

Subsec. (b)(5). Pub. L. 98-473, § 628(a)(2), substituted "(if such State or local agency exists)" for ", when appropriate".

Subsec. (b)(6). Pub. L. 98-473, § 628(a)(3), struck out ", when appropriate" at the end.

Subsec. (b)(8). Pub. L. 98-473, § 628(a)(4), substituted "attach a copy of" for "indicate".

Subsec. (c). Pub. L. 98-473, § 628(b)(1), added "and for contracts" in provisions preceding par. (1).

Subsec. (c)(4). Pub. L. 98-473, § 628(b)(2), substituted "address juvenile delinquency and juvenile delinquency prevention" for "delinquents and other youths to help prevent delinquency".

Subsec. (c)(6), (7). Pub. L. 98-473, § 628(b)(3)-(5), redesignated par. (7) as (6) and struck out former par. (6) which read "the extent to which the proposed program facilitates the implementation of the recommendations of the Advisory Committee as set forth pursuant to section 5657 of this title; and".

Subsecs. (d), (e). Pub. L. 98-473, § 628(c), added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (f). Pub. L. 98-473, § 628(d), added subsec. (f).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

Section Referred to in Other Sections

This section is referred to in section 5651 of this title.

§ 5637. Use of funds

[See main edition for text of (a) and (b)]

(c) Restrictions on lobbying

Funds paid pursuant to section 5633(a)(10)(D) of this title and section 5634(a)(3) of this title to any public or private agency, organization, or institution or to any individual (whether directly or through a State criminal justice council) shall not be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence a Member of the Congress or any other Federal, State, or local elected official to favor or oppose any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure by the Congress, any State legislature, any local council, or any similar governing body, except that this subsection shall not preclude such funds from being used in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved. The Administrator shall take such action as may be necessary to ensure that no funds paid under section 5633(a)(10)(D) of this title or section 5634(a)(3) of this title are used either directly or indirectly in any manner prohibited in this subsection.

(As amended Pub. L. 98-473, title II, § 629, Oct. 12, 1984, 98 Stat. 2117.)

Amendments

1984—Subsec. (c). Pub. L. 98-473 substituted "5634(a)(3) of this title" for "5634(a)(7) of this title" in two places.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5638. Continuing financial assistance for programs

(a) Contributions by recipient

Whenever the Administrator determines that it will contribute to the purposes of part A or part C of this subchapter, the Administrator may require the recipient of any grant or contract to contribute money, facilities, or services.

[See main edition for text of (b) and (c)]

(d) Grants to Indian tribe or other aboriginal group; increase in Federal share; waiver of State liability

In the case of a grant under this part to an Indian tribe or other aboriginal group, if the Administrator determines that the tribe or group does not have sufficient funds available to meet the local share of the cost of any program or project to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent the Administrator deems necessary. Where a State does not have an adequate forum to enforce grant provisions imposing any liability on Indian tribes, the Administrator is authorized to waive State liability and may pursue such legal remedies as are necessary.

(e) Reallocation of funds

If the Administrator determines, on the basis of information available to the Administrator during any fiscal year, that a portion of the funds granted to an applicant under this subpart for that fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 3783 of this title, that portion shall be available for reallocation in an equitable manner to States which have complied with the requirements in section 5633(a)(12)(A) of this title and section 5633(a)(13) of this title, under section 5634(b)(6) of this title.

(As amended Pub. L. 98-473, title II, § 630, Oct. 12, 1984, 98 Stat. 2117.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, § 630(a), substituted "the Administrator" for "he" before "may require".

Subsec. (d). Pub. L. 98-473, § 630(b), substituted "the Administrator" for "he" before "deems necessary".

Subsec. (e). Pub. L. 98-473, § 630(c)(1), substituted "the Administrator" for "him" before "during any fiscal year".

Pub. L. 98-473, § 630(c)(2), made a conforming amendment to the reference to section 3783 of this title to reflect the renumbering of the corresponding section of the original act.

Pub. L. 98-473, § 630(c)(3), substituted "section 5634(b)(6) of this title" for "section 5634(a)(5) of this title".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

PART C—NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5635, 5638, 5671 of this title.

§ 5651. Establishment of National Institute for Juvenile Justice and Delinquency Prevention

[*See main edition for text of* (*a*)]

(b) Deputy Administrator as head; Administrator to supervise and direct

The National Institute for Juvenile Justice and Delinquency Prevention shall be under the supervision and direction of the Administrator, and shall be headed by a Deputy Administrator of the Office appointed under section 5611(c) of this title.

[*See main edition for text of* (*c*)]

(d) Purpose of Institute

It shall be the purpose of the Institute to provide—

(1) a coordinating center for the collection, preparation, and dissemination of useful data regarding the prevention, treatment, and control of juvenile delinquency; and

(2) appropriate training (including training designed to strengthen and maintain the family unit) for representatives of Federal, State, local law enforcement officers, teachers and special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, probation personnel, correctional personnel (including volunteer lay personnel), persons associated with law-related education, youth workers, and representatives of private agencies and organizations with specific experience in the prevention, treatment, and control of juvenile delinquency.

[*See main edition for text of* (*e*)]

(f) National conference of member representatives from State advisory groups

The Administrator, acting through the Institute, shall provide, not less frequently than once every 2 years, for a national conference of member representatives from State advisory groups for the purpose of—

(1) disseminating information, data, standards, advanced techniques, and program models developed through the Institute and through programs funded under section 5634 of this title;

(2) reviewing Federal policies regarding juvenile justice and delinquency prevention;

(3) advising the Administrator with respect to particular functions or aspects of the work of the Office; and

(4) advising the President and Congress with regard to State perspectives on the operation of the Office and Federal legislation pertaining to juvenile justice and delinquency prevention.

(g) Cooperation of other Federal agencies

Any Federal agency which receives a request from the Institute under subsection (e)(1) of this section may cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information and advice to the Institute.

(h) Terms and conditions of authorities

The authorities of the Institute under this part shall be subject to the terms and conditions of section 5635(d) of this title.

(As amended Pub. L. 98-473, title II, § 631, Oct. 12, 1984, 98 Stat. 2118.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-473, § 631(b), substituted "section 5611(c) of this title" for "section 5611(f) of this title".

Subsec. (d). Pub. L. 98-473, § 631(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "It shall be the purpose of the Institute to provide a coordinating center for the collection, preparation, and dissemination of useful data regarding the treatment and control of juvenile offenders, and it shall also be the purpose of the Institute to provide training for representatives of Federal, State, and local law enforcement officers, teachers, and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation personnel, correctional personnel and other persons, including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations, connected with the treatment and control of juvenile offenders."

Subsecs. (f), (g). Pub. L. 98-473, § 631(d)(1), (2), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (h). Pub. L. 98-473, § 631(d)(3), added subsec. (h).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5611, 5661 of this title.

§ 5653. Research, demonstration, and evaluation functions of Institute

The National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

(1) conduct, encourage, and coordinate research and evaluation into any aspect of juve-

nile delinquency, particularly with regard to new programs and methods which seek to strengthen and maintain the family unit or which show promise of making a contribution toward the prevention and treatment of juvenile delinquency;

[*See main edition for text of* (2) *and* (3)]

(4) provide for the evaluation of any other Federal, State, or local juvenile delinquency program, upon the request of the Deputy Administrator;

(5) prepare, in cooperation with educational institutions, with Federal, State, and local agencies, and with appropriate individuals and private agencies, such studies as it considers to be necessary with respect to the prevention and treatment of juvenile delinquency and related matters, including—

(A) recommendations designed to promote effective prevention and treatment, particularly by strengthening and maintaining the family unit; and

(B) assessments regarding the role of family violence, sexual abuse or exploitation, media violence, the improper handling of youth placed in one State by another State, the possible ameliorating roles of familial relationships, special education, remedial education, and recreation, and the extent to which youth in the juvenile system are treated differently on the basis of sex, race, or family income and the ramifications of such treatment;

(C) examinations of the treatment of juveniles processed in the criminal justice system; and

(D) recommendations as to effective means for detering[1] involvement in illegal activities or promoting involvement in lawful activities on the part of gangs whose membership is substantially composed of juveniles.[2]

(6) disseminate the results of such evaluations and research and demonstration activities particularly to persons actively working in the field of juvenile delinquency; and

(7) disseminate pertinent data and studies to individuals, agencies, and organizations concerned with the prevention and treatment of juvenile delinquency.

(As amended Pub. L. 98-473, title II, § 632, Oct. 12, 1984, 98 Stat. 2118.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-473, § 632(1), added "which seek to strengthen and maintain the family unit or".

Par. (4). Pub. L. 98-473, § 632(2), substituted "Deputy" for "Associate".

Par. (5). Pub. L. 98-473, § 632(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "prepare, in cooperation with educational institutions, Federal, State, and local agencies, and appropriate individuals and private agencies, such studies as it considers to be necessary with respect to the prevention and treatment of juvenile delinquency and related matters, including recommendations designed to promote effective prevention and treatment, such as assessments regarding the role of family violence, sexual abuse or exploitation and media violence in delinquency, the improper handling of youth placed in one State by another State, the possible ameliorating roles of recreation and the arts, and the extent to which youth in the juvenile system are treated differently on the basis of sex and the ramifications of such practices;".

Par. (7). Pub. L. 98-473, § 632(4), struck out "(including a periodic journal)" before "to individuals".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5654. Training function of Institute

The National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

(1) develop, conduct, and provide for training programs for the training of professional, paraprofessional, and volunteer personnel, and other persons who are working with or preparing to work with juveniles, juvenile offenders, and their families;

(2) develop, conduct, and provide for seminars, workshops, and training programs in the latest proven effective techniques and methods of preventing and treating juvenile delinquency for law enforcement officers, juvenile judges, and other court personnel, probation officers, correctional personnel, and other Federal, State, and local government personnel who are engaged in work relating to juvenile delinquency;

(3) devise and conduct a training program, in accordance with the provisions of sections 5659, 5660, and 5661[3] of this title, of short-term instruction in the latest proven-effective methods of prevention, control, and treatment of juvenile delinquency for correctional and law enforcement personnel, teachers and special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, probation personnel (including volunteer lay personnel), persons associated with law-related education, youth workers, and organizations with specific experience in the prevention and treatment of juvenile delinquency; and

[*See main edition for text of* (4)]

(As amended Pub. L. 98-473, title II, § 633, Oct. 12, 1984, 98 Stat. 2119.)

REFERENCES IN TEXT

Sections 5659, 5660, and 5661, referred to in par. (3), was in the original a reference to "sections 248, 249, and 250" of Pub. L. 93-415, which sections were renumbered as sections 247, 249, and 250 by Pub. L. 98-473 without corresponding amendment of par. (3).

AMENDMENTS

1984—Par. (1). Pub. L. 98-473, § 633(1), substituted "working with or" for "or who are" and "juvenile offenders, and their families" for "and juvenile offenders".

Par. (2). Pub. L. 98-473, § 633(2), substituted "workshops" for "workshop".

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[1] So in original. Probably should be "deterring".

[2] So in original. The period probably should be a semicolon.

[3] See References in Text note below.

Par. (3). Pub. L. 98-473, § 633(3), substituted "teachers and special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, probation personnel (including volunteer lay personnel), persons associated with law-related education, youth workers, and organizations with specific experience in the prevention and treatment of juvenile delinquency" for "teachers and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation officers, and other persons (including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations) connected with the prevention and treatment of juvenile delinquency".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5635 of this title.

§ 5655. Repealed. Pub. L. 98–473, title II, § 634, Oct. 12, 1984, 98 Stat. 2119

Section, Pub. L. 93-415, title II, § 245, Sept. 7, 1974, 88 Stat. 1127; Pub. L. 95-115, § 5(c), Oct. 3, 1977, 91 Stat. 1057; Pub. L. 96-509, § 19(*l*), Dec. 8, 1980, 94 Stat. 2765, provided for the functions of the Advisory Committee.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

§ 5656. Annual report by Deputy Administrator; time; contents; summary to President and Congress

[*See main edition for text*]

(Pub. L. 93-415, title II, § 245, formerly § 246, Sept. 7, 1974, 88 Stat. 1127; Pub. L. 94-273, § 2(27), Apr. 21, 1976, 90 Stat. 376; Pub. L. 95-115, § 3(a)(3), (5), Oct. 3, 1977, 91 Stat. 1048, 1049; Pub. L. 96-509, § 19(m), Dec. 8, 1980, 94 Stat. 2765; renumbered Pub. L. 98-473, title II, § 635, Oct. 12, 1984, 98 Stat. 2120.)

PRIOR PROVISIONS

A prior section 245 of Pub. L. 93-415 was classified to section 5655 of this title and was repealed by Pub. L. 98-473, title II, § 634, Oct. 12, 1984, 98 Stat. 2119.

§ 5657. Additional functions of the Institute

(a) Scope of review

The National Institute for Juvenile Justice and Delinquency Prevention shall review existing reports, data, and standards, relating to the juvenile justice system in the United States.

(b) Development of model State legislation

The National Institute for Juvenile Justice and Delinquency Prevention is authorized to develop and support model State legislation consistent with the mandates of this subchapter and the standards developed by National Advisory Committee for Juvenile Justice and Delinquency Prevention before October 12, 1984.

(Pub. L. 93-415, title II, § 246, formerly § 247, Sept. 7, 1974, 88 Stat. 1127; Pub. L. 95-115, § 5(d), Oct. 3, 1977, 91 Stat. 1057; renumbered and amended Pub. L. 98-473, title II, § 636, Oct. 12, 1984, 98 Stat. 2120.)

PRIOR PROVISIONS

A prior section 246 of Pub. L. 93-415 was renumbered section 245 of Pub. L. 93-415 and is classified to section 5656 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, in amending subsec. (a) generally, struck out "under the supervision of the Advisory Committee," before "shall review".

Subsec. (b). Pub. L. 98-473, in amending subsec. (b) generally, substituted provisions relating to support and development of model State legislation for former provisions which related to a report by the Advisory Committee to the President and Congress concerning Federal, State, and local action.

Subsecs. (c), (d). Pub. L. 98-473, in amending section generally, struck out subsec. (c) which related to availability of information of Federal departments and subsec. (d) which related to refinement of recommended standards and assistance in adoption of State and local standards and development of model State legislation. See subsec. (b) of this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5659. Training program; establishment; purpose; utilization of State and local facilities, personnel, etc.; enrollees

[*See main edition for text of* (*a*)]

(b) Enrollees in the training program established under this section shall be drawn from law enforcement and correctional personnel (including volunteer lay personnel), teachers and special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, persons associated with law-related education, youth workers, and representatives of private agencies and organizations with specific experience in the prevention and treatment of juvenile delinquency.

(Pub. L. 93-415, title II, § 247, formerly § 249, Sept. 7, 1974, 88 Stat. 1128, renumbered § 248 and amended Pub. L. 95-115, §§ 3(a)(3)(B), 5(e)(1), (f), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub. L. 96-509, § 19(n), Dec. 8, 1980, 94 Stat. 2765; renumbered § 247 and amended Pub. L. 98-473, title II, § 637, Oct. 12, 1984, 98 Stat. 2120.)

PRIOR PROVISIONS

A prior section 247 of Pub. L. 93-415 was renumbered section 246 of Pub. L. 93-415 and is classified to section 5657 of this title.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-473, § 637(a), substituted "law enforcement and correctional personnel (including volunteer lay personnel), teachers and special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, persons associated with law-related education, youth workers, and representatives of private agencies and organizations with specific experience in the prevention and treatment of juvenile delinquency" for "correctional and law enforcement personnel, teachers and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation officers, and other persons (including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations) connected with the prevention and treatment of juvenile delinquency".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5660. Curriculum for training program

The Administrator shall design and supervise a curriculum for the training program established by section 5659[4] of this title which shall utilize an interdisciplinary approach with respect to the prevention of juvenile delinquency, the treatment of juvenile delinquents, and the diversion of youths from the juvenile justice system. Such curriculum shall be appropriate to the needs of the enrollees of the training program.

(Pub. L. 93-415, title II, § 248, formerly § 250, Sept. 7, 1974, 88 Stat. 1128, renumbered § 249 and amended Pub. L. 95-115, §§ 3(a)(3)(B), 5(e)(1), (2)(A), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub. L. 96-509, § 19(*o*), Dec. 8, 1980, 94 Stat. 2765; renumbered § 248 Pub. L. 98-473, title II, § 638, Oct. 12, 1984, 98 Stat. 2120.)

References in Text

Section 5659 of this title, referred to in text, was in the original a reference to "section 248" of Pub. L. 93-415, which section was renumbered as section 247 by Pub. L. 98-473 without corresponding amendment of this section.

Prior Provisions

A prior section 248 of Pub. L. 93-415 was classified to section 5658 of this title and was repealed by Pub. L. 95-115, § 5(e)(1), Oct. 3, 1977, 91 Stat. 1057.

Another prior section 248 of Pub. L. 93-415 was renumbered section 247 of Pub. L. 93-415 and is classified to section 5659 of this title.

§ 5661. Participation in training program and State advisory group conferences

(a) Application

Any person seeking to enroll in the training program established under section 5659[4] of this title shall transmit an application to the Administrator, in such form and according to such procedures as the Administrator may prescribe.

(b) Admittance; determination by Secretary

The Administrator shall make the final determination with respect to the admittance of any person to the training program. The Administrator, in making such determination, shall seek to assure that persons admitted to the training program are broadly representative of the categories described in section 5659(b)[4] of this title.

(c) Travel expenses and per diem allowance

While participating as a trainee in the program established under section 5659[4] of this title or while participating in any conference held under section 5651(f) of this title, and while traveling in connection with such participation, each person so participating shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed travel expenses under section 5703 of title 5. No consultation fee may be paid to such person for such participation.

(Pub. L. 93-415, title II, § 249, formerly § 251, Sept. 7, 1974, 88 Stat. 1128, renumbered § 250 and amended Pub. L. 95-115, §§ 3(a)(3)(B), 5(e)(1), (2)(B), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub. L. 96-509, § 19(p), Dec. 8, 1980, 94 Stat. 2765; renumbered § 249 and amended Pub. L. 98-473, title II, § 639, Oct. 12, 1984, 98 Stat. 2120.)

References in Text

Section 5659 and section 5659(b) of this title, referred to in subsecs. (a) and (b), were in the original references to "section 248" and "section 248(b)" of Pub. L. 93-415, which sections were renumbered as sections 247 and 247(b) by Pub. L. 98-473 without corresponding amendment of subsecs. (a) and (b) of this section.

Section 5659 of this title, referred to in subsec. (c), was in the original a reference to "section 246" of Pub. L. 93-415, and has been translated as if the reference were to section 247 to reflect the probable intent of Congress.

Prior Provisions

A prior section 249 of Pub. L. 93-415 was renumbered section 247 of Pub. L. 93-415 and is classified to section 5659 of this title.

Another prior section 249 of Pub. L. 93-415 was renumbered section 248 of Pub. L. 93-415 and is classified to section 5660 of this title.

Amendments

1984—Subsec. (c). Pub. L. 98-473, § 639(b), in amending subsec. (c) generally, struck out references to the National Institute of Juvenile Justice and Delinquency Prevention, substituted provisions relating to travel expenses of participants of the trainee program and conferences for provisions relating to such expenses while studying, and added "No consultation fee may be paid to such person for such participation."

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

Part D—Administrative Provisions

§ 5671. Authorization of appropriations

(a) Availability of funds

To carry out the purposes of this subchapter there is authorized to be appropriated such sums as may be necessary for fiscal years 1985, 1986, 1987, and 1988. Funds appropriated for any fiscal year may remain available for obligation until expended.

(b) Percentages available for programs

Of such sums as are appropriated to carry out the purposes of this subchapter—

(1) not to exceed 7.5 percent shall be available to carry out part A;

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[4] See References in Text note below.

(2) not less than 81.5 percent shall be available to carry out part B; and

(3) 11 percent shall be available to carry out part C.

(c) Approval of State agency; supervisory board membership requirements

Notwithstanding any other provision of law, the Administrator shall—

(1) establish appropriate administrative and supervisory board membership requirements for a State agency responsible for supervising the preparation and administration of the State plan submitted under section 5633 of this title and permit the State advisory group appointed under section 5633(a)(3) of this title to operate as the supervisory board for such agency, at the discretion of the Governor; and

(2) approve any appropriate State agency designated by the Governor of the State involved in accordance with paragraph (1).

(d) Experimentation on individuals; prohibition; "behavior control" defined

No funds appropriated to carry out the purposes of this subchapter may be used for any bio-medical or behavior control experimentation on individuals or any research involving such experimentation. For the purpose of this subsection, the term "behavior control" refers to experimentation or research employing methods which involve a substantial risk of physical or psychological harm to the individual subject and which are intended to modify or alter criminal and other anti-social behavior, including aversive conditioning therapy, drug therapy or chemotherapy (except as part of routine clinical care), physical therapy of mental disorders, electroconvulsive therapy, or physical punishment. The term does not apply to a limited class of programs generally recognized as involving no such risk, including methadone maintenance and certain alcohol treatment programs, psychological counseling, parent training, behavior contracting, survival skills training, restitution, or community service, if safeguards are established for the informed consent of subjects (including parents or guardians of minors).

(As amended Pub. L. 98-473, title II, § 640, Oct. 12, 1984, 98 Stat. 2121.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, amended subsec. (a) generally, substituting provisions relating to authorization of appropriations for fiscal years 1985 to 1988 for former provisions which authorized appropriations for fiscal years 1981 to 1984.

Subsec. (b). Pub. L. 98-473, amended subsec. (b) generally, substituting provisions which set forth specific percentages of appropriations for parts A, B and C for former provisions which also set forth appropriation percentages for juvenile delinquency programs.

Subsec. (c). Pub. L. 98-473, amended subsec. (c) generally. Prior to the amendment, subsec. (c) read as follows: "Notwithstanding any other provision of law, if the Administrator determines, in his discretion, that sufficient funds have not been appropriated for any fiscal year for the activities authorized in part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3741 et seq.], then the Administrator is authorized to—

"(1) approve any appropriate State agency designated by the Governor of the State involved as the sole agency responsible for supervising the preparation and administration of the State plan submitted under section 5633 of this title; and

"(2) establish appropriate administrative and supervisory board membership requirements for any agency designated in accordance with paragraph (1), and permit the State advisory group appointed under section 5633(a)(2) of this title to operate as the supervisory board for such agency, at the discretion of the Governor."

Subsec. (d). Pub. L. 98-473, in amending section generally, added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5633 of this title.

§ 5672. Administrative authority

(a) Authority of Administrator

The Office shall be administered by the Administrator under the general authority of the Attorney General.

(b) Certain crime control provisions applicable

Sections 3789d(c), 3789f(a), 3789f(b), 3789f(c), 3789g(a), 3789g(b), and 3789g(d) of this title, shall apply with respect to the administration of and compliance with this chapter, except that for purposes of this chapter—

(1) any reference to the Office of Justice Programs in such sections shall be deemed to be a reference to the Assistant Attorney General who heads the Office of Justice Programs; and

(2) the term "this chapter" as it appears in such sections shall be deemed to be a reference to this chapter.

(c) Certain other crime control provisions applicable

Sections 3782(a), 3782(c), and 3787 of this title shall apply with respect to the administration of and compliance with this chapter, except that for purposes of this chapter—

(1) any reference to the Attorney General, the Assistant Attorney General who heads the Office of Justice Programs, the Director of the National Institute of Justice, the Director of the Bureau of Justice Statistics, or the Director of the Bureau of Justice Assistance shall be deemed to be a reference to the Administrator;

(2) any reference to the Office of Justice Programs, the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics shall be deemed to be a reference to the Office of Juvenile Justice and Delinquency Prevention; and

(3) the term "this chapter" as it appears in such sections shall be deemed to be a reference to this chapter.

(d) Rules, regulations, and procedures

The Administrator is authorized, after appropriate consultation with representatives of States and units of local government, to establish such rules, regulations, and procedures as are necessary for the exercise of the functions of the Office and as are consistent with the purpose of this chapter.

(As amended Pub. L. 98-473, title II, § 641, Oct. 12, 1984, 98 Stat. 2122.)

REFERENCES IN TEXT

This chapter, referred to in text, except when appearing within quotes in subsecs. (b)(2) and (c)(3), was in the original "this Act", meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables. "This chapter", appearing within quotes in subsecs. (b)(2) and (c)(3), was in the original "this title", meaning title I of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended, which is classified principally to chapter 46 (§ 3701 et seq.) of this title. Within the provisions of such chapter 46, the phrase "this title" is translated as "this chapter".

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, in amending subsec. (a) generally, substituted provisions setting forth the administrative authority of the Office for former provisions which incorporated other administrative provisions into this chapter as well as construing certain references as authorizing the Administrator of the Office of Juvenile Justice and Delinquency Prevention to perform the same actions as other officials.

Subsec. (b). Pub. L. 98-473, in amending subsec. (b) generally, substituted provisions relating to the applicability of other provisions to this chapter as well as defining certain references therein for former provisions which directed the Office of Justice Assistance, Research and Statistics to provide staff support and coordinate the activities of the Office of Juvenile Justice and Delinquency Prevention.

Subsecs. (c), (d). Pub. L. 98-473, in amending section generally, added subsecs. (c) and (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

SUBCHAPTER III—RUNAWAY AND HOMELESS YOUTH

§ 5702. Promulgation of rules

The Secretary of Health and Human Services (hereinafter in this subchapter referred to as the "Secretary") may issue such rules as the Secretary considers necessary or appropriate to carry out the purposes of this subchapter.

(Pub. L. 93-415, title III, § 303, Sept. 7, 1974, 88 Stat. 1130; Pub. L. 98-473, title II, § 650, Oct. 12, 1984, 98 Stat. 2122.)

AMENDMENTS

1984—Pub. L. 98-473 substituted "Health and Human Services" for "Health, Education, and Welfare" and "issue such rules as the Secretary" for "prescribe such rules as he".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

PART A—GRANTS PROGRAM

§ 5711. Grants and technical assistance

(a) Authorization; purposes; amount; priority

The Secretary is authorized to make grants and to provide technical assistance and short-term training to States, localities and private entities and coordinated networks of such entities in accordance with the provisions of this part and assistance to their families. Grants under this part shall be made equitably among the States based upon their respective populations of youth under 18 years of age for the purpose of developing local facilities to deal primarily with the immediate needs of runaway youth or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and juvenile justice system. The size of such grant shall be determined by the number of such youth in the community and the existing availability of services. Grants also may be made for the provision of a national communications system for the purpose of assisting runaway and homeless youth in communicating with their families and with service providers. Among applicants priority shall be given to private organizations or institutions which have had past experience in dealing with such youth.

(b) Supplemental grants to runaway centers developing model programs

The Secretary is authorized to provide supplemental grants to runaway centers which are developing, in cooperation with local juvenile court and social service agency personnel, model programs designed to provide assistance to juveniles who have repeatedly left and remained away from their homes or from any facilities in which they have been placed as the result of an adjudication and to the families of such juveniles.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-473, title II, § 651, Oct. 12, 1984, 98 Stat. 2123.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, § 651(a), in first sentence, substituted "private entities and coordinated networks of such entities" for "nonprofit private agencies and coordinated networks of such agencies" and added "and assistance to their families".

Subsec. (b). Pub. L. 98-473, § 651(b), added "and to the families of such juveniles".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5712. Eligibility; plan requirements

[*See main edition for text of* (a)]

(b) In order to qualify for assistance under this part, an applicant shall submit a plan to the Secretary meeting the following requirements and including the following information. Each center—

(1) shall be located in an area which is demonstrably frequented by or easily reachable by runaway youth;

(2) shall have a maximum capacity of no more than twenty children, with a ratio of staff to children of sufficient proportion to assure adequate supervision and treatment;

(3) shall develop adequate plans for contacting the child's parents or relatives and assuring the safe return of the child according to the best interests of the child, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway center and for providing for other appropriate alternative living arrangements;

(4) shall develop an adequate plan for assuring proper relations with law enforcement personnel, social service personnel, school system personnel, and welfare personnel, and the return of runaway youths from correctional institutions;

(5) shall develop an adequate plan for aftercare counseling involving runaway youth and their families within the State in which the runaway center is located and for assuring, as possible, that aftercare services will be provided to those children who are returned beyond the State in which the runaway center is located;

(6) shall keep adequate statistical records profiling the children and family members which it serves, except that records maintained on individual runaway youths shall not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway youth, and reports or other documents based on such statistical records shall not disclose the identity of individual runaway youths;

[*See main edition for text of* (*7*) *to* (*10*)]

(As amended Pub. L. 98-473, title II, § 652, Oct. 12, 1984, 98 Stat. 2123.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-473, § 652(1), substituted "proportion" for "portion".

Subsec. (b)(3). Pub. L. 98-473, § 652(2), struck out "(if such action is required by State law)" before "and assuring".

Subsec. (b)(4). Pub. L. 98-473, § 652(3), added "school system personnel".

Subsec. (b)(5). Pub. L. 98-473, § 652(4), substituted "families" for "parents".

Subsec. (b)(6). Pub. L. 98-473, § 652(5), substituted "family members" for "parents".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5713. Approval of application by Secretary; priority

An application by a State, locality, or private entity for a grant under this part may be approved by the Secretary only if it is consistent with the applicable provisions of this part and meets the requirements set forth in section 5712 of this title. Priority shall be given to grants smaller than $150,000. In considering grant applications under this part, priority shall be given to organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families.

(As amended Pub. L. 98-473, title II, § 653, Oct. 12, 1984, 98 Stat. 2123.)

AMENDMENTS

1984—Pub. L. 98-473 substituted "private entity" for "nonprofit private agency".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5714. Grants to private entities; staffing

Nothing in this part shall be construed to deny grants to private entities which are fully controlled by private boards or persons but which in other respects meet the requirements of this part and agree to be legally responsible for the operation of the runaway center. Nothing in this part shall give the Federal Government control over the staffing and personnel decisions of facilities receiving Federal funds.

(As amended Pub. L. 98-473, title II, § 654, Oct. 12, 1984, 98 Stat. 2123.)

AMENDMENTS

1984—Pub. L. 98-473 amended section catchline and substituted "private entities" for "nonprofit private agencies" and "center" for "house" in text.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5714a. Assistance to potential grantees

The Secretary shall provide informational assistance to potential grantees interested in establishing runaway and homeless youth centers. Such assistance shall consist of information on—

(1) steps necessary to establish a runaway and homeless youth center, including information on securing space for such center, obtaining insurance, staffing, and establishing operating procedures;

(2) securing local private or public financial support for the operation of such center, including information on procedures utilized by grantees under this subchapter; and

(3) the need for the establishment of additional runaway youth centers in the geographical area identified by the potential grantee involved.

(Pub. L. 93-415, title III, § 315, as added Pub. L. 98-473, title II, § 655(2), Oct. 12, 1984, 98 Stat. 2124.)

PRIOR PROVISIONS

A prior section 315 of Pub. L. 93-415 was renumbered section 317 of Pub. L. 93-415 and is classified to section 5715 of this title.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

§ 5714b. Lease of surplus Federal facilities for use as runaway and homeless youth centers

(a) Conditions of lease arrangements

The Secretary may enter into cooperative lease arrangements with States, localities, and nonprofit private agencies to provide for the use of appropriate surplus Federal facilities transferred by the General Services Administration to the Department of Health and Human Services for use as runaway and homeless youth centers if the Secretary determines that—

(1) the applicant involved has suitable financial support necessary to operate a runaway and homeless youth center;

(2) the applicant is able to demonstrate the program expertise required to operate such center in compliance with this subchapter, whether or not the applicant is receiving a grant under this part; and

(3) the applicant has consulted with and obtained the approval of the chief executive officer of the unit of general local government in which the facility is located.

(b) Period of availability; rent-free use; structural changes: Federal ownership and consent

(1) Each facility made available under this section shall be made available for a period of not less than 2 years, and no rent or fee shall be charged to the applicant in connection with use of such facility.

(2) Any structural modifications or additions to facilities made available under this section shall become the property of the United States. All such modifications or additions may be made only after receiving the prior written consent of the Secretary or other appropriate officer of the Department of Health and Human Services.

(Pub. L. 93-415, title III, § 316, as added Pub. L. 98-473, title II, § 655(2), Oct. 12, 1984, 98 Stat. 2124.)

PRIOR PROVISIONS

A prior section 316 of Pub. L. 93-415 was renumbered section 318 of Pub. L. 93-415 and is classified to section 5716 of this title.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

§ 5715. Annual report to Congress

[See main edition for text]

(Pub. L. 93-415, title III, § 317, formerly § 315, Sept. 7, 1974, 88 Stat. 1131; Pub. L. 96-509, § 18(f), Dec. 8, 1980, 94 Stat. 2762; renumbered Pub. L. 98-473, title II, § 655(1), Oct. 12, 1984, 98 Stat. 2124.)

§ 5716. Federal and non-Federal share; methods of payment

[See main edition for text]

(Pub. L. 93-415, title III, § 318, formerly § 316, Sept. 7, 1974, 88 Stat. 1132; renumbered Pub. L. 98-473, title II, § 655(1), Oct. 12, 1984, 98 Stat. 2124.)

PART C—AUTHORIZATION OF APPROPRIATIONS

PRIOR PROVISIONS

A prior part C, consisting of section 5741, Pub. L. 93-415, title III, § 331, as added Pub. L. 95-115, § 7(c), Oct. 3, 1977, 91 Stat. 1059, and amended Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which authorized the President to submit to the Congress after April 30, 1978, a reorganization plan for establishment of an Office of Youth Assistance, subject to Congressional resolution of disapproval, was repealed by Pub. L. 98-473, title II, § 656, 670(a), Oct. 12, 1984, 98 Stat. 2124, 2129, eff. Oct. 12, 1984. Section 657(e) of Pub. L. 98-473 redesignated former part D as C.

Previously, part C was redesignated part D by Pub. L. 95-115, § 7(c), Oct. 3, 1977, 91 Stat. 1059.

§ 5741. Repealed. Pub. L. 98-473, title II, § 656, Oct. 12, 1984, 98 Stat. 2124

See Prior Provisions note set out preceding this section.

§ 5751. Authorization of appropriations

(a) Amounts authorized for programs and activities

To carry out the purposes of part A of this subchapter there is authorized to be appropriated such sums as may be necessary for fiscal years 1985, 1986, 1987, and 1988.

(b) Consultative and coordinating requirements

The Secretary (through the Office of Youth Development which shall administer this subchapter) shall consult with the Attorney General (through the Administrator of the Office of Juvenile Justice and Delinquency Prevention) for the purpose of coordinating the development and implementation of programs and activities funded under this subchapter with those related programs and activities funded under subchapter II of this chapter and under the Omnibus Crime Control and Safe Streets Act of 1968, as amended [42 U.S.C. 3701 et seq.].

(c) Conditions for use of funds

No funds appropriated to carry out the purposes of this subchapter—

(1) may be used for any program or activity which is not specifically authorized by this subchapter; or

(2) may be combined with funds appropriated under any other Act if the purpose of combining such funds is to make a single discretionary grant or a single discretionary payment unless such funds are separately identified in all grants and contracts and are used for the purposes specified in this subchapter.

(Pub. L. 93-415, title III, § 331, Sept. 7, 1974, 88 Stat. 1132, Pub. L. 94-273, § 32(c), Apr. 21, 1976, 90 Stat. 380; renumbered § 341 and amended Pub. L. 95-115, § 7(c), (d), Oct. 3, 1977, 91 Stat. 1059, 1060; Pub. L. 96-509, § 2(b), Dec. 8, 1980, 94 Stat. 2750; renumbered § 331 and amended Pub. L. 98-473, title II, § 657(a)-(d), (f), Oct. 12, 1984, 98 Stat. 2124, 2125.)

PRIOR PROVISIONS

For a prior section 331 of Pub. L. 93-415, see note set out preceding section 5741.

AMENDMENTS

1984—Pub. L. 98-473, § 657(a), amended section catchline.

Subsec. (a). Pub. L. 98-473, § 657(b), substituted "such sums as may be necessary for fiscal years 1985, 1986, 1987, and 1988" for "for each of the fiscal years ending September 30, 1981, September 30, 1982, September 30, 1983, and September 30, 1984 the sum of $25,000,000".

Subsec. (b). Pub. L. 98-473, § 657(c), struck out "Associate" before "Administrator".

Subsec. (c). Pub. L. 98-473, § 657(d), added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, except that enactment of subsec. (c)(2) by Pub. L. 98-473 shall not apply with respect to any grant or payment made before Oct. 12, 1984, see section 670 of Pub. L. 98-473, set out as a note under section 5601 of this title.

SUBCHAPTER IV—MISSING CHILDREN

§ 5771. Findings

The Congress hereby finds that—

(1) each year thousands of children are abducted or removed from the control of a parent having legal custody without such parent's consent, under circumstances which immediately place them in grave danger;

(2) many of these children are never reunited with their families;

(3) often there are no clues to the whereabouts of these children;

(4) many missing children are at great risk of both physical harm and sexual exploitation;

(5) in many cases, parents and local law enforcement officials have neither the resources nor the expertise to mount expanded search efforts;

(6) abducted children are frequently moved from one locality to another, requiring the cooperation and coordination of local, State, and Federal law enforcement efforts;

(7) on frequent occasions, law enforcement authorities quickly exhaust all leads in missing children cases, and require assistance from distant communities where the child may be located; and

(8) Federal assistance is urgently needed to coordinate and assist in this interstate problem.

(Pub. L. 93-415, title IV, § 402, as added Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2125.)

EFFECTIVE DATE

Subchapter effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

SHORT TITLE

For short title of title IV of Pub. L. 93-415, which enacted this subchapter, as the "Missing Children's Assistance Act", see section 401 of Pub. L. 93-415, as added by Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5772. "Missing child" and "Administrator" defined

For the purpose of this subchapter—

(1) the term "missing child" means any individual less than 18 years of age whose whereabouts are unknown to such individual's legal custodian if—

(A) the circumstances surrounding such individual's disappearance indicate that such individual may possibly have been removed by another from the control of such individual's legal custodian without such custodian's consent; or

(B) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited; and

(2) the term "Administrator" means the Administrator of the Office of Juvenile Justice and Delinquency Prevention.

(Pub. L. 93-415, title IV, § 403, as added Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2126.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 3201.

§ 5773. Duties and functions of the Administrator

(a) Description of activities

The Administrator shall—

(1) issue such rules as the Administrator considers necessary or appropriate to carry out this subchapter;

(2) make such arrangements as may be necessary and appropriate to facilitate effective coordination among all federally funded programs relating to missing children (including the preparation of an annual comprehensive plan for facilitating such coordination);

(3) provide for the furnishing of information derived from the national toll-free telephone line, established under subsection (b)(1) of this section, to appropriate law enforcement entities;

(4) provide adequate staff and agency resources which are necessary to properly carry out the responsibilities pursuant to this subchapter;

(5) analyze, compile, publish, and disseminate an annual summary of recently completed research, research being conducted, and Federal, State, and local demonstration projects relating to missing children with particular emphasis on—

(A) effective models of local, State, and Federal coordination and cooperation in locating missing children;

(B) effective programs designed to promote community awareness of the problem of missing children;

(C) effective programs to prevent the abduction and sexual exploitation of children (including parent, child, and community education); and

(D) effective program models which provide treatment, counseling, or other aid to parents of missing children or to children who have been the victims of abduction or sexual exploitation; and

(6) prepare, in conjunction with and with the final approval of the Advisory Board on Missing Children, an annual comprehensive plan for facilitating cooperation and coordination among all agencies and organizations with responsibilities related to missing children.

(b) Grants or contracts for toll-free telephone line, national resource center and clearinghouse; periodic national incidence studies

The Administrator, either by making grants to or entering into contracts with public agencies or nonprofit private agencies, shall—

(1) establish and operate a national toll-free telephone line by which individuals may report information regarding the location of any missing child, or other child 13 years of age or younger whose whereabouts are unknown to such child's legal custodian, and request information pertaining to procedures necessary to reunite such child with such child's legal custodian;

(2) establish and operate a national resource center and clearinghouse designed—

(A) to provide technical assistance to local and State governments, public and private nonprofit agencies, and individuals in locating and recovering missing children;

(B) to coordinate public and private programs which locate, recover, or reunite missing children with their legal custodians;

(C) to disseminate nationally information about innovative and model missing childrens' programs, services, and legislation; and

(D) to provide technical assistance to law enforcement agencies, State and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of the missing and exploited child case; and

(3) periodically conduct national incidence studies to determine for a given year the actual number of children reported missing each year, the number of children who are victims of abduction by strangers, the number of children who are the victims of parental kidnapings, and the number of children who are recovered each year.

(c) Independent status of other Federal agencies

Nothing contained in this subchapter shall be construed to grant to the Administrator any law enforcement responsibility or supervisory authority over any other Federal agency.

(Pub. L. 93-415, title IV, § 404, as added Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2126.)

§ 5774. Advisory Board

(a) Establishment; number and qualification of members

There is hereby established the Advisory Board on Missing Children (hereinafter in this subchapter referred to as the "Advisory Board") which shall be composed of 9 members as follows:

(1) a law enforcement officer;

(2) an individual whose official duty is to prosecute violations of the criminal law of a State;

(3) the chief executive officer of a unit of local government within a State;

(4) a statewide elected officer of a State;

(5) the Director of the Federal Bureau of Investigation or the Director's designee from within the Federal Bureau of Investigation; and

(6) 4 members of the public who have experience or expertise relating to missing children (including members representing parent groups).

(b) Appointment; meetings; Chairman

The Attorney General shall make the initial appointments to the Advisory Board not later than 90 days after October 12, 1984. The Advisory Board shall meet periodically and at the call of the Attorney General, but not less frequently than annually. The Chairman of the Advisory Board shall be designated by the Attorney General.

(c) Duties and functions of Advisory Board

The Advisory Board shall—

(1) advise the Administrator and the Attorney General in coordinating programs and activities relating to missing children which are planned, administered, or assisted by any Federal program;

(2) advise the Administrator with regard to the establishment of priorities for making grants or contracts under section 5775 of this title; and

(3) approve the annual comprehensive plan for facilitating cooperation and coordination among all agencies and organizations with responsibilities relating to missing children and submit the first such annual plan to the President and the Congress not later than eighteen months after October 12, 1984.

(d) Travel and per diem expenses; reimbursement

Members of the Advisory Board, while serving away from their places of residence or regular places of business, shall be entitled to reimbursement for travel expenses, including per diem in lieu of subsistence, in the same manner as is authorized by section 5703 of title 5 for persons employed intermittently in the Government service.

(Pub. L. 93-415, title IV, § 405, as added Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2127.)

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 5775. Grants

(a) Authority of Administrator; description of research, demonstration projects, and service programs

The Administrator is authorized to make grants to and enter into contracts with public agencies or nonprofit private organizations, or combinations thereof, for research, demonstration projects, or service programs designed—

(1) to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

(2) to provide information to assist in the locating and return of missing children;

(3) to aid communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children;

(4) to increase knowledge of and develop effective treatment pertaining to the psychological consequences, on both parents and children, of—

(A) the abduction of a child, both during the period of disappearance and after the child is recovered; and

(B) the sexual exploitation of a missing child;

(5) to collect detailed data from selected States or localities on the actual investigative practices utilized by law enforcement agencies in missing children's cases; and

(6) to address the particular needs of missing children by minimizing the negative impact of judicial and law enforcement procedures on children who are victims of abuse or sexual exploitation and by promoting the active participation of children and their families in cases involving abuse or sexual exploitation of children.

(b) Priorities of grant applicants

In considering grant applications under this subchapter, the Administrator shall give priority to applicants who—

(1) have demonstrated or demonstrate ability in—

(A) locating missing children or locating and reuniting missing children with their legal custodians;

(B) providing other services to missing children or their families; or

(C) conducting research relating to missing children; and

(2) with respect to subparagraphs (A) and (B) of paragraph (1), substantially utilize volunteer assistance.

The Administrator shall give first priority to applicants qualifying under subparagraphs (A) and (B) of paragraph (1).

(c) Non-Federal fund expenditures requisite for receipt of Federal assistance

In order to receive assistance under this subchapter for a fiscal year, applicants shall give assurance that they will expend, to the greatest extent practicable, for such fiscal year an amount of funds (without regard to any funds received under any Federal law) that is not less than the amount of funds they received in the preceding fiscal year from State, local, and private sources.

(Pub. L. 93-415, title IV, § 406, as added Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2128.)

Section Referred to in Other Sections

This section is referred to in sections 5774, 5776 of this title.

§ 5776. Criteria for grants

The Administrator, in consultation with the Advisory Board, shall establish annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 5775 of this title and, not less than 60 days before establishing such priorities, shall publish in the Federal Register for public comment a statement of such proposed priorities.

(Pub. L. 93-415, title IV, § 407, as added Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2129.)

§ 5777. Authorization of appropriations

To carry out the provisions of this subchapter, there are authorized to be appropriated $10,000,000 for fiscal year 1985, and such sums as may be necessary for fiscal years 1986, 1987, and 1988.

(Pub. L. 93-415, title IV, § 408, as added Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2129.)

CHAPTER 74—NONNUCLEAR ENERGY RESEARCH AND DEVELOPMENT

Sec.
5903d. Clean coal technology projects; proposals, implementation, funding, etc.

Chapter Referred to in Other Sections

This chapter is referred to in sections 5903d, 5907a, 6981, 7135a, 8751, 8752, 8795, 8837 of this title; title 7 sections 341, 427, 1923, 1932, 1942, 3282; title 15 sections 2507, 2705.

§ 5903d. Clean coal technology projects; proposals, implementation, funding, etc.

Within 60 days following December 19, 1985, the Secretary of Energy shall, pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901, et seq.), issue a general request for proposals for clean coal technology projects for which the Secretary of Energy upon review may provide financial assistance awards. Proposals for clean coal technology projects under this section shall be submitted to the Department of Energy within 60 days after issuance of the general request for proposals. The Secretary of Energy shall make any project selections no later than August 1, 1986: *Provided*, That the Secretary may vest fee title or other property interests acquired under cost-shared clean coal technology agreements in any entity, including the United States: *Provided further*, That the Secretary shall not finance more than 50 per centum of the total costs of a project as estimated by the Secretary as of the date of award of financial assistance: *Provided further*, That cost-sharing by project sponsors is required in each of the design, construction, and operating phases proposed to be included in a project: *Provided further*, That financial assistance for costs in excess of those estimated as of the date of award of original financial assistance may not be provided in excess of the proportion of costs borne by the Government in the original agreement and only up to 25 per centum of the original financial assistance: *Provided further*, That revenues or royalties from prospective operation of projects beyond the time considered in the award of financial assistance, or proceeds from prospective sale of the assets of the project, or revenues or royalties from replication of technology in future projects or plants are not cost-sharing for the purposes of this appropriation: *Provided further*, That other appropriated Federal funds are not cost-sharing for the purposes of this appropriation: *Provided further*, That existing facilities, equipment, and supplies, or previously expended research or development funds are not cost-sharing for the purposes of this appropriation, except as amortized, depreciated, or expensed in normal business practice.

(Pub. L. 99-190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1251.)

REFERENCES IN TEXT

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in text, is Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to this chapter (§ 5901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Federal Nonnuclear Energy Reserach and Development Act of 1974 which comprises this chapter.

§ 5905. Comprehensive plan and implementing program for energy research, development, and demonstration; transmission to Congress; purposes; scope of program; comprehensive environment and safety program implementing plan; development and transmission to Congress

[*See main edition for text of* (*a*)]

(b) [*See main edition for text of* (*1*)]

(2) This program shall be designed to achieve solutions to the energy supply and associated environmental problems in the immediate and short-term (to the early 1980's), middle-term (the early 1980's to 2000), and long-term (beyond 2000) time intervals. In formulating the nonnuclear aspects of this program, the Secretary shall evaluate the economic, environmental, and technological merits of each aspect of the program.

[*See main edition for text of* (*3*); (*c*); *credits*]

CODIFICATION

Subsec. (b)(2) is set out in this supplement to correct a typographical error appearing in the main edition.

§ 5908. Patents and inventions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5585, 5906, 5907a, 5919, 6981, 8773, 10308 of this title; title 7 section 178j; title 15 sections 2511, 2707; title 35 section 210.

§ 5909. Relationship to antitrust laws

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10308 of this title; title 7 section 178j.

§ 5915. Authorization of appropriations

ALTERNATIVE FUELS PRODUCTION; ENERGY SECURITY RESERVE FUND

Pub. L. 96-126, title II, § 201, Nov. 27, 1979, 93 Stat. 970, as amended by Pub. L. 99-190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1255, provided that:

[*See main edition for text of first nine undesignated paragraphs*]

[Last undesignated paragraph. Repealed. Pub. L. 99-190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1255]

Additional provisions relating to appropriations for the Energy Security Reserve Fund, purposes for which the Fund is available, and administrative provisions for the Fund and alternative fuels production were contained in the following appropriation Acts:

Pub. L. 98-369, div. B, title I, § 2103, July 18, 1984, 98 Stat. 1058.

§ 5919. Loan guarantees and commitments for alternative fuel demonstration facilities

[*See main edition for text of* (*a*) *to* (*o*)]

(p) Citizenship or nationality requirements for applicants; waiver

(1) An applicant seeking a guarantee or cooperative agreement under subsection (b) or subsection (y) of this section must be a citizen or national of the United States. A corporation, partnership, firm, or association shall not be deemed to be a citizen or national of the United States unless the Secretary determines that it satisfactorily meets all the requirements of section 802 of title 46, Appendix, for determining such citizenship, except that the provisions in subsection (a) of such section 802 concerning (A) the citizenship of officers or directors of a corporation, and (B) the interest required to be owned in the case of a corporation, association, or partnership operating a vessel in the coastwise trade, shall not be applicable.

[*See main edition for text of* (*2*); (*q*) *to* (*y*); *credits*]

CODIFICATION

Subsec. (p)(1) is set out in this supplement to reflect the transfer of section 802 of title 46, referred to in text, to title 46, Appendix.

CHAPTER 75—PROGRAMS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

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6000. Congressional declaration of findings and purpose.
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Sec.

- 6002. Federal share.
  - (a) Subchapter II; percentage limitation.
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  - (c) Non-Federal share; medium of payment.
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- 6006. Reports; State planning council; Secretary.
  - (a) State planning council; contents.
  - (b) Protection and advisory systems.
  - (c) Secretary to report to President, Congress, and National Council on the Handicapped.
- 6007. Responsibilities of Secretary.
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- 6008. Employment of handicapped individuals.
- 6009. Congressional finding regarding rights of the developmentally disabled.
- 6010 to 6012. Omitted.

SUBCHAPTER II—FEDERAL ASSISTANCE FOR PLANNING AND SERVICE ACTIVITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

- 6021. Congressional statement of purpose.
- 6022. State plans.
  - (a) Secretary; submission of plan to; approval by.
  - (b) Plan requirements and contents.
  - (c) Approval; final disapproval; notice and hearing.
  - (d) Administration of State plan; expenditures; paid from allotment; limitation; condition.
- 6023. Habilitation plans.
  - (a) Condition for receipt of State allotment.
  - (b) Requirements.
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- 6024. State Planning Councils.
  - (a) Establishment; membership.
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- 6025. State allotments.
  - (a) Determination of amount.
  - (b) Apportionment of allotment among State agencies.
  - (c) Combined allotments to States involved in joint effort.
  - (d) Reallotment of funds not required by State.
- 6026. Payments to the States for planning, administration, and services.
- 6027. Withholding of payments for planning, administration, and services.
- 6028. Nonduplication.
- 6029. Appeals by States.
- 6030. Authorization of appropriations.
- 6031 to 6033. Omitted.

SUBCHAPTER III—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

- 6041. Congressional statement of purpose.
- 6042. System requirement.
  - (a) Subchapter II.
  - (b) Application.
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SUBCHAPTER IV—UNIVERSITY AFFILIATED FACILITIES

- 6061. Congressional statement of purpose.
- 6062. Grant authority.
  - (a) Authorization.

Sec.

  - (b) Additional grants; activities.
  - (c) Payments for costs of establishing and maintaining satellite centers; study.
  - (d) Limitation on satellite center grants; Secretary.
- 6063. Applications.
  - (a) Standards for university affiliated facilities.
  - (b) Secretary; submission to; approval by; contents.
  - (c) Review process.
  - (d) Grant amount determined by amount of appropriation.
- 6064. Authorization of appropriations.
- 6065 to 6068. Omitted.

SUBCHAPTER V—SPECIAL PROJECT GRANTS

- 6081. Congressional statement of purpose.
- 6082. Grant authority.
  - (a) Secretary; demonstration projects; technical assistance.
  - (b) Application requirement; approval by Secretary; State Planning Council; review.
  - (c) Payments; advance; reimbursement; intervals; conditions.
- 6083. Authorization of appropriations.

CODIFICATION

The Developmental Disabilities Assistance and Bill of Rights Act, comprising this chapter, is title I of the Mental Retardation Facilities and Community Mental Health Centers Act of 1963, which was originally enacted by Pub. L. 88-164, Oct. 31, 1963, 77 Stat. 282, at which time title I was known as the Mental Retardation Facilities Construction Act, and parts B and C of such title I were classified to subchapters I (§ 2661 et seq.) and II (§ 2670 et seq.), respectively, of chapter 33 of this title. Because of the extensive amendments, reorganization of the subject matter, and expansion of the Act by the acts summarized below, the Act is shown herein as having been added by Pub. L. 98-527, without reference to intervening amendments.

Part D of the Act was added by Pub. L. 90-170, § 4, Dec. 4, 1967, 81 Stat. 528, and was classified to subchapter IIA (§ 2678 et seq.) of chapter 33 of this title. Part C of the Act was amended generally and the Act was reorganized and renamed the Developmental Disabilities Services and Facilities Construction Act, by Pub. L. 91-517, Oct. 30, 1970, 84 Stat. 1316.

Parts A, B, and D of the Act were amended generally and the Act was otherwise extensively amended and reorganized by Pub. L. 94-103, Oct. 4, 1975, 89 Stat. 486, and was reclassified to this chapter (§ 6000 et seq.).

The Act was renamed the Developmental Disabilities Assistance and Bill of Rights Act and was amended and reorganized by Pub. L. 95-602, title V, Nov. 6, 1978, 92 Stat. 3003, and was subsequently amended generally and completely reorganized by Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662.

EXTENSION OF TERM OF PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1987, see Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1985, see Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Chapter Referred to in Other Sections

This chapter is referred to in sections 217a-1, 300a-7, 3500 of this title; title 29 sections 761a, 781; title 40 App. section 202.

SUBCHAPTER I—GENERAL PROVISIONS

§ 6000. Congressional declaration of findings and purpose

(a) The Congress finds that—

(1) there are more than two million persons with developmental disabilities in the United States;

(2) individuals with disabilities occurring during their developmental period are more vulnerable and less able to reach an independent level of existence than other handicapped individuals who generally have had a normal developmental period on which to draw during the rehabilitation process;

(3) persons with developmental disabilities often require specialized lifelong services to be provided by many agencies in a coordinated manner in order to meet the persons' needs;

(4) generic service agencies and agencies providing specialized services to disabled persons tend to overlook or exclude persons with developmental disabilities in their planning and delivery of services; and

(5) it is in the national interest to strengthen specific programs, especially programs that reduce or eliminate the need for institutional care, to meet the needs of persons with developmental disabilities.

(b)(1) It is the overall purpose of this chapter to assist States to (A) assure that persons with developmental disabilities receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community, and (B) establish and operate a system which coordinates, monitors, plans, and evaluates services which ensures the protection of the legal and human rights of persons with developmental disabilities.

(2) The specific purposes of this chapter are—

(A) to assist in the provision of comprehensive services to persons with developmental disabilities, with priority to those persons whose needs are not otherwise met under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] or other health, education, or welfare programs;

(B) to assist States in appropriate planning activities;

(C) to make grants to States and public and private, nonprofit agencies to establish model programs, to demonstrate innovative habilitation techniques, and to train professional and paraprofessional personnel with respect to providing services to persons with developmental disabilities;

(D) to make grants to university affiliated facilities to assist them in administering and operating demonstration facilities for the provision of services to persons with developmental disabilities and interdisciplinary training programs for personnel needed to provide specialized services for these persons; and

(E) to make grants to support a system in each State to protect the legal and human rights of all persons with developmental disabilities.

(Pub. L. 88-164, title I, § 101, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662.)

References in Text

The Rehabilitation Act of 1973, referred to in subsec. (b)(2)(A), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 357, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Prior Provisions

A prior section 6000, Pub. L. 88-164, title I, § 101, as added Pub. L. 95-602, title V, § 502, Nov. 6, 1978, 92 Stat. 3004, set out the Congressional statement of findings and purpose prior to the general revision of this chapter by Pub. L. 98-527.

Short Title of 1984 Amendment

Section 1 of Pub. L. 98-527 provided: "That this Act [enacting this chapter] may be cited as the 'Developmental Disabilities Act of 1984'."

Short Title

Pub. L. 88-164, title I, § 101, as added by Pub. L. 94-103, title I, § 125, which provided that: "This title [this chapter] may be cited as the 'Developmental Disabilities Services and Facilities Construction Act'.", was struck out by Pub. L. 95-602, title V, § 502. See below.

Pub. L. 88-164, title I, § 100, as added by section 2 of Pub. L. 98-527, provided that: "This title [enacting this chapter] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act'."

§ 6001. Definitions

For purposes of this chapter:

(1) The term "State" includes Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

(2) The term "facility for persons with developmental disabilities" means a facility, or a specified portion of a facility, designed primarily for the delivery of one or more services to persons with one or more developmental disabilities.

(3) The terms "nonprofit facility for persons with developmental disabilities" and "nonprofit private institution of higher learning" mean, respectively, a facility for persons with developmental disabilities and an institution of higher learning which are owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual. The term "nonprofit private agency or organization" means an agency or organization which is such a corporation or association or which is owned and operated by one or more of such corporations or associations.

(4) The term "construction" includes construction of new buildings, acquisition, expansion, remodeling, and alteration of existing

buildings, and initial equipment of any such buildings (including medical, transportation, and recreation facilities); including architect's fees, but excluding the cost of offsite improvements and the cost of the acquisition of land.

(5) The term "cost of construction" means the amount found by the Secretary to be necessary for the construction of a project.

(6) The term "title", when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than fifty years undisturbed use and possession for the purposes of construction and operation of the project.

(7) The term "developmental disability" means a severe, chronic disability of a person which—

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the person attains age twenty-two;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(8) The term "independence" means the extent to which persons with developmental disabilities exert control and choice over their own lives.

(9) The term "productivity" means—

(A) engagement in income-producing work by a person with developmental disabilities which is measured through improvements in income level, employment status, or job advancement, or

(B) engagement by a person with developmental disabilities in work which contributes to a household or community.

(10) The term "integration" means—

(A) the—

(i) use by persons with developmental disabilities of the same community resources that are used by and available to other citizens, and

(ii) participation by persons with developmental disabilities in the same community activities in which nonhandicapped citizens participate,

together with regular contact with nonhandicapped citizens, and

(B) the residence by persons with developmental disabilities in homes or in home-like settings which are in proximity to community resources, together with regular contact with nonhandicapped citizens in their communities.

(11)(A) The term "services for persons with developmental disabilities" means—

(i) priority services; and

(ii) any other specialized services or special adaptations of generic services for persons with developmental disabilities, including diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation and socialization, counseling of the person with such disability and the family of such person, protective and other social and sociolegal services, information and referral services, follow-along services, nonvocational social-developmental services, transportation services necessary to assure delivery of services to persons with developmental disabilities, and services to promote and coordinate activities to prevent developmental disabilities.

(B) The term "service activities" includes, with respect to a priority service or a service described in subparagraph (A)(ii)—

(i) the provision of specialized services in the area which respond to unmet needs of persons with developmental disabilities;

(ii) model service programs in the area;

(iii) activities to increase the capacity of agencies to provide services in the area;

(iv) the coordination of the provision of services in the area with the provision of other services;

(v) outreach to individuals for the provision of services in the area;

(vi) the training of personnel, including parents of persons with developmental disabilities, professionals, and volunteers, to provide services in the area; and

(vii) similar activities designed to expand the use and availability of services in the area.

(C) The term "priority services" means alternative community living arrangement services, employment related activities, child development services, and case management services.

(D) The term "alternative community living arrangement services" means such services as will assist persons with developmental disabilities in developing or maintaining suitable residential arrangements in the community, including in-house services (such as personal aides and attendants and other domestic assistance and supportive services), family support services, foster care services, group living services, respite care, recreation and socialization services, and staff training, placement, and maintenance services.

(E) The term "employment related activities" means such services as will increase the independence, productivity, or integration of a person with developmental disabilities in work settings, including such services as employment preparation and vocational training leading to supported employment, incentive programs for employers who hire persons with developmental disabilities, services to assist transition from special education to employment, and services to assist transition from sheltered work settings to supported employment settings or competitive employment.

(F) The term "supported employment" means paid employment which—

(i) is for persons with developmental disabilities for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;

(ii) is conducted in a variety of settings, particularly worksites in which persons without disabilities are employed; and

(iii) is supported by any activity needed to sustain paid work by persons with disabilities, including supervision, training, and transportation.

(G) The term "child development services" means such services as will assist in the prevention, identification, and alleviation of developmental disabilities in children, including early intervention services, counseling and training of parents, early identification of developmental disabilities, and diagnosis and evaluation of such developmental disabilities.

(H) The term "case management services" means such services to persons with developmental disabilities as will assist them in gaining access to needed social, medical, educational, and other services. Such term includes—

(i) follow-along services which ensure, through a continuing relationship, lifelong if necessary, between an agency or provider and a person with a developmental disability and the person's immediate relatives or guardians, that the changing needs of the person and the family are recognized and appropriately met; and

(ii) coordination services which provide to persons with developmental disabilities support, access to (and coordination of) other services, information on programs and services, and monitoring of the persons' progress.

(12) The term "satellite center" means a public or private nonprofit entity which—

(A)(i) is affiliated with one or more university affiliated facilities;

(ii) functions as a community or regional extension of such university affiliated facility or facilities in the delivery of services to persons with developmental disabilities, and their families, who reside in geographical areas where adequate services are not otherwise available; and

(iii) may engage in the activities described in subparagraph (A), (B), or (C) of paragraph (13); or

(B) is affiliated with one or more university affiliated facilities and which provides for at least—

(i) interdisciplinary training for personnel concerned with the provision of direct or indirect services to persons with developmental disabilities; and

(ii) dissemination of findings relating to the provision of services to persons with developmental disabilities.

(13) The term "university affiliated facility" means a public or nonprofit facility which is associated with, or is an integral part of, a college or university and which provides for at least the following activities:

(A) Interdisciplinary training for personnel concerned with developmental disabilities which is conducted at the facility and through outreach activities.

(B) Demonstration of—

(i) exemplary services relating to persons with developmental disabilities in settings which are integrated in the community; and

(ii) technical assistance to generic and specialized agencies to provide services to increase the independence, productivity, and integration into the community of persons with developmental disabilities, such as the development and improvement of quality assurance mechanisms.

(C)(i) Dissemination of findings relating to the provision of services under subparagraph (B) of this paragraph, and (ii) providing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research which would provide data and information that will assist in increasing the independence, productivity, and integration into the community of persons with developmental disabilities.

(14) The term "Secretary" means the Secretary of Health and Human Services.

(15) The term "State Planning Council" means a State Planning Council established under section 6024 of this title.

(Pub. L. 88-164, title I, § 102, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2663.)

PRIOR PROVISIONS

A prior section 6001, Pub. L. 88-164, title I, § 102, as added Pub. L. 94-103, title I, § 125, Oct. 4, 1975, 89 Stat. 496, and amended Pub. L. 95-602, title V, § 503(a), (b)(1), (c)-(f), Nov. 6, 1978, 92 Stat. 3004-3006; Pub. L. 98-221, title III, § 301, Feb. 22, 1984, 98 Stat. 34, defined terms for purposes of this chapter prior to the general revision of this chapter by Pub. L. 98-527.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1471, 6022, 6062, 6063, 6862, 9877 of this title.

§ 6002. Federal share

(a) Subchapter II; percentage limitation

The Federal share of all projects in a State supported by an allotment to the State under subchapter II of this chapter may not exceed 75 percent of the aggregate necessary costs of all such projects, as determined by the Secretary, except that in the case of projects located in urban or rural poverty areas, the Federal share of all such projects may not exceed 90 percent of the aggregate necessary costs of such projects, as determined by the Secretary.

(b) Subchapter IV; percentage limitation

The Federal share of any project to be provided through grants under subchapter IV of this chapter may not exceed 75 percent of the necessary cost of such project, as determined by the Secretary, except that if the project is located in an urban or rural poverty area, the Federal share may not exceed 90 percent of the project's necessary costs as so determined.

(c) Non-Federal share; medium of payment

The non-Federal share of the cost of any project assisted by a grant or allotment under this chapter may be provided in kind.

(d) State expenditures

For the purpose of determining the Federal share with respect to any project, expenditures on that project by a political subdivision of a State or by a nonprofit private entity shall, subject to such limitations and conditions as the Secretary may by regulation prescribe, be deemed to be expenditures by such State in the case of a project under subchapter II of this chapter or by a university affiliated facility or a satellite center, as the case may be, in the case of a project assisted under subchapter IV of this chapter.

(Pub. L. 88-164, title I, § 103, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2667.)

PRIOR PROVISIONS

A prior section 6002, Pub. L. 88-164, title I, § 103, as added Pub. L. 94-103, title I, § 125, Oct. 4, 1975, 89 Stat. 498, set out provisions relating to Federal share prior to the general revision of this chapter by Pub. L. 98-527.

§ 6003. Records and audit

(a) Each recipient of assistance under this chapter shall keep such records as the Secretary shall prescribe, including (1) records which fully disclose (A) the amount and disposition by such recipient of the proceeds of such assistance, (B) the total cost of the project or undertaking in connection with which such assistance is given or used, and (C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and (2) such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of assistance under this chapter that are pertinent to such assistance.

(Pub. L. 88-164, title I, § 104, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2667.)

PRIOR PROVISIONS

A prior section 6003, Pub. L. 88-164, title I, § 104, as added Pub. L. 94-103, title I, § 125, Oct. 4, 1975, 89 Stat. 498, set forth provisions relating to State control of operations prior to the general revision of this chapter by Pub. L. 98-527. See section 6005 of this title.

§ 6004. Recovery of expenditures under certain conditions; lien

If any facility with respect to which funds have been paid under subchapter II or IV of this chapter shall, at any time within twenty years after the completion of construction—

(1) be sold or transferred to any person, agency, or organization which is not a public or nonprofit private entity, or

(2) cease to be a public or other nonprofit facility for persons with developmental disabilities,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be a public or other nonprofit facility for persons with developmental disabilities, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment. The Secretary, in accordance with regulations prescribed by the Secretary, may, upon finding good cause therefor, release the applicant or other owner from the obligation to continue such facility as a public or other nonprofit facility for persons with developmental disabilities.

(Pub. L. 88-164, title I, § 105, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2667.)

PRIOR PROVISIONS

A prior section 6004, Pub. L. 88-164, title I, § 105, as added Pub. L. 94-103, title I, § 125, Oct. 4, 1975, 89 Stat. 498, related to records and audits prior to the general revision of this chapter by Pub. L. 98-527. See section 6003 of this title.

§ 6005. State control of operations

Except as otherwise specifically provided, nothing in this chapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility for persons with developmental disabilities with respect to which any funds have been or may be expended under this chapter.

(Pub. L. 88-164, title I, § 106, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2668.)

PRIOR PROVISIONS

A prior section 6005, Pub. L. 88-164, title I, § 106, as added Pub. L. 94-103, title I, § 125, Oct. 4, 1975, 89 Stat. 498, related to employment of handicapped individuals prior to the general revision of this chapter by Pub. L. 98-527. See section 6008 of this title.

§ 6006. Reports; State planning council; Secretary

(a) State planning council; contents

By January 1 of each year, the State Planning Council of each State shall prepare and transmit to the Secretary a report concerning activities carried out during the preceding fiscal year with funds paid to the State under subchapter II of this chapter for such fiscal year. Each such report shall be in a form prescribed by the Secretary by regulation and shall contain—

(1) a description of such activities and the accomplishments resulting from such activities;

(2) a comparison of such accomplishments with the goals, objectives, and proposed activities specified by the State in the State plan submitted under section 6022 of this title for such fiscal year; and

(3) an accounting of the manner in which funds paid to a State under subchapter II of this chapter for a fiscal year were expended.

(b) Protection and advisory systems

By January 1 of each year, each protection and advocacy system established in a State pursuant to subchapter III of this chapter shall prepare and transmit to the Secretary a report which describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year.

(c) Secretary to report to President, Congress, and National Council on the Handicapped

(1) By April 1 of each year the Secretary shall prepare and transmit to the President, the Congress, and the National Council on the Handicapped a report which describes—

(A) the activities and accomplishments of programs supported under subchapters II, III, IV, and V of this chapter; and

(B) the progress made in States in improving the independence, productivity, and integration into the community of persons with developmental disabilities and any activities or services needed to improve such independence, productivity, and integration.

(2) In preparing the report required by this subsection, the Secretary shall use and include information submitted to the Secretary in the reports required under subsections (a) and (b) of this section.

(Pub. L. 88-164, title I, § 107, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2668.)

Prior Provisions

A prior section 6006, Pub. L. 88-164, title I, § 107, as added Pub. L. 94-103, title I, § 125, Oct. 4, 1975, 89 Stat. 499, related to recovery of expenditures under certain conditions and liens prior to the general revision of this chapter by Pub. L. 98-527. See section 6004 of this title.

§ 6007. Responsibilities of Secretary

(a) Promulgation of regulations

The Secretary, not later than one hundred eighty days after the date of enactment of any Act amending the provisions of this chapter, shall promulgate such regulations as may be required for the implementation of such amendments.

(b) Interagency committee

Within ninety days after October 19, 1984, the Secretary of Health and Human Services and the Secretary of Education shall establish an interagency committee composed of representatives of the Administration for Developmental Disabilities of the Department of Health and Human Services, the Office of Special Education and Rehabilitative Services of the Department of Education, the Department of Labor, and such other Federal departments and agencies as the Secretary of Health and Human Services and the Secretary of Education consider appropriate. Such interagency committee shall meet regularly to coordinate and plan activities conducted by Federal departments and agencies for persons with developmental disabilities.

(Pub. L. 88-164, title I, § 108, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2669.)

Prior Provisions

A prior section 6007, Pub. L. 88-164, title I, § 108, formerly § 133, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1318, and renumbered and amended Pub. L. 94-103, title I, § 126(a), Oct. 4, 1975, 89 Stat. 499, which established the National Advisory Council on Services and Facilities for Developmentally Disabled and provided for membership, terms of office, compensation and traveling expenses, and duties and functions, was repealed by Pub. L. 95-602, title V, § 504(a), Nov. 6, 1978, 92 Stat. 3006.

§ 6008. Employment of handicapped individuals

As a condition of providing assistance under this chapter, the Secretary shall require that each recipient of such assistance take affirmative action to employ and advance in employment qualified handicapped individuals on the same terms and conditions required with respect to the employment of such individuals by the provisions of the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] which govern employment (1) by State rehabilitation agencies and rehabilitation facilities, and (2) under Federal contracts and subcontracts.

(Pub. L. 88-164, title I, § 109, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2669.)

References in Text

The Rehabilitation Act of 1973, referred to in text, is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 357, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Prior Provisions

A prior section 6008, Pub. L. 88-164, title I, § 109, formerly § 139, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1323, and renumbered and amended Pub. L. 94-103, title I, § 127, Oct. 4, 1975, 89 Stat. 500; Pub. L. 95-602, title V, § 505, Nov. 6, 1978, 92 Stat. 3007, related to promulgation of regulations prior to the general revision of this chapter by Pub. L. 98-527. See section 6007(a) of this title.

§ 6009. Congressional finding regarding rights of the developmentally disabled

Congress makes the following findings respecting the rights of persons with developmental disabilities:

(1) Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.

(2) The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty.

(3) The Federal Government and the States both have an obligation to assure that public funds are not provided to any institutional or other residential program for persons with developmental disabilities that—

(A) does not provide treatment, services, and habilitation which is appropriate to the needs of such persons; or

(B) does not meet the following minimum standards:

(i) Provision of a nourishing, well-balanced daily diet to the persons with developmental disabilities being served by the program.

(ii) Provision to such persons of appropriate and sufficient medical and dental services.

(iii) Prohibition of the use of physical restraint on such persons unless absolutely necessary and prohibition of the use of such restraint as a punishment or as a substitute for a habilitation program.

(iv) Prohibition on the excessive use of chemical restraints on such persons and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such persons.

(v) Permission for close relatives of such persons to visit them at reasonable hours without prior notice.

(vi) Compliance with adequate fire and safety standards as may be promulgated by the Secretary.

(4) All programs for persons with developmental disabilities should meet standards which are designed to assure the most favorable possible outcome for those served, and—

(A) in the case of residential programs serving persons in need of comprehensive health-related, habilitative, or rehabilitative services, which are at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded promulgated in regulations of the Secretary on January 17, 1974 (39 Fed. Reg. pt. II), as appropriate when taking into account the size of the institutions and the service delivery arrangements of the facilities of the programs;

(B) in the case of other residential programs for persons with developmental disabilities, which assure that care is appropriate to the needs of the persons being served by such programs, assure that the persons admitted to facilities of such programs are persons whose needs can be met through services provided by such facilities, and assure that the facilities under such programs provide for the humane care of the residents of the facilities, are sanitary, and protect their rights; and

(C) in the case of nonresidential programs, which assure the care provided by such programs is appropriate to the persons served by the programs.

The rights of persons with developmental disabilities described in findings made in this section are in addition to any constitutional or other rights otherwise afforded to all persons.

(Pub. L. 88-164, title I, § 110, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2669.)

Prior Provisions

A prior section 6009, Pub. L. 88-164, title I, § 110, as added Pub. L. 94-103, title I, § 128, Oct. 4, 1975, 89 Stat. 501, and amended Pub. L. 95-602, title V, §§ 504(b)(1), 506, Nov. 6, 1978, 92 Stat. 3006, 3007; Pub. L. 96-32, § 3(b), July 10, 1979, 93 Stat. 82, which set forth provisions respecting development, etc., of the evaluation system, was repealed by Pub. L. 97-35, title IX, § 912(a), Aug. 13, 1981, 95 Stat. 563.

Prior sections 6010 to 6012 were omitted in the general revision of this chapter by Pub. L. 98-527.

Section 6010, Pub. L. 88-164, title I, § 111, as added Pub. L. 94-103, title II, § 201, Oct. 4, 1975, 89 Stat. 502, and amended Pub. L. 95-602, title V, § 507, Nov. 6, 1978, 92 Stat. 3007, set forth Congressional findings respecting rights of the developmentally disabled. See section 6009 of this title.

Section 6011, Pub. L. 88-164, title I, § 112, as added Pub. L. 94-103, title II, § 202, Oct. 4, 1975, 89 Stat. 503, and amended Pub. L. 95-602, title V, § 514(a), Nov. 6, 1978, 92 Stat. 3016, related to habilitation plans. See section 6023 of this title.

Section 6012, Pub. L. 88-164, title I, § 113, as added Pub. L. 94-103, title II, § 203, Oct. 4, 1975, 89 Stat. 504, and amended Pub. L. 95-602, title V, § 508, Nov. 6, 1978, 92 Stat. 3007; Pub. L. 97-35, title IX, § 911(a), Aug. 13, 1981, 95 Stat. 563; Pub. L. 98-221, title III, § 302, Feb. 22, 1984, 98 Stat. 35, related to protection and advocacy of rights of persons with developmental disabilities. See section 6042(a) of this title.

Section Referred to in Other Sections

This section is referred to in sections 6022, 6063, 6082 of this title.

§§ 6010 to 6012. Omitted

Codification

See Prior Provisions note set out under section 6009 of this title.

SUBCHAPTER II—FEDERAL ASSISTANCE FOR PLANNING AND SERVICE ACTIVITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 6002, 6004, 6006, 6042 of this title.

§ 6021. Congressional statement of purpose

The purpose of this subchapter is to provide payments to States to plan for, and to conduct, activities which will increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

(Pub. L. 88-164, title I, § 121, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2670.)

PRIOR PROVISIONS

A prior section 121 of Pub. L. 88-164, title I, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 486, and amended Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008, which related generally to demonstration and training grants, was classified to section 6031 of this title, prior to the general revision of this chapter by Pub. L. 98-527.

§ 6022. State plans

(a) Secretary; submission of plan to; approval by

Any State desiring to take advantage of this subchapter must have a State plan submitted to and approved by the Secretary under this section.

(b) Plan requirements and contents

In order to be approved by the Secretary under this section, a State plan for the provision of services for persons with developmental disabilities must meet the following requirements:

(1)(A) The plan must provide for the establishment of a State Planning Council, in accordance with section 6024 of this title, for the assignment to the Council of personnel in such numbers and with such qualifications as the Secretary determines to be adequate to enable the Council to carry out its duties under this chapter, and for the identification of the personnel so assigned.

(B) The plan must designate the State agency or agencies which shall administer or supervise the administration of the State plan and, if there is more than one such agency, the portion of such plan which each will administer (or the portion the administration of which each will supervise).

(C) The plan must provide that each State agency designated under subparagraph (B) will keep such records and afford such access thereto as the Secretary or the State Planning Council finds necessary.

(D) The plan must provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this subchapter.

(2) The plan must—

(A) set out the specific objectives to be achieved under the plan and a listing of the programs and resources to be used to meet such objectives;

(B) set forth the non-Federal share that will be required in carrying out each such objective and program;

(C) describe (and provide for the review annually and revision of the description not less often than once every three years) (i) the extent and scope of services being provided, or to be provided, to persons with developmental disabilities under such other State plans for federally assisted State programs as the State conducts relating to education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, and comprehensive health and mental health, and under such other plans as the Secretary may specify, and (ii) how funds allotted to the State in accordance with section 6025 of this title will be used to complement and augment rather than duplicate or replace services for persons with developmental disabilities who are eligible for Federal assistance under such other State programs;

(D) for each fiscal year, assess and describe the extent and scope of the priority services being or to be provided under the plan in the fiscal year; and

(E) establish a method for the periodic evaluation of the plan's effectiveness in meeting the objectives described in subparagraph (A).

(3) The plan must contain or be supported by assurances satisfactory to the Secretary that—

(A) the funds paid to the State under section 6025 of this title will be used to make a significant contribution toward strengthening services for persons with developmental disabilities through agencies in the various political subdivisions of the State;

(B) part of such funds will be made available by the State to public or nonprofit private entities;

(C) not more than 25 percent of such funds will be allocated to the agency or agencies designated under subsection (b)(1)(B) of this section for the provision of services by such agency or agencies;

(D) such funds paid to the State under section 6025 of this title will be used to supplement and to increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds; and

(E) there will be reasonable State financial participation in the cost of carrying out the State plan.

(4)(A) The plan must provide for the examination not less often than once every three years of the provision, and the need for the provision, in the State of the four priority services.

(B) The plan must provide for the development, not later than the second year in which funds are provided under the plan after October 19, 1984, and the timely review and revision of, a comprehensive statewide plan to plan, financially support, coordinate, and otherwise better address, on a statewide and comprehensive basis, unmet needs in the State for the provision of services for persons with developmental disabilities as follows:

(i)(I) Except as provided in subclause (II), the plan shall provide for the provision of at least one but not more than two priority services.

(II) In fiscal year 1987, the plan may provide for the provision of three priority services.

(ii) For any fiscal year after fiscal year 1986 for which the total appropriations under section 6030 of this title are at least $50,250,000, the plan shall provide for the provision of employment related activities among the priority services to be provided under the plan.

(iii) At the option of the State, the plan may provide for the provision of one or more additional services for persons with developmental disabilities from the services described in section 6001(11)(A)(ii) of this title.

(C) Notwithstanding subparagraph (E)(i), upon application of a State, which under section 6063(b)(4)(C) of this title (as in effect on October 18, 1984) was permitted to make expenditures for services without regard to the requirements of section 6063(b)(4)(B) of this title (as so in effect) the Secretary, pursuant to regulations which the Secretary shall prescribe, may permit a portion of the funds which, pursuant to subparagraph (E)(i), must otherwise be expended under the State plan of such State for service activities in the priority services, to be expended in fiscal years 1985, 1986, and 1987 for the additional services for which expenditure was permitted under section 6063(b)(4)(C) of this title (as so in effect) if the Secretary determines that—

(i) such additional services are not priority services;

(ii) such additional services are not services for which funds are otherwise available under subchapter III, IV, or V of this chapter; and

(iii) the expenditures of such State on service activities in the priority services has reasonably met the need for those services in such State in comparison to the extent to which the need for such additional services has been met in such State.

(D) The plan must be developed after consideration of the data collected by the State education agency under section 1418(b)(3) of title 20.

(E)(i) The plan must provide that not less than 65 percent of the amount available to the State under section 6025 of this title will be expended for service activities in the priority services.

(ii) The plan must provide that the remainder of the amount available to the State from allotments under section 6025 of this title (after making the expenditures required by clause (i) of this paragraph) shall be used for service activities for persons with developmental disabilities, and the planning, coordination, and administration of, and the advocacy for, the provision of such services.

(F) The plan must provide that special financial and technical assistance shall be given to agencies or entities providing services for persons with developmental disabilities who are residents of geographical areas designated as urban or rural poverty areas.

(5)(A)(i) The plan must provide that services furnished, and the facilities in which they are furnished, under the plan for persons with developmental disabilities will be in accordance with standards prescribed by the Secretary in regulations.

(ii) The plan must provide satisfactory assurances that buildings used in connection with the delivery of services assisted under the plan will meet standards adopted pursuant to the Act of August 12, 1968 (known as the Architectural Barriers Act of 1968) [42 U.S.C. 4151 et seq.].

(B) The plan must provide that services are provided in an individualized manner consistent with the requirements of section 6023 of this title (relating to habilitation plans).

(C) The plan must contain or be supported by assurances satisfactory to the Secretary that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this subchapter will be protected consistent with section 6009 of this title (relating to rights of the developmentally disabled).

(D) The plan must provide assurances that the State has undertaken affirmative steps to assure the participation in programs under this chapter of individuals generally representative of the population of the State, with particular attention to the participation of members of minority groups.

(E) The plan must provide assurances that the State will provide the State Planning Council with a copy of each annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1396a(a)(31)(B) of this title with respect to any intermediate care facility for the mentally retarded in such State within 30 days after the completion of each such report or plan.

(6)(A) The plan must provide for the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4951 et seq.] and other appropriate voluntary organizations, except that such volunteer services shall supplement, and shall not be in lieu of, services of paid employees.

(B) The plan must provide for fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions under the plan to provide alternative community living arrangement services, including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

(7) The plan also must contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this subchapter.

(c) Approval; final disapproval; notice and hearing

The Secretary shall approve any State plan and any modification thereof which complies with the provisions of subsection (b) of this section. The Secretary shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

(d) Administration of State plan; expenditures; paid from allotment; limitation; condition

(1) At the request of any State, a portion of any allotment or allotments of such State under this subchapter for any fiscal year shall

be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Secretary for the proper and efficient administration of the State plan approved under this section; except that not more than 5 per centum of the total of the allotments of such State for any fiscal year, or $50,000, whichever is less, shall be available for the total expenditures for such purpose by all of the State agencies designated under subsection (b)(1)(B) of this section for the administration or supervision of the administration of the State plan. Payments under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(2) Any amount paid under paragraph (1) to any State for any fiscal year shall be paid on condition that there shall be expended from the State sources for such year for administration of the State plan approved under this section not less than the total amount expended for such purposes from such sources during the previous fiscal year.

(Pub. L. 88-164, title I, § 122, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2670, and amended Pub. L. 99-91, § 6(b), Aug. 15, 1985, 99 Stat. 391.)

REFERENCES IN TEXT

Section 6063 of this title, referred to in subsec. (b)(4)(C), is a prior section 6063 of this title, Pub. L. 88-164, title I, § 133, formerly § 134, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1319, and renumbered and amended Pub. L. 94-103, title I, §§ 110(e)(2), 111, title III, § 302(a), (b)(2), Oct. 4, 1975, 89 Stat. 490, 506; Pub. L. 95-602, title V, § 511, Nov. 6, 1978, 92 Stat. 3011, which related to State plans prior to the general revision of this chapter by Pub. L. 98-527.

The Act of August 12, 1968 (known as the Architectural Barriers Act of 1968), referred to in subsec. (b)(5)(A)(ii), is Pub. L. 90-480, Aug. 12, 1968, 82 Stat. 718, as amended, which is classified generally to chapter 51 (§ 4151 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b)(6)(A), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§ 4951 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4951 of this title and Tables.

PRIOR PROVISIONS

A prior section 122 of Pub. L. 88-164, title I, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 487, and amended Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3009, which set forth administrative provisions relating to demonstration and training grants, was classified to section 6032 of this title prior to the general revision of this chapter by Pub. L. 98-527.

AMENDMENTS

1985—Subsec. (b)(4)(C). Pub. L. 99-91 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "Notwithstanding the requirements of subparagraph (B), upon the application of a State, the Secretary, pursuant to regulations which the Secretary shall prescribe, may permit the portion of the funds which must otherwise be expended under the State plan for service activities in a limited number of services to be expended for service activities in additional services if the Secretary determines that the expenditures of the State on service activities in the initially specified services has reasonably met the need for those services in the State in comparison to the extent to which the need for such additional services has been met in such State. Such additional areas shall, to the maximum extent feasible, be areas within the priority services."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-91 effective Oct. 19, 1984, see section 8(b) of Pub. L. 99-91, set out as a note under section 360aa of Title 21, Food and Drugs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6006, 6024, 6025, 6027, 6028, 6029, 6082 of this title.

§ 6023. Habilitation plans

(a) Condition for receipt of State allotment

The Secretary shall require as a condition to a State's receiving an allotment under this subchapter that the State provide the Secretary satisfactory assurances that each program (including programs of any agency, facility, or project) which receives funds from the State's allotment under this subchapter (1) has in effect for each developmentally disabled person who receives services from or under the program a habilitation plan meeting the requirements of subsection (b) of this section, and (2) provides for an annual review, in accordance with subsection (c) of this section, of each such plan.

(b) Requirements

A habilitation plan for a person with developmental disabilities shall meet the following requirements:

(1) The plan shall be in writing.

(2) The plan shall be developed jointly by (A) a representative or representatives of the program primarily responsible for delivering or coordinating the delivery of services to the person for whom the plan is established, (B) such person, and (C) where appropriate, such person's parents or guardian or other representative.

(3) The plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainments of such goals. Such goals should include the increase or support of independence, productivity, and integration into the community for the person. Such objectives shall be stated specifically and in sequence and shall be expressed in behavioral or other terms that provide measurable indices of progress. The plan shall (A) describe how the objectives will be achieved and the barriers that might interfere with the achievement of them, (B) state an objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and (C) provide for a program coordinator who will be responsible for the implementation of the plan.

(4) The plan shall contain a statement (in readily understandable form) of specific habilitation services to be provided, shall identify each agency which will deliver such services, shall describe the personnel (and their

qualifications) necessary for the provision of such services, and shall specify the date of the initiation of each service to be provided and the anticipated duration of each such service.

(5) The plan shall specify the role and objectives of all parties to the implementation of the plan.

(c) Annual review

Each habilitation plan shall be reviewed at least annually by the agency primarily responsible for the delivery of services to the person for whom the plan was established or responsible for the coordination of the delivery of services to such person. In the course of the review, such person and the person's parents or guardian or other representative shall be given an opportunity to review such plan and to participate in its revision.

(Pub. L. 88-164, title I, § 123, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2674.)

PRIOR PROVISIONS

A prior section 123 of Pub. L. 88-164, title I, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 487, and amended Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3010; Pub. L. 97-35, title IX, § 911(b), Aug. 13, 1981, 95 Stat. 563, which authorized appropriations for demonstration and training grants, was classified to section 6033 of this title, prior to the general revision of this chapter by Pub. L. 98-527.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6022 of this title.

§ 6024. State Planning Councils

(a) Establishment; membership

(1) Each State which receives assistance under this subchapter shall establish a State Planning Council which will serve as an advocate for persons with developmental disabilities. The members of the State Planning Council of a State shall be appointed by the Governor of the State from among the residents of that State. The Governor of each State shall make appropriate provisions for the rotation of membership on the Council of that State. Each State Planning Council shall at all times include in its membership representatives of the principal State agencies (including the State agency that administers funds provided under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], the State agency that administers funds provided under the Education of the Handicapped Act [20 U.S.C. 1400 et seq.], and the State agency that administers funds provided under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for persons with developmental disabilities), higher education training facilities, each university affiliated facility or satellite center in the State, the State protection and advocacy system established under section 6042 of this title, local agencies, and nongovernmental agencies and private nonprofit groups concerned with services to persons with developmental disabilities in that State.

(2) At least one-half of the membership of each such Council shall consist of persons who—

(A) are persons with developmental disabilities or parents or guardians of such persons, or

(B) are immediate relatives or guardians of persons with mentally impairing developmental disabilities,

who are not employees of a State agency which receives funds or provides services under this subchapter, who are not managing employees (as defined in section 1126(b) of the Social Security Act [42 U.S.C. 1320a-5(b)]) of any other entity which receives funds or provides services under this subchapter, and who are not persons with an ownership or control interest (within the meaning of section 1124(a)(3) of the Social Security Act [42 U.S.C. 1320a-3(a)(3)]) with respect to such an entity.

(3) Of the members of the Council described in paragraph (2)—

(A) at least one-third shall be persons with developmental disabilities, and

(B)(i) at least one-third shall be individuals described in subparagraph (B) of paragraph (2), and (ii) at least one of such individuals shall be an immediate relative or guardian of an institutionalized person with a developmental disability.

(b) Duties

Each State Planning Council shall—

(1) develop jointly with the State agency or agencies designated under section 6022(b)(1)(B) of this title the State plan required by this subchapter, including the specification of services under section 6022(b)(4)(B) of this title;

(2) monitor, review, and evaluate, not less often than annually, the implementation of such State plan;

(3) to the maximum extent feasible, review and comment on all State plans in the State which relate to programs affecting persons with developmental disabilities; and

(4) submit to the Secretary, through the Governor, such periodic reports on its activities as the Secretary may reasonably request, and keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

(Pub. L. 88-164, title I, § 124, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2675.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (a)(1), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 357, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Education of the Handicapped Act, referred to in subsec. (a)(1), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Social Security Act, referred to in subsec. (a)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6001, 6022 of this title.

§ 6025. State allotments

(a) Determination of amount

(1) For each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 6030 of this title among the States on the basis of—

(A) the population,

(B) the extent of need for services for persons with developmental disabilities, and

(C) the financial need,

of the respective States. Sums allotted to the States under this section shall be used in accordance with approved State plans under section 6022 of this title for the provision under such plans of services for persons with developmental disabilities.

(2) Adjustments in the amounts of State allotments based on subparagraphs (A), (B), and (C) of paragraph (1) may be made not more often than annually. The Secretary shall notify States of any adjustment made not less than six months before the beginning of the fiscal year in which such adjustment is to take effect.

(3)(A) Except as provided in paragraph (4), for any fiscal year the allotment under paragraph (1)—

(i) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than $100,000, and

(ii) to any other State may not be less than the greater of $250,000, or the amount of the allotment (determined without regard to subsection (d) of this section) received by the State for the fiscal year ending September 30, 1984.

(B) Notwithstanding subparagraph (A), if the aggregate of the amounts to be allotted to each State pursuant to subparagraph (A) in any fiscal year exceeds the total amount appropriated under section 6030 of this title for such fiscal year, the amount to be allotted to a State for such fiscal year shall be an amount which bears the same ratio to the amount which is to be allotted to the State pursuant to such subparagraph as the total amount appropriated under section 6030 of this title for such fiscal year bears to the total of the amount required to be appropriated under such section for allotments to provide each State with the allotment required by such subparagraph.

(4) In any case in which amounts appropriated under section 6030 of this title for a fiscal year exceed $47,000,000, the allotment under paragraph (1) for such fiscal year—

(A) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than $160,000; and

(B) to each of the several States, Puerto Rico, or the District of Columbia, may not be less than $300,000.

(5) In determining, for purposes of paragraph (1)(B), the extent of need in any State for services for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services described, pursuant to section 6022(b)(2)(C) of this title, in the State plan of the State.

(b) Apportionment of allotment among State agencies

Whenever the State plan approved in accordance with section 6022 of this title provides for participation of more than one State agency in administering or supervising the administration of designated portions of the State plan, the State may apportion its allotment among such agencies in a manner which, to the satisfaction of the Secretary, is reasonably related to the responsibilities assigned to such agencies in carrying out the purposes of the State plan. Funds so apportioned to State agencies may be combined with other State or Federal funds authorized to be spent for other purposes, provided the purposes of the State plan will receive proportionate benefit from the combination.

(c) Combined allotments to States involved in joint effort

Whenever the State plan approved in accordance with section 6022 of this title provides for cooperative or joint effort between States or between or among agencies, public or private, in more than one State, portions of funds allotted to one or more such cooperating States may be combined in accordance with the agreements between the agencies involved.

(d) Reallotment of funds not required by State

The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as the Secretary may fix (but not earlier than thirty days after the Secretary has published notice of the intention of the Secretary to make such reallotment in the Federal Register), to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State for a fiscal year shall be deemed to be a part of its allotment under subsection (a) of this section for such fiscal year.

(Pub. L. 88-164, title I, § 125, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2676.)

PRIOR PROVISIONS

A prior section 125 of Pub. L. 88-164, title I, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 488, which authorized construction, renovation, or modernization of buildings to be used by university affiliated facilities, was classified to section 6041 of this title prior to general revision of a prior subchapter II by Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6022, 6026, 6027, 6028, 6030, 6042 of this title.

§ 6026. Payments to the States for planning, administration, and services

From each State's allotments for a fiscal year under section 6025 of this title, the State shall be paid the Federal share of the expenditures, other than expenditures for construction, incurred during such year under its State plan approved under this subchapter. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this section.

(Pub. L. 88-164, title I, § 126, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2677.)

PRIOR PROVISIONS

A prior section 126 of Pub. L. 88-164, title I, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 488, which related to grants for projects and to application requirements, was classified to section 6042 of this title prior to general revision of a prior subchapter II by Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008.

§ 6027. Withholding of payments for planning, administration, and services

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State Planning Council and the appropriate State agency designated pursuant to section 6022(b)(1) of this title finds that—

(1) there is a failure to comply substantially with any of the provisions required by section 6022 of this title to be included in the State plan; or

(2) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this subchapter,

the Secretary shall notify such State Council and agency or agencies that further payments will not be made to the State under section 6025 of this title (or, in the discretion of the Secretary, that further payments will not be made to the State under section 6025 of this title for activities in which there is such failure), until the Secretary is satisfied that there will no longer be such failure. Until the Secretary is so satisfied, the Secretary shall make no further payment to the State under section 6025 of this title, or shall limit further payment under section 6025 of this title to such State to activities in which there is no such failure.

(Pub. L. 88-164, title I, § 127, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2678.)

PRIOR PROVISIONS

A prior section 127 of Pub. L. 88-164, title I, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 488, which authorized appropriations for making payments for construction, renovation, or modernization of buildings, was classified to section 6043 of this title prior to general revision of a prior subchapter II by Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6029 of this title.

§ 6028. Nonduplication

In determining the amount of any State's Federal share of the expenditures incurred by it under a State plan approved under section 6022 of this title, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any provision of law other than section 6025 of this title, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.

(Pub. L. 88-164, title I, § 128, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2678.)

§ 6029. Appeals by States

If any State is dissatisfied with the Secretary's action under section 6022(c) of this title or section 6027 of this title, such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by the Secretary for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Secretary may modify or set aside the order of the Secretary. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of the fact and may modify the previous action of the Secretary, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Secretary's action.

(Pub. L. 88-164, title I, § 129, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2678.)

§ 6030. Authorization of appropriations

For allotments under section 6025 of this title, there are authorized to be appropriated

$50,250,000 for fiscal year 1985, $53,400,000 for fiscal year 1986, and $56,500,000 for fiscal year 1987.

(Pub. L. 88-164, title I, § 130, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2679.)

PRIOR PROVISIONS

Prior sections 6031 to 6033 were omitted in the general revision of this chapter by Pub. L. 98-527.

Section 6031, Pub. L. 88-164, title I, § 121, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 486, and amended Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008, related to grants for university affiliated facilities. See section 6062 of this title.

Section 6032, Pub. L. 88-164, title I, § 122, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 487, and amended Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3009, set forth administrative provisions relating to demonstration and training grants for university affiliated facilities. See section 6063 of this title.

Section 6033, Pub. L. 88-164, title I, § 123, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 487, and amended Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3010; Pub. L. 97-35, title IX, § 911(b), Aug. 13, 1981, 95 Stat. 563; Pub. L. 98-221, title III, § 303, Feb. 22, 1984, 98 Stat. 35, authorized appropriations for demonstration and training grants for university affiliated facilities. See section 6064 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6022, 6025 of this title.

§§ 6031 to 6033. Omitted

CODIFICATION

See Prior Provisions note set out under section 6030 of this title.

SUBCHAPTER III—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6006, 6022 of this title.

§ 6041. Congressional statement of purpose

It is the purpose of this subchapter to provide for allotments to support a system in each State to protect the legal and human rights of persons with developmental disabilities in accordance with section 6042 of this title.

(Pub. L. 88-164, title I, § 141, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2679.)

PRIOR PROVISIONS

A prior section 6041, Pub. L. 88-164, title I, § 125, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 488, which authorized construction, renovation, or modernization of buildings to be used by university-affiliated facilities, was omitted in the general revision of a prior subchapter II of this chapter by Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008.

§ 6042. System requirement

(a) Subchapter II

In order for a State to receive an allotment under subchapter II of this chapter—

(1) the State must have in effect a system to protect and advocate the rights of persons with developmental disabilities;

(2) such system must—

(A) have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the State and to provide information on and referral to programs and services addressing the needs of persons with developmental disabilities;

(B) not be administered by the State Planning Council;

(C) be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities; and

(D) except as provided in subsection (b) of this section, be able to obtain access to the records of a person with developmental disabilities who resides in a facility for persons with developmental disabilities if—

(i) a complaint has been received by the system from or on behalf of such person; and

(ii) such person does not have a legal guardian or the State or the designee of the State is the legal guardian of such person;

(3) the State must provide assurances to the Secretary that funds allotted to the State under this section will be used to supplement and increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds;

(4) the State must provide assurances to the Secretary that such system will be provided with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to section 1396a(a)(31)(B) of this title with respect to any intermediate care facility for the mentally retarded in the State within 30 days after the completion of each such report or plan; and

(5) the State must provide assurances satisfactory to the Secretary that the agency implementing the system will not be redesignated unless there is good cause for the redesignation and unless notice has been given of the intention to make such redesignation to persons with developmental disabilities or their representatives.

(b) Application

Prior to October 1, 1986, the provisions of paragraph (2)(D) of subsection (a) of this section shall not apply to any State in which the laws of the State prohibit the system required under such subsection from obtaining access to the records of a person with developmental disabilities under the conditions described in such paragraph.

(c) Allotments to States; percentage limitation

(1) To assist States in meeting the requirements of subsection (a) of this section, the Secretary shall allot to the States the amounts appropriated under section 6043 of this title. Allotments and reallotments of such sums shall be made on the same basis as the allotments and reallotments are made under the first sen-

tence of subsection (a)(1) and subsection (d) of section 6025 of this title, except that in any case in which—

(A) the total amount appropriated under section 6043 of this title for a fiscal year is at least $11,000,000—

(i) the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than $80,000; and

(ii) the allotment to each of the several States, Puerto Rico, and the District of Columbia for such fiscal year shall not be less than $150,000; or

(B) the total amount appropriated under section 6043 of this title for a fiscal year is less than $11,000,000, the allotment to each State (other than Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) shall not be less than $50,000.

(2) A State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under subsection (a) of this section.

(3) Notwithstanding paragraph (1), if the aggregate of the amounts of the allotments to be made in accordance with such paragraph for any fiscal year exceeds the total of the amounts appropriated for such allotments under section 6043 of this title, the amount of a State's allotment for such fiscal year shall bear the same ratio to the amount otherwise determined under such paragraph as the total of the amounts appropriated for that year under section 6043 of this title bears to the aggregate amount required to make an allotment to each of the States in accordance with paragraph (1).

(Pub. L. 88-164, title I, § 142, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2679.)

PRIOR PROVISIONS

A prior section 6042, Pub. L. 88-164, title I, § 126, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 488, which related to grants for projects and to application requirements, was omitted in the general revision of a prior subchapter II of this chapter by Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6024, 6041, 6043, 6082 of this title.

§ 6043. Authorization of appropriations

For allotments under section 6042 of this title, there are authorized to be appropriated $13,750,000 for fiscal year 1985, $14,600,000 for fiscal year 1986, and $15,500,000 for fiscal year 1987. The provisions of section 1913 of title 18 shall be applicable to all moneys authorized under the provisions of this section.

(Pub. L. 88-164, title I, § 143, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2680.)

PRIOR PROVISIONS

A prior section 6043, Pub. L. 88-164, title I, § 127, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 488, which authorized appropriations for making payments for construction, renovation, or modernization of buildings, was omitted in the general revision of a prior subchapter II of this chapter by Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6042 of this title.

SUBCHAPTER IV—UNIVERSITY AFFILIATED FACILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6002, 6004, 6006, 6022 of this title.

§ 6061. Congressional statement of purpose

The purpose of this subchapter is to provide for grants to university affiliated facilities to assist in the provision of interdisciplinary training, the conduct of service demonstration programs, and the dissemination of information which will increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

(Pub. L. 88-164, title I, § 151, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2681.)

PRIOR PROVISIONS

A prior section 6061, Pub. L. 88-164, title I, § 131, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1317, and amended Pub. L. 93-45, title III, § 301(b), June 18, 1973, 87 Stat. 95; Pub. L. 94-103, title I, §§ 101(a), 110(a), Oct. 4, 1975, 89 Stat. 486, 489; Pub. L. 95-602, title V, § 510(a), Nov. 6, 1978, 92 Stat. 3010; Pub. L. 97-35, title IX, § 911(c), Aug. 13, 1981, 95 Stat. 563; Pub. L. 98-221, title III, § 304, Feb. 22, 1984, 98 Stat. 35, authorized appropriations for State allotments prior to the general revision of this chapter by Pub. L. 98-527. See section 6030 of this title.

§ 6062. Grant authority

(a) Authorization

From appropriations under section 6064 of this title, the Secretary shall make grants to university affiliated facilities to assist in the administration and operation of the activities described in section 6001(13) of this title.

(b) Additional grants; activities

The Secretary may make one or more grants to a university affiliated facility receiving a grant under subsection (a) of this section to support one or more of the following activities:

(1) Conducting—

(A) a study of the feasibility of establishing a university affiliated facility or a satellite center in an area not served by a university affiliated facility, including an assessment of the needs of the area for such a facility or center; or

(B) a study of the ways in which such university affiliated facility, singly or jointly with other university affiliated facilities which have received a grant under subsection (a) of this section, can assist in establishing one or more satellite centers which would be located in areas not served by a university affiliated facility.

A study under subparagraph (A) or subparagraph (B) shall be carried out in consultation with the State Planning Council for the State in which the university affiliated facility conducting the study is located and the State Planning Council for the State in which the university affiliated facility or satellite center would be established.

(2) Provision of service-related training to parents of persons with developmental disabilities, professionals, volunteers, or other personnel to enable such parents, professionals, volunteers, or personnel to provide services to increase or maintain the independence, productivity, and integration into the community of persons with developmental disabilities.

(3) Conducting an applied research program designed to produce more efficient and effective methods (A) for the delivery of services to persons with developmental disabilities, and (B) for the training of professionals, paraprofessionals, and parents who provide these services.

The amount of a grant under paragraph (1) may not exceed $25,000.

(c) Payments for costs of establishing and maintaining satellite centers; study

The Secretary may make grants to pay part of the costs of establishing satellite centers and may make grants to satellite centers to pay part of their administration and operation costs. A satellite center which receives a grant under this section may engage in the activities described in subparagraph (A), (B), or (C) of section 6001(13) of this title.

(d) Limitation on satellite center grants; Secretary

(1) The Secretary may not make a grant under subsection (c) of this section for the fiscal year ending on September 30, 1985, to a satellite center which has not received a grant under such subsection or section 6031(c) of this title (as such section was in effect prior to October 1, 1984) unless—

(A) a study assisted under subsection (b)(1)(A) of this section has established the feasibility of establishing or operating such center, except that such study shall not be required to contain an assessment of the need for such center in the area in which such center will be located; or

(B) a study assisted under section 6031(b)(1) of this title (as in effect prior to October 1, 1984) has established the feasibility of establishing or operating such center.

(2) The Secretary may not make a grant under subsection (a) of this section or subsection (c) of this section for a fiscal year beginning after September 30, 1985, to a university affiliated facility or a satellite center which has not received a grant under this section or section 6031 of this title (as such section was in effect prior to October 1, 1984) unless—

(A) a study assisted under subsection (b)(1)(A) of this section has been conducted with respect to such facility or center by a university affiliated facility; and

(B) such study has established the feasibility of establishing or operating such facility or center.

(Pub. L. 88-164, title I, § 152, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2681.)

REFERENCES IN TEXT

Section 6031 of this title, referred to in subsec. (d), was omitted from the Code in the general revision of this chapter by Pub. L. 98-527.

PRIOR PROVISIONS

A prior section 6062, Pub. L. 88-164, title I, § 132, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1317, and amended Pub. L. 94-103, title I, § 110(b)-(e)(1), title III, § 302(b)(1), Oct. 4, 1975, 89 Stat. 489, 490, 506; Pub. L. 94-278, title XI, § 1107(a) Apr. 22, 1976, 90 Stat. 416; Pub. L. 95-602, title V, § 510(b), Nov. 6, 1978, 92 Stat. 3010, related to allotments to States prior to the general revision of this chapter by Pub. L. 98-527. See section 6025 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6063, 6064 of this title.

§ 6063. Applications

(a) Standards for university affiliated facilities

Not later than six months after October 19, 1984, the Secretary shall establish by regulation standards for university affiliated facilities. Such standards shall reflect the special needs of persons with developmental disabilities who are of various ages, and shall include performance standards relating to each of the activities described in section 6001(13) of this title.

(b) Secretary; submission to; approval by; contents

No grants may be made under section 6062 of this title unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner, and contain such information, as the Secretary may require. Such an application shall be approved by the Secretary only if the application contains or is supported by reasonable assurances that—

(1) the making of the grant will (A) not result in any decrease in the use of State, local, and other non-Federal funds for services for persons with developmental disabilities and for training of persons to provide such services, which funds would (except for such grant) be made available to the applicant, and (B) be used to supplement and, to the extent practicable, increase the level of such funds;

(2)(A) the applicant's facility is in full compliance with the standards established under subsection (a) of this section, or

(B)(i) the applicant is making substantial progress toward bringing the facility into compliance with such standards, and (ii) the facility will, not later than three years after the date of approval of the initial application or the date standards are promulgated under subsection (a) of this section, whichever is later, fully comply with such standards; and

(3) the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this subchapter will be protected consistent with section 6009 of this title (relating to rights of the developmentally disabled).

(c) Review process

The Secretary shall establish such a process for the review of applications for grants under section 6062 of this title as will ensure, to the maximum extent feasible, that each Federal agency that provides funds for the direct support of the applicant's facility reviews the application.

(d) Grant amount determined by amount of appropriation

(1) If the total amount appropriated under section 6064 of this title for a fiscal year is at least $8,500,000, the amount of any grant under section 6062(a) of this title to a university affiliated facility shall not be less than $175,000 for such fiscal year and the amount of any grant under section 6062(c) of this title to a satellite center shall not be less than $75,000 for such fiscal year.

(2) If the total amount appropriated under section 6064 of this title is less than $8,500,000, the amount of any grant under section 6062(a) of this title to a university affiliated facility shall not be less than $150,000 for such fiscal year and the amount of any grant under section 6062(c) of this title to a satellite center shall not be less than $75,000 for such fiscal year.

(Pub. L. 88-164, title I, § 153, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2682.)

PRIOR PROVISIONS

A prior section 6063, Pub. L. 88-164, title I, § 133, formerly § 134, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1319, and renumbered and amended Pub. L. 94-103, title I, §§ 110(e)(2), 111, title III, § 302(a), (b)(2), Oct. 4, 1975, 89 Stat. 490, 506; Pub. L. 95-602, title V, § 511, Nov. 6, 1978, 92 Stat. 3011, related to State plans prior to the general revision of this chapter by Pub. L. 98-527. See section 6022 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1438 of this title.

§ 6064. Authorization of appropriations

For the purpose of making grants under section 6062 of this title, there are authorized to be appropriated $9,000,000 for fiscal year 1985, $9,600,000 for fiscal year 1986, and $10,100,000 for fiscal year 1987.

(Pub. L. 88-164, title I, § 154, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2683.)

PRIOR PROVISIONS

Prior sections 6064 to 6068 were omitted in the general revision of this chapter by Pub. L. 98-527.

Section 6064, Pub. L. 88-164, title I, § 134, formerly § 137, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1323, amended Pub. L. 93-45, title III, § 301(c), June 18, 1973, 87 Stat. 95, and renumbered and amended Pub. L. 94-103, title I, §§ 101(b), 113, title III, § 302(a), Oct. 4, 1975, 89 Stat. 486, 492, 506; Pub. L. 94-278, title XI, § 1107(b), (c), Apr. 22, 1976, 90 Stat. 416; Pub. L. 95-602, title V, § 514(b), Nov. 6, 1978, 92 Stat. 3017, related to payments to the States for planning, administration, and services prior to the general revision of this chapter by Pub. L. 98-527. See section 6026 of this title.

Section 6065, Pub. L. 88-164, title I, § 135, formerly § 138, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1323, and renumbered and amended Pub. L. 94-103, title I, §§ 110(e)(3), 114, title III, § 302(a), (b)(3), Oct. 4, 1975, 89 Stat. 490, 493, 506; Pub. L. 95-602, title V, § 514(c), Nov. 6, 1978, 92 Stat. 3017, related to withholding of payments to States for planning, administration, and services. See section 6027 of this title.

Section 6066, Pub. L. 88-164, title I, § 136, formerly § 140, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1324, and renumbered and amended Pub. L. 94-103, title I, § 115, title III, § 302(a), (b)(4), Oct. 4, 1975, 89 Stat. 493, 506, related to nonduplication of payments. See section 6028 of this title.

Section 6067, Pub. L. 88-164, title I, § 137, formerly § 141, as added and renumbered Pub. L. 94-103, title I, § 116, title III, § 302(a), Oct. 4, 1975, 89 Stat. 493, 506, and amended Pub. L. 95-602, title V, § 512, Nov. 6, 1978, 92 Stat. 3015, related to State Planning Councils. See section 6024 of this title.

Section 6068, Pub. L. 88-164, title I, § 138, formerly § 142, as added, renumbered, and amended Pub. L. 94-103, title I, § 117, title III, § 302(a), (b)(5), Oct. 4, 1975, 89 Stat. 494, 506, related to appeals, petitions, record, jurisdiction of courts of appeals, conclusiveness of findings, review by the Supreme Court, and stay of administrative action. See section 6029 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6062, 6063 of this title.

§§ 6065 to 6068. Omitted

CODIFICATION

See Prior Provisions note set out under section 6064 of this title.

SUBCHAPTER V—SPECIAL PROJECT GRANTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6006, 6022 of this title.

§ 6081. Congressional statement of purpose

The purpose of this subchapter is to provide for grants for demonstration projects to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

(Pub. L. 88-164, title I, § 161, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2683.)

PRIOR PROVISIONS

A prior section 6081, Pub. L. 88-164, title I, § 145, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 495, and amended Pub. L. 95-602, title V, §§ 504(b)(2), (3), 513, Nov. 6, 1978, 92 Stat. 3006, 3016; Pub. L. 96-32, § 3(a), July 10, 1979, 93 Stat. 82; Pub. L. 97-35, title IX, § 913, Aug. 13, 1981, 95 Stat. 563; Pub. L. 98-221, title III, § 305, Feb. 22, 1984, 98 Stat. 35, set forth grant authority for special projects grants prior to the general revision of this chapter by Pub. L. 98-527. See sections 6082 and 6083 of this title.

§ 6082. Grant authority

(a) Secretary; demonstration projects; technical assistance

The Secretary may make grants to public or nonprofit private entities for—

(1) demonstration projects—

(A) which are conducted in more than one State,

(B) which involve the participation of two or more Federal departments or agencies, or

(C) which are otherwise of national significance,

and which hold promise of expanding or otherwise improving services to persons with developmental disabilities (especially those who are multihandicapped or disadvantaged, including Native Americans, Native Hawaiians, and other underserved groups); and

(2) technical assistance and demonstration projects (including research, training, and evaluation in connection with such projects) which hold promise of expanding or otherwise improving protection and advocacy services relating to the State protection and advocacy system described in section 6042 of this title.

Projects for the evaluation and assessment of the quality of services provided persons with developmental disabilities which meet the requirements of subparagraphs (A), (B), and (C) of paragraph (1) may be included as projects for which grants are authorized under such paragraph.

(b) Application requirement; approval by Secretary; State Planning Council; review

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information as the Secretary shall by regulation prescribe. The Secretary may not approve such an application unless each State in which the applicant's project will be conducted has a State plan approved under section 6022 of this title, and unless the application provides assurances that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under projects assisted under this subchapter will be protected consistent with section 6009 of this title (relating to the rights of the developmentally disabled). The Secretary shall provide to the State Planning Council for each State in which an applicant's project will be conducted an opportunity to review the application for such project and to submit its comments on the application.

(c) Payments; advance; reimbursement; intervals; conditions

Payments under grants under subsection (a) of this section may be made in advance or by way of reimbursement and at such intervals and on such conditions, as the Secretary finds necessary. The amount of any grant under subsection (a) of this section shall be determined by the Secretary.

(Pub. L. 88-164, title I, § 162, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2683.)

§ 6083. Authorization of appropriations

To carry out this subchapter, there are authorized to be appropriated $2,700,000 for fiscal year 1985, $2,800,000 for fiscal year 1986, and $3,100,000 for fiscal year 1987.

(Pub. L. 88-164, title I, § 163, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2684.)

CHAPTER 76—AGE DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Chapter Referred to in Other Sections

This chapter is referred to in sections 300w-7, 300x-7, 300y-9, 708, 5057, 5309, 6727, 8625, 9906, 10406 of this title; title 29 section 1577; title 31 section 6716.

§ 6106. Study of discrimination based on age

[See main edition for text of (a) and (b)]

(c) Publication of results of analyses, research and studies by independent experts; services of voluntary or uncompensated personnel

The Commission is authorized to obtain, through grant or contract, analyses, research and studies by independent experts of issues relating to age discrimination and to publish the results thereof. For purposes of the study required by this section, the Commission may accept and utilize the services of voluntary or uncompensated personnel, without regard to the provisions of section 105(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(b)).

[See main edition for text of (d) to (g); credits]

References in Text

Section 105(b) of the Civil Rights Act of 1957, referred to in subsec. (c), is section 105(b) of Pub. L. 85-315, pt. I, Sept. 9, 1957, 71 Stat. 636, which was classified to section 1975d(b) of this title and was omitted from the Code. For further details, see Codification note set out preceding section 1975 of this title. Similar provisions are contained in section 6(b) of the United States Commission on Civil Rights Act of 1983, Pub. L. 98-183, Nov. 30, 1983, 97 Stat. 1306, which is classified to section 1975d(b) of this title.

CHAPTER 77—ENERGY CONSERVATION

SUBCHAPTER I—DOMESTIC SUPPLY AVAILABILITY

Part C—Expiration

Sec.
6251. Expiration.

SUBCHAPTER II—STANDBY ENERGY AUTHORITIES

Part A—General Emergency Authorities

6264. Termination date.

Part B—Authorities With Respect to International Energy Program

6276. Domestic renewable energy industry and related service industries.
(a) Purpose.
(b) Evaluation; report to Congress.

Sec.

(c) Program for enhancing commerce in renewable energy technologies; funding.

(d) Interagency working group; personnel and services from appropriate agencies.

PART D—EXPIRATION

6285. Expiration.

SUBCHAPTER III—IMPROVING ENERGY EFFICIENCY

PART B—STATE ENERGY CONSERVATION PLANS

6323a. Matching State contributions.

SUBCHAPTER IV—GENERAL PROVISIONS

PART B—GENERAL PROVISIONS

6401. Repealed.

§ 6201. Congressional statement of purpose

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-58, § 1, July 2, 1985, 99 Stat. 102, provided that: "This Act [enacting sections 6251, 6264, 6285, and 7277 of this title, amending sections 6239, 6240, 6241, 6247, and 6272 of this title, repealing section 6401 of this title, enacting provisions set out as notes under section 7277 of this title, and amending provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be cited as the 'Energy Policy and Conservation Amendments Act of 1985'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-370, § 1, July 18, 1984, 98 Stat. 1211, provided: "That this Act [enacting section 6276 of this title and a provision set out as a note under section 6276 of this title] may be cited as the 'Renewable Energy Industry Development Act of 1983'."

§ 6202. Definitions

As used in this chapter:

[*See main edition for text of* (*1*) *to* (*3*)]

(4) The term "State" means a State, the District of Columbia, Puerto Rico, the Trust Territory of the Pacific Islands, or any territory or possession of the United States.

[*See main edition for text of* (5) *to* (*10*)]

(As amended Pub. L. 98-454, title VI, § 601(f), Oct. 5, 1984, 98 Stat. 1736.)

AMENDMENTS

1984—Par. (4). Pub. L. 98-454 added reference to the Trust Territory of the Pacific Islands.

SUBCHAPTER I—DOMESTIC SUPPLY AVAILABILITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6391, 6393, 6394, 6396 of this title.

PART B—STRATEGIC PETROLEUM RESERVE

§ 6231. Congressional finding and declaration of policy

STUDY OF A STRATEGIC ETHANOL RESERVE

Pub. L. 99-198, title XVII, § 1778, Dec. 23, 1985, 99 Stat. 1659, provided that:

"(a) The Secretary of Agriculture shall conduct a study of the cost effectiveness, the economic benefits, and the feasibility of establishing, maintaining, and utilizing a Strategic Ethanol Reserve relative to the existing Strategic Petroleum Reserve.

"(b) The study shall be completed within one year after the enactment of this section [Dec. 23, 1985] and shall include, among other considerations—

"(1) the benefits and losses related to the U.S. economy, farm income, employment, government commodity programs, and the trade deficit of utilizing a Strategic Ethanol Reserve, as opposed to the Strategic Petroleum Reserve; and

"(2) the savings from storing ethanol as opposed to storing the amount of CCC-held grain necessary to produce the ethanol.

"(c) If the study shows that the Strategic Ethanol Reserve is cost effective, beneficial to the U.S. economy, and feasible in comparison with the Strategic Petroleum Reserve, the Secretary of Agriculture may establish, maintain, and utilize a Strategic Ethanol Reserve."

§ 6234. Strategic Petroleum Reserve

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6235, 6238, 6239, 6246 of this title; title 15 section 714b.

§ 6239. Congressional review of Strategic Petroleum Reserve Plan; implementation

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Presidential determination; 60-day period

Subject to section 6241(g)(2) of this title, any amendment transmitted pursuant to subsection (d) of this section may not become effective until 60 days after the date of such transmittal, except that such 60-day period shall not apply if the President determines that such amendment is required by a severe energy supply interruption or by obligations of the United States under the international energy program.

[*See main edition for text of* (*f*) *to* (*h*)]

(As amended Pub. L. 99-58, title I, § 102(a), July 2, 1985, 99 Stat. 102.)

AMENDMENTS

1985—Subsec. (e). Pub. L. 99-58 amended subsec. (e) generally, substituting provisions directing that amendments transmitted pursuant to subsec. (d) of this section not become effective until 60 days after transmittal except in the case of enumerated presidential determinations for provisions which had formerly empowered Congress to disapprove of transmitted proposals and amendments in accordance with the procedures specified in section 6421 of this title.

§ 6240. Petroleum products for storage, transport, or exchange

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Crude oil from Naval Petroleum Reserve Numbered 1

(1) Notwithstanding any other provision of law, no portion of the United States share of crude oil in Naval Petroleum Reserve Numbered 1 (Elk Hills) may be sold or otherwise disposed of other than to the Strategic Petroleum Reserve (either directly or by exchange) during any fiscal year, except as provided in paragraph (2), unless—

(A) the quantity of crude oil in storage within the Strategic Petroleum Reserve is at least 500,000,000 barrels; or

(B) acquisition, transportation, and injection activities for the Reserve are being undertaken for that fiscal year at a level sufficient to assure that crude oil in storage in the Strategic Petroleum Reserve will be increased at an average rate of at least 100,000 barrels per day for that fiscal year; or

(C) the fill rate is sufficient to attain a level of 500,000,000 barrels by the end of the fiscal year during which the fill rate falls below the rate established in (B).

[*See main edition for text of* (*2*)]

(3) In determining the number of barrels of crude oil for purposes of subparagraph (A) of paragraph (1), any crude oil drawndown from the Reserve as a result of any drawdown and distribution carried out under section 6241(g) of this title and not replaced under section 6241(g)(6)(B) of this title shall be considered to be within the Reserve.

(e) Suspensions of fill operations, etc., during emergency situations; applicability, etc.

(1) The provisions of subsections (c) and (d) of this section shall not apply (A) if there is in effect an order of the President directing drawdown and distribution pursuant to section 6241 of this title or (B) if—

(i) the President has found in his discretion that compliance with such provisions significantly impairs the ability of the United States to respond to a severe energy supply interruption or to meet the obligations of the United States under the international energy program; and

(ii) the President has transmitted such finding to the Congress.

(2) The suspension of the application of subsections (c) and (d) of this section under paragraph (1)(B) may become effective on the day the finding is transmitted to the Congress and shall terminate nine months thereafter or on such earlier date as is specified in such finding.

(3) The period of any suspension of subsections (c) and (d) of this section under this subsection, and the quantity of any petroleum product involved, shall be disregarded in applying the provisions of such subsections for periods following such suspension.

(4) Redesignated (3)

(As amended Pub. L. 99-58, title I, §§ 102(b), 103(b)(1), July 2, 1985, 99 Stat. 103, 104; Pub. L. 99-88, title I, § 100, Aug. 15, 1985, 99 Stat. 342.)

AMENDMENTS

1985—Subsec. (d)(1)(C). Pub. L. 99-88 added subpar. (C).

Subsec. (d)(3). Pub. L. 99-58, § 103(b)(1), added par. (3).

Subsec. (e)(1)(B). Pub. L. 99-58, § 102(b)(1), (2), inserted "and" at the end of cl. (i), inserted a period following "to the Congress", and struck out "in accordance with section 6422 of this title, together with a request for a suspension of such provisions; and" in cl. (ii), and struck out cl. (iii) which directed that the provisions of subsecs. (c) and (d) of this section would not apply if a Presidential request for the suspension of such provisions was approved by a resolution of each House of Congress within 60 days of continuous session after the date of its transmittal in accordance with the provisions of section 6422 of this title applicable to energy conservation contingency plans.

Subsec. (e)(2). Pub. L. 99-58, § 102(b)(3), substituted "may become effective on the day the finding is transmitted to the Congress and shall terminate nine months thereafter or on such earlier date as is specified in such finding" for "shall take effect on the date on which a resolution approving that request is adopted by the second House to have so approved that request and shall terminate 9 months thereafter, or such earlier date as is specified in the request transmitted under paragraph (1)(B)(ii)".

Subsec. (e)(3), (4). Pub. L. 99-58, § 102(b)(3), (4), redesignated par. (4) as (3). Former par. (3), which related to the application of section 6422 of this title for purposes of par. (1)(B), was struck out.

EXCHANGE OF AGRICULTURAL PRODUCTS FOR CRUDE OIL TO BE DELIVERED TO STRATEGIC PETROLEUM RESERVE

Pub. L. 99-190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1254, provided that: "Notwithstanding any other provision of law, the Secretary of Agriculture, at the request of the Secretary of Energy, may exchange agricultural products owned by the Commodity Credit Corporation for crude oil to be delivered to the Strategic Petroleum Reserve: *Provided*, That the Secretary of Energy shall approve the quantity, quality, delivery method, scheduling, market value and other aspects of the exchange of such agricultural products: *Provided further*, That if the volume of agricultural products to be exchanged has a value in excess of the market value of the crude oil acquired by such exchange, then the Secretary of Agriculture shall require as part of the terms and conditions of the exchange that the party or entity providing such crude oil shall agree to purchase, within six months following the exchange, current crop commodities or value-added food products from United States producers or processors in an amount equal to at least one-half the difference between the value of the commodities received in exchange and the market value of the crude oil acquired for the Strategic Petroleum Reserve."

§ 6241. Drawdown and distribution of Reserve

[*See main edition for text of* (*a*)]

(b) Drawdown and distribution of Reserve in accordance with Distribution Plan contained in Strategic Petroleum Reserve Plan

Except as provided in subsections (c), (f), and (g) of this section, no drawdown and distribution of the Reserve may be made except in accordance with the provisions of the Distribution Plan contained in the Strategic Petroleum Reserve Plan which has taken effect pursuant to section 6239(a) of this title.

[*See main edition for text of* (*c*) *to* (*f*)]

(g) Directive to carry out test drawdown

(1) In order to evaluate the implementation of the Distribution Plan, the Secretary shall, commencing within 180 days after July 2, 1985, carry out a test drawdown and distribution under this subsection through the sale or exchange of approximately 1,100,000 barrels of crude oil from the Reserve. The requirement of this paragraph shall not apply if the President determines, within the 180-day period described in the preceding sentence, that implementation of the Distribution Plan is required by a severe

energy supply interruption or by obligations of the United States under the international energy program.

(2) The Secretary shall carry out such drawdown and distribution in accordance with the Distribution Plan and implementing regulations and contract provisions, modified as the Secretary considers appropriate taking into consideration the artificialities of a test and the absence of a severe energy supply interruption. To meet the requirements of subsections (d) and (e) of section 6239 of this title, the Secretary shall transmit any such modification of the Plan, along with explanatory and supporting material, to both Houses of the Congress no later than 15 calendar days prior to the offering of any crude oil for sale under this subsection.

(3) At least part of the crude oil that is sold or exchanged under this subsection shall be sold or exchanged to or with entities that are not part of the Federal Government.

(4) The Secretary may not sell any crude oil under this subsection at a price less than that which the Secretary determines appropriate and, in no event, at a price less than 90 percent of the sales price, as estimated by the Secretary, of comparable crude oil being sold in the same area at the time the Secretary is offering crude oil for sale in such area under this subsection.

(5) The Secretary may cancel any offer to sell or exchange crude oil as part of any drawdown and distribution under this subsection if the Secretary determines that there are insufficient acceptable offers to obtain such crude oil.

(6)(A) The minimum required fill rate in effect for any fiscal year shall be reduced by the amount of any crude oil drawdown from the Reserve under this subsection during such fiscal year.

(B) In the case of a sale of any crude oil under this subsection, the Secretary shall, to the extent funds are available in the SPR Petroleum Account as a result of such sale, acquire crude oil for the Reserve within the 12-month period beginning after the completion of the sale. Such acquisition shall be in addition to any acquisition of crude oil for the Reserve required as part of a fill rate established by any other provision of law.

(7) Rules, regulations, or orders issued in order to carry out this subsection which have the applicability and effect of a rule as defined in section 551(4) of title 5 shall not be subject to the requirements of subchapter II of chapter 5 of such title or to section 6393 of this title.

(8) The Secretary shall transmit to both Houses of the Congress a detailed explanation of the drawdown and distribution carried out under this subsection. Such explanation may be a part of any report made to the President and the Congress under section 6245 of this title.

(As amended Pub. L. 99-58, title I, § 103(a), (b)(2), July 2, 1985, 99 Stat. 103, 104.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-58, § 103(b)(2), inserted reference to subsec. (g) of this section.

Subsec. (g). Pub. L. 99-58, § 103(a), added subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6239, 6240, 6247 of this title.

§ 6245. Reports by Secretary to Congress; contents

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6241 of this title.

§ 6247. SPR Petroleum Account

[*See main edition for text of* (*a*)]

(b) Obligation of funds for acquisition, transportation, and injection of petroleum products into SPR

Amounts in the Account may be obligated by the Secretary of Energy for the acquisition, transportation, and injection of petroleum products into the Strategic Petroleum Reserve, and the drawdown and delivery of petroleum products from the Reserve—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) in the case of any fiscal year, notwithstanding section 7270 of this title, in an aggregate amount equal to the aggregate amount of the receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under section 6241 of this title, including a drawdown and distribution carried out under subsection (g) of such section.

Funds available to the Secretary of Energy for obligation under this subsection may remain available without fiscal year limitation.

[*See main edition for text of* (*c*)]

(d) Off-budgeting procedures

The Account, the deposits and withdrawals from the Account, and the transactions, receipts, obligations, outlays associated with such deposits and withdrawals (including petroleum product purchases and related transactions), and receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under section 6241 of this title, including a drawdown and distribution carried out [2] subsection (g) of such section—

[*See main edition for text of* (*1*) *and* (*2*); (*e*)]

(As amended Pub. L. 99-58, title I, § 103(b)(3), (4), July 2, 1985, 99 Stat. 104.)

AMENDMENTS

1985—Subsec. (b)(3). Pub. L. 99-58, § 103(b)(3), inserted ", including a drawdown and distribution carried out under subsection (g) of such section" after "section 6241 of this title".

Subsec. (d). Pub. L. 99-58, § 103(b)(4), inserted ", including a drawdown and distribution carried out subsection (g) of such section" after "section 6241 of this title" in provisions preceding par. (1).

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[2] So in original. Probably should be followed by "under".

PART C—EXPIRATION

§ 6251. Expiration

Except as otherwise provided in this subchapter, all authority under any provision of this subchapter and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, June 30, 1989, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, June 30, 1989.

(Pub. L. 94-163, title I, § 171, as added Pub. L. 99-58, title I, § 101(a), July 2, 1985, 99 Stat. 102.)

CODIFICATION

Words "(other than a provision of such title amending another law)" appearing in the original in this section, have been omitted as unnecessary. Such title meant title I of Pub. L. 94-163, which is classified to this subchapter. The provisions of such title that amended other laws are not classified to this subchapter.

SUBCHAPTER II—STANDBY ENERGY AUTHORITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6391, 6393, 6394, 6396 of this title.

PART A—GENERAL EMERGENCY AUTHORITIES

§ 6263. Rationing contingency plan

REFERENCES IN TEXT

Section 6401 of this title, referred to in subsec. (f), was repealed by Pub. L. 99-58, title I, § 104(c)(3), July 2, 1985, 99 Stat. 105.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6261, 6262, 6264, 8513 of this title.

§ 6264. Termination date

Except as provided in section 6263(f) of this title, authority to carry out the provisions of this part and any rule, regulation, or order issued pursuant to such part shall expire at midnight, June 30, 1985.

(Pub. L. 94-163, title II, § 204, as added Pub. L. 99-58, title I, § 104(b), July 2, 1985, 99 Stat. 104.)

PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

§ 6271. International oil allocations

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Prerequisites for effectiveness of rule

No rule under this section may be put into effect unless—

(1) an international energy supply emergency, as defined in the first sentence of section 6272(k)(1) of this title, is in effect; and

[*See main edition for text of* (*2*)]

(As amended Pub. L. 99-58, title I, § 104(c)(2), July 2, 1985, 99 Stat. 105.)

AMENDMENTS

1985—Subsec. (e)(1). Pub. L. 99-58 substituted reference to section 6272(k)(1) for reference to section 6272(*l*)(1).

§ 6272. International voluntary agreements

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Participation of Attorney General and Federal Trade Commission in development and carrying out of voluntary agreements and plans of action

(1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, and when practicable, in the carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this part. A voluntary agreement or plan of action under this section may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement or plan of action should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Secretary, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively any immunity which may be conferred by subsection (f) or (j) of this section.

[*See main edition for text of* (*2*) *and* (*3*); (*e*) *to* (*i*)]

(j) Defense in breach of contract actions

In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an international energy supply emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section.

(k) Definitions

As used in this section and section 6274 of this title:

(1) The term "international energy supply emergency" means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international energy program is required by chapters III and IV of such program, and (B) ending on a date on which he determines that such allocation is no longer required. Such a period may not exceed 90 days, but the President may establish one or more additional 90-day periods by making anew the determination under sub-

paragraph (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

(2) The term "allocation and information provisions of the international energy program" means the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in such program.

(*l*) Applicability of authority

The authority granted by this section shall apply only to the development or carrying out of voluntary agreements and plans of action to implement chapters III, IV, and V of the international energy program.

(m) Limitation on new plans of action

(1) With respect to any plan of action approved by the Attorney General after July 2, 1985—

(A) the defenses under subsection (f) and (j) of this section shall be applicable to Type 1 activities (as that term is defined in the International Energy Agency Emergency Management Manual, dated December 1982) only if—

(i) the Secretary has transmitted such plan of action to the Congress; and

(ii)(I) 90 calendar days of continuous session have elapsed since receipt by the Congress of such transmittal; or

(II) within 90 calendar days of continuous session after receipt of such transmittal, either House of the Congress has disapproved a joint resolution of disapproval pursuant to subsection (n) of this section; and

(B) such defenses shall not be applicable to Type 1 activities if there has been enacted, in accordance with subsection (n) of this section, a joint resolution of disapproval.

(2) The Secretary may withdraw the plan of action at any time prior to adoption of a joint resolution described in subsection (n)(3) of this section by either House of Congress.

(3) For the purpose of this subsection—

(A) continuity of session is broken only by an adjournment of the Congress sine die at the end of the second session of Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the calendar-day period involved.

(n) Joint resolution of disapproval

(1)(A) The application of defenses under subsections (f) and (j) of this section for Type 1 activities with respect to any plan of action transmitted to Congress as described in subsection (m)(1)(A)(i) of this section shall be disapproved if a joint resolution of disapproval has been enacted into law during the 90-day period of continuous session after which such transmission was received by the Congress. For the purpose of this subsection, the term "joint resolution" means only a joint resolution of either House of the Congress as described in paragraph (3).

(B) After receipt by the Congress of such plan of action, a joint resolution of disapproval may be introduced in either House of the Congress. Upon introduction in the Senate, the joint resolution shall be referred in the Senate immediately to the Committee on Energy and Natural Resources of the Senate.

(2) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by paragraph (3); it supersedes other rules only to the extent that is inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(3) The joint resolution disapproving the transmission under subsection (m) of this section shall read as follows after the resolving clause: "That the Congress of the United States disapproves the availability of the defenses pursuant to section 252 (f) and (j) of the Energy Policy and Conservation Act with respect to Type 1 activities under the plan of action submitted to the Congress by the Secretary of Energy on   .", the blank space therein being filled with the date and year of receipt by the Congress of the plan of action transmitted as described in subsection (m) of this section.

(4)(A) If the Committee on Energy and Natural Resources of the Senate has not reported a joint resolution referred to it under this subsection at the end of 20 calendar days of continuous session after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other joint resolution which has been referred to the committee with respect to such plan of action.

(B) A motion to discharge shall be highly privileged (except that it may not be made after the Committee on Energy and Natural Resources has reported a joint resolution with respect to the plan of action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the joint resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other joint resolution with respect to the same transmission.

(5)(A) When the Committee on Energy and Natural Resources of the Senate has reported or has been discharged from further consideration of a joint resolution, it shall be in order at any time thereafter within the 90-day period following receipt by the Congress of the plan of action (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such joint resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider a vote by which the motion was agreed to or disagreed to.

(B) Debate on the joint resolution shall be limited to not more than 10 hours and final action on the joint resolution shall occur immediately following conclusion of such debate. A motion further to limit debate shall not be debatable. A motion to recommit such a joint resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such a joint resolution was agreed to or disagreed to.

(6)(A) Motions to postpone made with respect to the discharge from committee or consideration of a joint resolution, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of rules of the Senate to the procedures relating to a joint resolution shall be decided without debate.

(As amended Pub. L. 98-239, Mar. 20, 1984, 98 Stat. 93; Pub. L. 99-58, title I, §§ 104(c)(2), (4), 105, July 2, 1985, 99 Stat. 105.)

REFERENCES IN TEXT

Section 252(f) and (j) of the Energy Policy and Conservation Act, referred to in subsection (n)(3), is classified to subsecs. (f) and (j) of this section.

AMENDMENTS

1985—Subsec. (d)(1). Pub. L. 99-58, § 104(c)(4), substituted "subsection (f) or (j)" for "subsection (f) or (k)".

Subsecs. (j) to (*l*). Pub. L. 99-58, § 104(c)(2), redesignated subsecs. (k) to (m) as (j) to (*l*). Former subsec. (j), which provided that the authority granted by this section would terminate at midnight, June 30, 1985, was struck out.

Subsecs. (m), (n). Pub. L. 99-58, § 105, added subsecs. (m) and (n). Former subsec. (m) redesignated (*l*).

1984—Subsec. (j). Pub. L. 98-239 substituted "June 30, 1985" for "December 31, 1983".

§ 6276. Domestic renewable energy industry and related service industries

(a) Purpose

It is the purpose of this section to implement the responsibilities of the United States under chapter VII of the international energy program with respect to development of alternative energy by facilitating the overall abilities of the domestic renewable energy industry and related service industries to create new markets.

(b) Evaluation; report to Congress

(1) Before the later of—

(A) 6 months after July 18, 1984, and

(B) May 31, 1985,

the Secretary of Commerce shall conduct an evaluation regarding the domestic renewable energy industry and related service industries and submit a report of his findings to the Congress.

(2) Such evaluation shall include—

(A) an assessment of the technical and commercial status of the domestic renewable energy industry and related service industries in domestic and foreign markets;

(B) an assessment of the Federal Government's activities affecting commerce in the domestic renewable energy industry and related service industries and in consolidating and coordinating such activities within the Federal Government; and

(C) an assessment of the aspects of the domestic renewable energy industry and related service industries in which improvements must be made to increase the international commercialization of such industry.

(c) Program for enhancing commerce in renewable energy technologies; funding

(1) On the basis of the evaluation under subsection (b) of this section, the Secretary of Commerce shall, consistent with existing law, establish a program for enhancing commerce in renewable energy technologies and consolidating or coordinating existing activities for such purpose.

(2) Such program shall provide for—

(A) the broadening of the participation by the domestic renewable energy industry and related service industries in such activities;

(B) the promotion of the domestic renewable energy industry and related service industries on a worldwide basis;

(C) the participation by the Federal Government and the domestic renewable energy industry and related service industries in international standard-setting activities; and

(D) the establishment of an information program under which—

(i) technical information about the domestic renewable energy industry and related service industries shall be provided to appropriate public and private officials engaged in commerce, and

(ii) marketing information about export opportunities shall be available to the domestic renewable energy industry and related service industries.

(3) Necessary funds required for carrying out such program shall be requested in connection with fiscal years beginning after September 30, 1984.

(d) Interagency working group; personnel and services from appropriate agencies

There shall be established an interagency working group which, in consultation with the representative industry groups and relevant agency heads, shall make recommendations to coordinate the actions and programs of the Federal Government affecting commerce in renewable energy products and related services. The Secretary of Energy shall be the chairman of such group. The heads of appropriate agencies may detail such personnel and may furnish such services to such working group, with or without reimbursement, as may be necessary to carry out its functions.

(Pub. L. 94-163, title II, § 256, as added Pub. L. 98-370, § 2, July 18, 1984, 98 Stat. 1211.)

EFFECTIVE DATE

Section 3 of Pub. L. 98-370 provided that: "The amendments made by this Act [enacting this section and a provision set out as a note under section 6201 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984]."

PART D—EXPIRATION

§ 6285. Expiration

Except as otherwise provided in this subchapter, all authority under any provision of this subchapter and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, June 30, 1988, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, June 30, 1988.

(Pub. L. 94-163, title II, § 281, as added Pub. L. 99-58, title I, § 104(a), July 2, 1985, 99 Stat. 104.)

CODIFICATION

Words "(other than a provision of such title amending another law)" appearing in the original in this section, have been omitted as unnecessary. Such title meant title II of Pub. L. 94-163 which is classified in its entirety to this subchapter.

SUBCHAPTER III—IMPROVING ENERGY EFFICIENCY

PART B—STATE ENERGY CONSERVATION PLANS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 6323a, 6851, 7005 of this title; title 12 section 1701z-8.

§ 6321. Congressional findings and declaration of purpose

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6323a of this title.

§ 6322. State energy conservation plans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323, 6323a, 6324, 6325, 6327, 6371, 7005 of this title.

§ 6323. Federal assistance to States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6325, 6327 of this title.

§ 6323a. Matching State contributions

For the base State Energy Conservation Program (part D of the Energy Policy and Conservation Act, sections 361 through 366 [42 U.S.C. 6321-6326]), each State will hereafter match in cash or in kind not less than 20 percent of the Federal contribution.

(Pub. L. 98-473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1861.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended. Part D of title III of the Energy Policy and Conservation Act, as amended, is classified generally to this part (§ 6321 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1985, as enacted by Pub. L. 98-473, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

PRIOR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

Pub. L. 98-146, title II, § 201, Nov. 4, 1983, 97 Stat. 942.

§ 6324. Energy conservation goals

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6325 of this title.

§ 6325. General provisions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6326, 6371, 6881 of this title; title 12 section 1701z-8.

§ 6326. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6881 of this title; title 12 section 1701z-8.

PART D—OTHER FEDERAL ENERGY CONSERVATION MEASURES

§ 6362. Energy conservation policies and practices

TRANSFER OF FUNCTIONS

The Civil Aeronautics Board terminated on Jan. 1, 1985, and all functions, powers, and duties of the Board under this section were transferred to the Secretary of Transportation by section 1553(a)(6) of Title 49, Appendix, Transportation, effective Jan. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 sections 1010, 1207; title 49 App. section 1553.

PART E—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

§ 6371. Definitions

For the purposes of this part—

[See main edition for text of (1) to (8)]

(9) The term "State" means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

[See main edition for text of (10) to (21)]

(As amended Pub. L. 98-454, title VI, § 601(e), Oct. 5, 1984, 98 Stat. 1736.)

AMENDMENTS

1984—Par. (9). Pub. L. 98-454 which directed the amendment of subsec. (a) by adding reference to the Northern Mariana Islands was executed to par. (9) of this section to reflect the probable intent of Congress, because this section does not contain a subsec. (a).

§ 6371g. Allocation of grants

[*See main edition for text of* (*a*)]

(b) Restrictions on allocations to States

The total amount allocated to any State under subsection (a) of this section in any year shall not exceed 10 percent of the total amount allocated to all the States in such year under such subsection (a) of this section. Except for the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, not less than 0.5 percent of such total allocation to all States for that year shall be allocated in such year for the total of grants to States and to schools and hospitals in each State which has an approved State plan under this part.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended Pub. L. 98-454, title VI, § 601(e), Oct. 5, 1984, 98 Stat. 1736.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-454 added reference to the Northern Mariana Islands.

SUBCHAPTER IV—GENERAL PROVISIONS

PART B—GENERAL PROVISIONS

§ 6393. Administrative procedure and judicial review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6241, 6261, 6262, 6263 of this title; title 15 section 2841.

§ 6401. Repealed. Pub. L. 99-58, title I, § 104(c)(3), July 2, 1985, 99 Stat. 105

Section, Pub. L. 94-163, title V, § 531, Dec. 22, 1975, 89 Stat. 965, provided for the expiration of all authority under subchapters I and II of this chapter at midnight June 30, 1985. See sections 6251 and 6285 of this title.

PART C—CONGRESSIONAL REVIEW

§ 6422. Expedited procedure for Congressional consideration of certain authorities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6261, 7362 of this title; title 15 section 2841.

CHAPTER 78—NATIONAL PETROLEUM RESERVE IN ALASKA

§ 6502. Designation of National Petroleum Reserve in Alaska; reservation of lands; disposition and conveyance of mineral materials, lands, etc., preexisting property rights

The area known as Naval Petroleum Reserve Numbered 4, Alaska, established by Executive order of the President, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344, dated April 24, 1961, shall be transferred to and administered by the Secretary of the Interior in accordance with the provisions of this Act. Effective on the date of transfer all lands within such area shall be redesignated as the "National Petroleum Reserve in Alaska" (hereinafter in this chapter referred to as the "reserve"). Subject to valid existing rights, all lands within the exterior boundaries of such reserve are hereby reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts; but the Secretary is authorized to (1) make dispositions of mineral materials pursuant to the Act of July 31, 1947 (61 Stat. 681), as amended [30 U.S.C. 601 et seq.], for appropriate use by Alaska Natives and the North Slope Borough, (2) make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under this Act, (3) convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], and (4) grant such rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 [43 U.S.C. 1761 et seq.] or section 28 of the Mineral Leasing Act, as amended [30 U.S.C. 185], as may be necessary to permit the North Slope Borough to provide energy supplies to villages on the North Slope. All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Naval Petroleum Reserve shall remain in full force and effect to the extent not inconsistent with this Act.

(As amended Pub. L. 98-366, § 4(a), July 17, 1984, 98 Stat. 470.)

REFERENCES IN TEXT

The Federal Land Policy and Management Act of 1976, referred to in text, is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended. Title V of the Federal Land Policy and Management Act of 1976 is classified generally to subchapter V (§ 1761 et seq.) of chapter 35 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

AMENDMENTS

1984—Pub. L. 98-366 added "and the North Slope Borough" after "Alaska Natives", struck out "and" after "responsibilities under this Act," and inserted ", and (4) grant rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 or section 28 of the Mineral Leasing Act, as amended, as may be necessary to permit the North Slope Borough to provide energy supplies to the villages on the North Slope".

§ 6504. Administration of reserve

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Repealed. Pub. L. 98-366, § 4(b), July 17, 1984, 98 Stat. 470

(As amended Pub. L. 98-366, § 4(b), July 17, 1984, 98 Stat. 470.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-366 struck out subsec. (e) which read as follows: "Until the reserve is transferred to the jurisdiction of the Secretary of the Interior, the Secretary of the Navy is authorized to develop and continue operation of the South Barrow gas field, or such other fields as may be necessary, to supply gas at reasonable and equitable rates to the native village of Barrow, and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the United States located at or near Point Barrow, Alaska. After such transfer, the Secretary of the Interior shall take such actions as may be necessary to continue such service to such village, communities, installations, and agencies at reasonable and equitable rates."

Effective Date of 1984 Amendment

Section 4(b) of Pub. L. 98-366 provided in part that the repeal of subsec. (e) of this section is effective Oct. 1, 1984.

§ 6508. Competitive leasing of oil and gas

[*See main edition for text of first and second pars.*]

Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in the National Petroleum Reserve-Alaska shall be barred unless brought in the appropriate District Court within 60 days after notice of the availability of such statement is published in the Federal Register.

[*See main edition for text of fourth par.*]

(As amended Pub. L. 98-620, title IV, § 402(41), Nov. 8, 1984, 98 Stat. 3360.)

Amendments

1984—Pub. L. 98-620 struck out provision in third par. that required that any proceeding on such action be assigned for hearing at the earliest possible date and be expedited by the Court.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 81—ENERGY CONSERVATION AND RESOURCE RENEWAL

SUBCHAPTER III—ENERGY CONSERVATION AND RENEWABLE-RESOURCE ASSISTANCE FOR EXISTING BUILDINGS

Part A—Weatherization Assistance for Low-Income Persons

Part Referred to in Other Sections

This part is referred to in sections 1474, 3013, 6873 of this title.

§ 6862. Definitions

As used in this part:

[*See main edition for text of (1) to (6)*]

(7) The term "low-income" means that income in relation to family size which (A) is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 2809(a)(12) of this title, (B) is the basis on which cash assistance payments have been paid during the preceding 12-month period under titles IV and XVI of the Social Security Act [42 U.S.C. 601 et seq., 1381 et seq.] or applicable State or local law, or (C) if a State elects, is the basis for eligibility for assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621), provided that such basis is at least 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

(8) The term "State" means each of the States and the District of Columbia.

(9) The term "weatherization materials" means—

(A) caulking and weatherstripping of doors and windows;

(B) furnace efficiency modifications, including, but not limited to—

(i) replacement burners, furnaces, or boilers or any combination thereof;

(ii) devices for minimizing energy loss through heating system, chimney, or venting devices; and

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

[*See main edition for text of (C) to (F)*]

(G) such other insulating or energy conserving devices or technologies as the Secretary may determine,,[1] after consulting with the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Director, of the Community Services Administration.

(As amended Pub. L. 98-558, title IV, §§ 401, 402, Oct. 30, 1984, 98 Stat. 2887.)

References in Text

The Developmental Disabilities Services and Facilities Construction Act referred to in par. (5), is title I of Pub. L. 88-164, as added by Pub. L. 94-103, Oct. 4, 1975, 89 Stat. 496, and amended. Title I of Pub. L. 88-164, as amended generally by Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662, is known as the Developmental Disabilities Assistance and Bill of Rights Act.

The Low-Income Home Energy Assistance Act of 1981, referred to in par. (7), is title XXVI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 893, as amended, which is classified generally to subchapter II (§ 8621 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8621 of this title and Tables.

Amendments

1984—Par. (7)(C). Pub. L. 98-558, § 401, added cl. (C).

Par. (9)(B). Pub. L. 98-558, § 402(1), in amending subpar. (B) generally, substituted ", including, but not limited to" for "limited to" in provisions preceding cl. (i), ", furnaces, or boilers or any combination thereof" for "designed to substantially increase the energy efficiency of the heating system," in cl. (i), and "minimizing energy loss through heating system, chimney, or venting devices" for "modifying flue openings which will increase the energy efficiency of the heating system," in cl. (ii).

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[1] So in original.

Par. (9)(C). Pub. L. 98-558, § 402(2), struck out "by rule" after "may determine,".

§ 6863. Weatherization program

[*See main edition for text of* (*a*)]

(b) Consultation by Secretary with other Federal departments and agencies on development and publication in Federal Register of proposed regulations; required regulatory provisions; standards and procedures

(1) The Secretary, after consultation with the Director, the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, the Secretary of Labor, the Director of the ACTION Agency, and the heads of such other Federal departments and agencies as the Secretary deems appropriate, shall develop and publish in the Federal Register for public comment, not later than 60 days after August 14, 1976, proposed regulations to carry out the provisions of this part. The Secretary shall take into consideration comments submitted regarding such proposed regulations and shall promulgate and publish final regulations for such purpose not later than 90 days after August 14, 1976. The development of regulations under this part shall be fully coordinated with the Director.

(2) The regulations promulgated pursuant to this section shall include provisions—

(A) prescribing, in coordination with the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, and the Director of the National Bureau of Standards in the Department of Commerce, for use in various climatic, structural, and human need settings, standards for weatherization materials, energy conservation techniques, and balance combinations thereof, which are designed to achieve a balance of a healthful dwelling environment and maximum practicable energy conservation; and

[*See main edition for text of* (*B*), (*3*) *and* (*4*); (*c*) *to* (*e*)]

(Pub. L. 94-385, title IV, § 413, Aug. 14, 1976, 90 Stat. 1152; Pub. L. 95-619, title II, § 231(a)(2), (b)(1), Nov. 9, 1978, 92 Stat. 3224; Pub. L. 96-294, title V, §§ 573(b), 574, 577(2), June 30, 1980, 94 Stat. 759, 760; Pub. L. 98-479, title II, § 201(h), Oct. 17, 1984, 98 Stat. 2228.)

Amendments

1984—Subsec. (b)(1), (2)(A). Pub. L. 98-479 substituted "Health and Human Services" for "Health, Education, and Welfare".

§ 6864. Financial assistance; annual application; contents; allocation to States; requirements for assistance

Section Referred to in Other Sections

This section is referred to in sections 6863, 6869 of this title.

§ 6865. Limitations on financial assistance

(a) Purchase of materials and administration of projects

An average of at least forty percent of the funds provided in a State under this part for weatherization materials, labor, and related matters described in subsection (c) of this section shall be spent for weatherization materials. Not more than an amount equal to 10 percent of any grant made by the Secretary under this part may be used for administrative purposes in carrying out duties under this part, except that not more than one-half of such amount may be used by any State for such purposes.

[*See main edition for text of* (*b*)]

(c) Limitations on expenditures; exceptions

(1) The expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters shall not exceed an average of $1,600 per dwelling unit weatherized in that State. Labor, weatherization materials, and related matter includes, but is not limited to—

(A) the appropriate portion of the cost of tools and equipment used to install weatherization materials for a dwelling unit;

(B) the cost of transporting labor, tools, and materials to a dwelling unit;

(C) the cost of having onsite supervisory personnel; and

(D) the cost of making incidental repairs to a dwelling unit if such repairs are necessary to make the installation of weatherization materials effective.

(2) Dwelling units partially weatherized under this part or under other Federal programs during the period September 30, 1975, through September 30, 1979, may receive further financial assistance for weatherization under this part.

(d) Performance fund

Beginning in fiscal year 1986, not less than 5 percent and no more than 15 percent of the amount appropriated under this part for each fiscal year shall be allotted by the Secretary to a performance fund, which shall be available only to provide financial assistance under this part to those States which the Secretary determines to have demonstrated the best performance during the previous fiscal year in providing weatherization assistance. The Secretary shall make such determination on the basis of such information as may be available to the Secretary, to include, but not be limited to, the percentage of eligible dwelling units within the State which have been weatherized using low-income weatherization assistance program funds during the relevant reporting period. In assessing the quality of the weatherization assistance provided, the Secretary shall consider comparable energy savings data supplied by the States.

(Pub. L. 94-385, title IV, § 415, Aug. 14, 1976, 90 Stat. 1155; Pub. L. 95-619, title II, § 231(c), Nov. 9, 1978, 92 Stat. 3225; Pub. L. 96-294, title V,

§§ 571, 572, 573(a), 575, 577(2), June 30, 1980, 94 Stat. 759, 760; Pub. L. 98-558, title IV, §§ 403, 404, Oct. 30, 1984, 98 Stat. 2887, 2888.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-558, § 403(1), substituted provisions that an average of at least forty percent of the funds provided shall be spent for weatherization for former provisions which directed the Secretary to use funds to the maximum extent practicable.

Subsec. (c). Pub. L. 98-558, § 403(2), in amending subsec. (c) generally, substituted provisions that expenditures shall not exceed an average of $1,600 per dwelling unit for former provisions which provided for an $800 per dwelling unit limit in par. (1), struck out "(not to exceed $150)" after "the cost" in par. (1)(D), substituted provisions that dwelling units partially weatherized between certain dates could receive further financial assistance under this part for former provisions that $800 limit would not apply if the State policy advisory council requested greater amounts from the Secretary and the Secretary gave approval in par. (2), and deleted former par. (3) which provided that in areas where the Secretary, after consultation with the Secretary of Labor, determined that there was an insufficient number of volunteers and training participants and public service employment workers, assisted pursuant to the Comprehensive Employment and Training Act of 1973, available to work on weatherization projects under the supervision of qualified supervisors and foremen, the Secretary could increase the limitation of $800 to not more than $1,600 to cover the costs of paying persons who would install the weatherization materials and, to the maximum extent practicable, who would otherwise be able to participate as training participants and public service employment workers pursuant to the Comprehensive Employment and Training Act of 1973.

Subsec. (d). Pub. L. 98-558, § 404, added subsec. (d).

PERFORMANCE FUND; RESTRICTION ON USE

Pub. L. 99-190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1253, provided: "That section 404 of Public Law 98-558 [enacting subsec. (d) of this section] shall not be effective in any fiscal year in which the amount made available for low income weatherization assistance from appropriations under this head is less than 5 per centum above the amount made available in fiscal year 1985."

§ 6872. Authorization of appropriations

Of the funds authorized by section 1005(1) of the Omnibus Budget Reconciliation Act of 1981 for energy conservation for fiscal year 1984, not less than $190,000,000 is authorized to be appropriated to carry out the weatherization program under this part. There is authorized to be appropriated such sums as may be necessary for fiscal year 1985 to carry out such weatherization program. Any amount appropriated under this section shall remain available until expended.

(As amended Pub. L. 98-181, title IV, § 464, Nov. 30, 1983, 97 Stat. 1235.)

REFERENCES IN TEXT

Section 1005(1) of the Omnibus Budget Reconciliation Act of 1981, referred to in text, is section 1005(1) of Pub. L. 97-35, title X, Aug. 13, 1981, 95 Stat. 609, which authorized appropriations for operating expenses for energy conservation for fiscal years 1982, 1983, and 1984, and which is not classified to the Code.

AMENDMENTS

1983—Pub. L. 98-181 amended section generally, providing that, of the funds authorized by section 1005(1) of the Omnibus Budget Reconciliation Act of 1981 for energy conservation for fiscal year 1984, not less than $190,000,000 was authorized to be appropriated to carry out the weatherization program under this part, and substituted provisions authorizing the appropriation of such sums as may be necessary for fiscal year 1985 to carry out the weatherization program for provisions that had authorized the appropriations of $55,000,000 for the fiscal year ending on Sept. 30, 1977, $130,000,000 for the fiscal year ending on Sept. 30, 1978, $200,000,000 for the fiscal year ending on Sept. 30, 1979, $200,000,000 for the fiscal year ending on Sept. 30, 1980, and $200,000,000 for the fiscal year ending on Sept. 30, 1981.

CHAPTER 82—SOLID WASTE DISPOSAL

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  - (f) Reimbursement.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2022, 2114, 4365, 5919, 6344a, 8302, 9601 of this title; title 26 sections 468, 4682; title 30 section 1292; title 49 section 11901.

SUBCHAPTER I—GENERAL PROVISIONS

§ 6901. Congressional findings

[See main edition for text of (a)]

(b) Environment and health

The Congress finds with respect to the environment and health, that—

[See main edition for text of (1) to (4)]

(5) the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment;

(6) if hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex, and time consuming;

(7) certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated, and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes; and

(8) alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 98-616, title I, § 101(a), Nov. 8, 1984, 98 Stat. 3224.)

AMENDMENTS

1984—Subsec. (b)(5) to (8). Pub. L. 98-616 added pars. (5) to (7), struck out former par. (5) providing that "hazardous waste presents, in addition to the problems associated with non-hazardous solid waste, special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste; and", redesignated former par. (6) as (8), and substituted a period for a semicolon at the end.

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-616 provided that: "This Act [enacting sections 6917, 6936 to 6939a, 6949a, 6979a, 6979b, and 6991 to 6991i of this title, amending sections 6901, 6902, 6905, 6912, 6915, 6916, 6921 to 6933, 6935, 6941 to 6945, 6948, 6956, 6962, 6972, 6973, 6976, 6982 and 6984 of this title and enacting provisions set out as notes under sections 6905, 6921 and 6926 of this title] may be cited as 'The Hazardous and Solid Waste Amendments of 1984'."

§ 6902. Objectives and national policy

(a) Objectives

The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by—

(1) providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;

(2) providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;

(3) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;

(4) assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment;

(5) requiring that hazardous waste be properly managed in the first instance thereby reducing the need for corrective action at a future date;

(6) minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment;

(7) establishing a viable Federal-State partnership to carry out the purposes of this chapter and insuring that the Administrator will, in carrying out the provisions of subchapter III of this chapter, give a high priority to assisting and cooperating with States in obtaining full authorization of State programs under subchapter III of this chapter;

(8) providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;

(9) promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;

(10) promoting the demonstration, construction, and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and

(11) establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.

(b) National policy

The Congress hereby declares it to be the national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.

(As amended Pub. L. 98-616, title I, § 101(b), Nov. 8, 1984, 98 Stat. 3224.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, § 101(b)(1), designated existing provisions as subsec. (a).

Subsec. (a)(4) to (11). Pub. L. 98-616, § 101(b)(2), struck out par. (4) which provided for regulating the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment, added pars. (4) to (7), and redesignated former pars. (5) to (8) as (8) to (11), respectively.

Subsec. (b). Pub. L. 98-616, § 101(b)(1), added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6982 of this title.

§ 6903. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5919, 6921, 6991, 9601 of this title; title 46 App. section 883.

§ 6905. Application of chapter and integration with other Acts

[See main edition for text of (a)]

(b) Integration with other Acts

(1) The Administrator shall integrate all provisions of this chapter for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [33 U.S.C. 1401 et seq.], and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this chapter and in the other acts referred to in this subsection.

(2)(A) As promptly as practicable after November 8, 1984, the Administrator shall submit a report describing—

(i) the current data and information available on emissions of polychlorinated dibenzo-p-dioxins from resource recovery facilities burning municipal solid waste;

(ii) any significant risks to human health posed by these emissions; and

(iii) operating practices appropriate for controlling these emissions.

(B) Based on the report under subparagraph (A) and on any future information on such emissions, the Administrator may publish advisories or guidelines regarding the control of dioxin emissions from such facilities. Nothing in this paragraph shall be construed to preempt or otherwise affect the authority of the Administrator to promulgate any regulations under the Clean Air Act [42 U.S.C. 7401 et seq.] regarding emissions of polychlorinated dibenzo-p-dioxins.

(3) Notwithstanding any other provisions of law, in developing solid waste plans, it is the intention of this chapter that in determining the size of a waste-to-energy facility, adequate provisions shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interests within the area encompassed by the solid waste plan.

[See main edition for text of (c)]

(As amended Pub. L. 98-616, title I, § 102, title V, § 501(f)(2), Nov. 8, 1984, 98 Stat. 3225, 3276.)

References in Text

The Clean Air Act, referred to in subsec. (b)(1), (2)(B), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

Amendments

1984—Subsec. (b)(1), (2). Pub. L. 98-616, § 102, designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(3). Pub. L. 98-616, § 501(f)(2), added par. (3).

Uranium Mill Tailings

Section 703 of Pub. L. 98-616 provided that: "Nothing in the Hazardous and Solid Waste Amendments of 1984 [see Short Title of 1984 Amendment note set out under section 6901 of this title] shall be construed to affect, modify, or amend the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7901 et seq.]".

§ 6907. Solid waste management information and guidelines

Section Referred to in Other Sections

This section is referred to in sections 5919, 5920, 6945, 6948, 6949a, 6964, 6981, 6984, 6986 of this title.

SUBCHAPTER II—OFFICE OF SOLID WASTE; AUTHORITIES OF THE ADMINISTRATOR

§ 6911a. Assistant Administrator of Environmental Protection Agency; appointment, etc.

The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], shall be appointed by the President by and with the advice and consent of the Senate.

(As amended Pub. L. 98-80, § 2(c)(2)(B), Aug. 23, 1983, 97 Stat. 485.)

Amendments

1983—Pub. L. 98-80 struck out ", and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5" after "advice and consent of the Senate".

Section Referred to in Other Sections

This section is referred to in section 4370a of this title.

§ 6912. Authorities of Administrator

[See main edition for text of (a) and (b)]

(c) Criminal investigations

In carrying out the provisions of this chapter, the Administrator, and duly-designated agents and employees of the Environmental Protection Agency, are authorized to initiate and conduct investigations under the criminal provisions of this chapter, and to refer the results of these investigations to the Attorney General for prosecution in appropriate cases.

(As amended Pub. L. 98-616, title IV, § 403(d)(4), Nov. 8, 1984, 98 Stat. 3272.)

Amendments

1984—Subsec. (c). Pub. L. 98-616 added subsec. (c).

§ 6915. Annual report

The Administrator shall transmit to the Congress and the President, not later than ninety days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Office during the preceding fiscal year. Each such report shall include—

(1) a statement of specific and detailed objectives for the activities and programs conducted and assisted under this chapter;

[See main edition for text of (2) to (6)]

(As amended Pub. L. 98-616, title V, § 502(b), Nov. 8, 1984, 98 Stat. 3276.)

Amendments

1984—Par. (1). Pub. L. 98-616 substituted "detailed" for "detail".

§ 6916. General authorization

(a) General administration

There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of this chapter, $35,000,000 for the fiscal year ending September 30, 1977, $38,000,000 for the fiscal year ending September 30, 1978, $42,000,000 for the fiscal year ending September 30, 1979, $70,000,000 for the fiscal year ending September 30, 1980,

$80,000,000 for the fiscal year ending September 30, 1981, $80,000,000 for the fiscal year ending September 30, 1982, $70,000,000 for the fiscal year ending September 30, 1985, $80,000,000 for the fiscal year ending September 30, 1986, $80,000,000 for the fiscal year ending September 30, 1987, and $80,000,000 for the fiscal year 1988.

[*See main edition for text of* (*b*) *to* (*d*)]

(e) Criminal investigators

There is authorized to be appropriated to the Administrator $3,246,000 for the fiscal year 1985, $2,408,300 for the fiscal year 1986, $2,529,000 for the fiscal year 1987, and $2,529,000 for the fiscal year 1988 to be used—

(1) for additional officers or employees of the Environmental Protection Agency authorized by the Administrator to conduct criminal investigations (to investigate, or supervise the investigation of, any activity for which a criminal penalty is provided) under this chapter; and

(2) for support costs for such additional officers or employees.

(f) Underground storage tanks

(1) There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of subchapter IX of this chapter (relating to regulation of underground storage tanks), $10,000,000 for each of the fiscal years 1985 through 1988.

(2) There is authorized to be appropriated $25,000,000 for each of the fiscal years 1985 through 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of approved State underground storage tank release detection, prevention, and correction programs under subchapter IX of this chapter.

(As amended Pub. L. 98-616, § 2(a), (i), Nov. 8, 1984, 98 Stat. 3222, 3223.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, § 2(a), substituted "$80,000,000 for the fiscal year ending September 30, 1982, $70,000,000 for the fiscal year ending September 30, 1985, $80,000,000 for the fiscal year ending September 30, 1986, $80,000,000 for the fiscal year ending September 30, 1987, and $80,000,000 for the fiscal year 1988" for "and $80,000,000 for the fiscal year ending September 30, 1982".

Subsecs. (e), (f). Pub. L. 98-616, § 2(i), added subsecs. (e) and (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6991h, 6991i of this title.

§ 6917. Office of Ombudsman

(a) Establishment; functions

The Administrator shall establish an Office of Ombudsman, to be directed by an Ombudsman. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests for information submitted by any person with respect to any program or requirement under this chapter.

(b) Authority to render assistance

The Ombudsman shall render assistance with respect to the complaints, grievances, and requests submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Administrator.

(c) Effect on procedures for grievances, appeals, or administrative matters

The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this chapter, any other provision of law, or any Federal regulation.

(d) Termination

The Office of the Ombudsman shall cease to exist 4 years after November 8, 1984.

(Pub. L. 89-272, title II, § 2008, as added Pub. L. 98-616, title I, § 103(a), Nov. 8, 1984, 98 Stat. 3225.)

SUBCHAPTER III—HAZARDOUS WASTE MANAGEMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2022, 6902, 6905, 6916, 6948, 6949a, 6972, 6991, 9601, 9603, 9604, 9607, 9608, 9651 of this title.

§ 6921. Identification and listing of hazardous waste

[*See main edition for text of* (*a*)]

(b) Identification and listing

(1) Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 6903(5) of this title), which shall be subject to the provisions of this subchapter. Such regulations shall be based on the criteria promulgated under subsection (a) of this section and shall be revised from time to time thereafter as may be appropriate. The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratagens) at levels in excess of levels which endanger human health.

[*See main edition for text of* (*2*) *and* (*3*); (*c*)]

(d) Small quantity generator waste

(1) By March 31, 1986, the Administrator shall promulgate standards under sections 6922, 6923, and 6924 of this title for hazardous waste generated by a generator in a total quantity of hazardous waste greater than one hundred kilograms but less than one thousand kilograms during a calendar month.

(2) The standards referred to in paragraph (1), including standards applicable to the legitimate use, reuse, recycling, and reclamation of such wastes, may vary from the standards ap-

plicable to hazardous waste generated by larger quantity generators, but such standards shall be sufficient to protect human health and the environment.

(3) Not later than two hundred and seventy days after November 8, 1984, any hazardous waste which is part of a total quantity generated by a generator generating greater than one hundred kilograms but less than one thousand kilograms during one calendar month and which is shipped off the premises on which such waste is generated shall be accompanied by a copy of the Environmental Protection Agency Uniform Hazardous Waste Manifest form signed by the generator. This form shall contain the following information:

(A) the name and address of the generator of the waste;

(B) the United States Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA), if applicable;

(C) the number and type of containers;

(D) the quantity of waste being transported; and

(E) the name and address of the facility designated to receive the waste.

If subparagraph (B) is not applicable, in lieu of the description referred to in such subparagraph (B), the form shall contain the Environmental Protection Agency identification number, or a generic description of the waste, or a description of the waste by hazardous waste characteristic. Additional requirements related to the manifest form shall apply only if determined necessary by the Administrator to protect human health and the environment.

(4) The Administrator's responsibility under this subchapter to protect human health and the environment may require the promulgation of standards under this subchapter for hazardous wastes which are generated by any generator who does not generate more than one hundred kilograms of hazardous waste in a calendar month.

(5) Until the effective date of standards required to be promulgated under paragraph (1), any hazardous waste identified or listed under this section generated by any generator during any calendar month in a total quantity greater than one hundred kilograms but less than one thousand kilograms, which is not treated, stored, or disposed of at a hazardous waste treatment, storage, or disposal facility with a permit under section 6925 of this title, shall be disposed of only in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) Standards promulgated as provided in paragraph (1) shall, at a minimum, require that all treatment, storage, or disposal of hazardous wastes generated by generators referred to in paragraph (1) shall occur at a facility with interim status or a permit under this subchapter, except that onsite storage of hazardous waste generated by a generator generating a total quantity of hazardous waste greater than one hundred kilograms, but less than one thousand kilograms during a calendar month, may occur without the requirement of a permit for up to one hundred and eighty days. Such onsite storage may occur without the requirement of a permit for not more than six thousand kilograms for up to two hundred and seventy days if such generator must ship or haul such waste over two hundred miles.

(7)(A) Nothing in this subsection shall be construed to affect or impair the validity of regulations promulgated by the Secretary of Transportation pursuant to the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.].

(B) Nothing in this subsection shall be construed to affect, modify, or render invalid any requirements in regulations promulgated prior to January 1, 1983 applicable to any acutely hazardous waste identified or listed under this section which is generated by any generator during any calendar month in a total quantity less than one thousand kilograms.

(8) Effective March 31, 1986, unless the Administrator promulgates standards as provided in paragraph (1) of this subsection prior to such date, hazardous waste generated by any generator in a total quantity greater than one hundred kilograms but less than one thousand kilograms during a calendar month shall be subject to the following requirements until the standards referred to in paragraph (1) of this subsection have become effective:

(A) the notice requirements of paragraph (3) of this subsection shall apply and in addition, the information provided in the form shall include the name of the waste transporters and the name and address of the facility designated to receive the waste;

(B) except in the case of the onsite storage referred to in paragraph (6) of this subsection, the treatment, storage, or disposal of such waste shall occur at a facility with interim status or a permit under this subchapter;

(C) generators of such waste shall file manifest exception reports as required of generators producing greater amounts of hazardous waste per month except that such reports shall be filed by January 31, for any waste shipment occurring in the last half of the preceding calendar year, and by July 31, for any waste shipment occurring in the first half of the calendar year; and

(D) generators of such waste shall retain for three years a copy of the manifest signed by the designated facility that has received the waste.

Nothing in this paragraph shall be construed as a determination of the standards appropriate under paragraph (1).

(9) The last sentence of section 6930(b) of this title shall not apply to regulations promulgated under this subsection.

(e) Specified wastes

(1) Not later than 6 months after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) of this section, additional wastes containing chlorinated dioxins or chlorinated-dibenzofurans. Not later than one year after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) of this section wastes contain-

ing remaining halogenated dioxins and halogenated-dibenzofurans.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall make a determination of whether or not to list under subsection (b)(1) of this section the following wastes: Chlorinated Aliphatics, Dioxin, Dimethyl Hydrazine, TDI (toluene diisocyanate), Carbamates, Bromacil, Linuron, Organo-bromines, solvents, refining wastes, chlorinated aromatics, dyes and pigments, inorganic chemical industry wastes, lithium batteries, coke byproducts, paint production wastes, and coal slurry pipeline effluent.

(f) Delisting procedures

(1) When evaluating a petition to exclude a waste generated at a particular facility from listing under this section, the Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. The Administrator shall provide notice and opportunity for comment on these additional factors before granting or denying such petition.

(2)(A) To the maximum extent practicable the Administrator shall publish in the Federal Register a proposal to grant or deny a petition referred to in paragraph (1) within twelve months after receiving a complete application to exclude a waste generated at a particular facility from being regulated as a hazardous waste and shall grant or deny such a petition within twenty-four months after receiving a complete application.

(B) The temporary granting of such a petition prior to November 8, 1984, without the opportunity for public comment and the full consideration of such comments shall not continue for more than twenty-four months after November 8, 1984. If a final decision to grant or deny such a petition has not been promulgated after notice and opportunity for public comment within the time limit prescribed by the preceding sentence, any such temporary granting of such petition shall cease to be in effect.

(g) EP toxicity

Not later than twenty-eight months after November 8, 1984, the Administrator shall examine the deficiencies of the extraction procedure toxicity characteristic as a predictor of the leaching potential of wastes and make changes in the extraction procedure toxicity characteristic, including changes in the leaching media, as are necessary to insure that it accurately predicts the leaching potential of wastes which pose a threat to human health and the environment when mismanaged.

(h) Additional characteristics

Not later than two years after November 8, 1984, the Administrator shall promulgate regulations under this section identifying additional characteristics of hazardous waste, including measures or indicators of toxicity.

(i) Clarification of household waste exclusion

A resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subchapter, if—

(1) such facility—

(A) receives and burns only—

(i) household waste (from single and multiple dwellings, hotels, motels, and other residential sources), and

(ii) solid waste from commercial or industrial sources that does not contain hazardous waste identified or listed under this section, and

(B) does not accept hazardous wastes identified or listed under this section, and

(2) the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(As amended Pub. L. 98-616, title II, §§ 221(a), 222, 223(a), Nov. 8, 1984, 98 Stat. 3248, 3251, 3252.)

References in Text

The Hazardous Materials Transportation Act, referred to in subsec. (d)(7)(A), is title I of Pub. L. 93-633, Jan. 3, 1975, 88 Stat. 2156, as amended, which is classified principally to chapter 27 (§ 1801 et seq.) of Title 49, Appendix, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 49, Appendix, and Tables.

Amendments

1984—Subsec. (b)(1). Pub. L. 98-616, § 222(b), added: "The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratagens) at levels in excess of levels which endanger human health."

Subsec. (d). Pub. L. 98-616, § 221(a), added subsec. (d).

Subsecs. (e) to (h). Pub. L. 98-616, § 222(a), added subsecs. (e) to (h).

Subsec. (i). Pub. L. 98-616, § 223(a), added subsec. (i).

Small Quantity Generator Waste; Inform and Educate; Waste Generators

Section 221(b) of Pub. L. 98-616 provided that: "The Administrator of the Environmental Protection Agency shall undertake activities to inform and educate the waste generators of their responsibilities under the amendments made by this section [enacting subsec. (d) of this section] during the period within thirty months after the enactment of the Hazardous and Solid Waste Amendments of 1984 [Nov. 8, 1984] to help assure compliance."

Study of Existing Manifest System for Hazardous Wastes as Applicable to Small Quantity Generators; Submittal to Congress

Section 221(d) of Pub. L. 98-616 provided that: "The Administrator of the Environmental Protection Agency shall cause to be studied the existing manifest system for hazardous wastes as it applies to small quantity generators and recommend whether the current system shall be retained or whether a new system should be introduced. The study shall include an analysis of the cost versus the benefits of the system studied as well as an analysis of the ease of retrieving and collating information and identifying a given substance. Finally, any new proposal shall include a list of those standards that are necessary to protect human health and the environment. Such study shall be submitted to the Congress not later than April 1, 1987."

Administrative Burdens; Small Quantity Generators; Retention of Current System; Report to Congress

Section 221(e) of Pub. L. 98-616 provided that: "The Administrator of the Environmental Protection Agency, in conjunction with the Secretary of Transportation, shall prepare and submit to the Congress a report on the feasibility of easing the administrative burden on small quantity generators, increasing compliance with statutory and regulatory requirements, and simplifying enforcement efforts through a program of licensing hazardous waste transporters to assume the responsibilities of small quantity generators relating to the preparation of manifests and associated recordkeeping and reporting requirements. The report shall examine the appropriate licensing requirements under such a program including the need for financial assurances by licensed transporters and shall make recommendations on provisions and requirements for such a program including the appropriate division of responsibilities between the Department of Transportation and the Environmental Protection Administration. Such report shall be submitted to the Congress not later than April 1, 1987."

Educational Institutions; Accumulation, Storage and Disposal of Hazardous Wastes; Study

Section 221(f) of Pub. L. 98-616 provided that:

"(1) The Administrator of the Environmental Protection Agency shall, in consultation with the Secretary of Education, the States, and appropriate educational associations, conduct a comprehensive study of problems associated with the accumulation, storage and disposal of hazardous wastes from educational institutions. The study shall include an investigation of the feasibility and availability of environmentally sound methods for the treatment, storage or disposal of hazardous waste from such institutions, taking into account the types and quantities of such waste which are generated by these institutions, and the nonprofit nature of these institutions.

"(2) The Administrator shall submit a report to the Congress containing the findings of the study carried out under paragraph (1) not later than April 1, 1987.

"(3) For purposes of this subsection—

"(A) the term 'hazardous waste' means hazardous waste which is listed or identified under Section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921];

"(B) the term 'educational institution' includes, but shall not be limited to,

"(i) secondary schools as defined in section 198(a)(7) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2854(a)(7)]; and

"(ii) institutions of higher education as defined in section 1201(a) of the Higher Education Act of 1965 [20 U.S.C. 1141(a)]."

Section Referred to in Other Sections

This section is referred to in sections 6923, 6924, 6925, 6930, 6935, 6938, 6939, 6945, 6949a of this title; title 26 section 4682.

§ 6922. Standards applicable to generators of hazardous waste

(a) In general

Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

(1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;

(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;

(3) use of appropriate containers for such hazardous waste;

(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

(5) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; and

(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out a permit program pursuant to this subchapter) at least once every two years, setting out—

(A) the quantities and nature of hazardous waste identified or listed under this subchapter that he has generated during the year;

(B) the disposition of all hazardous waste reported under subparagraph (A);

(C) the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(D) the changes in volume and toxicity of waste actually achieved during the year in question in comparison with previous years, to the extent such information is available for years prior to November 8, 1984.

(b) Waste minimization

Effective September 1, 1985, the manifest required by subsection (a)(5) of this section shall contain a certification by the generator that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(As amended Pub. L. 98-616, title II, § 224(a), Nov. 8, 1984, 98 Stat. 3252.)

References in Text

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (a)(5), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§ 1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

Amendments

1984—Subsec. (a). Pub. L. 98-616, § 224(a)(1), designated existing provisions as subsec. (a).

Subsec. (a)(6). Pub. L. 98-616, § 224(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subchapter) at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

"(A) the quantities of hazardous waste identified or listed under this subchapter that he has generated during a particular time period; and

"(B) the disposition of all hazardous waste reported under subparagraph (A)."

Subsec. (b). Pub. L. 98-616, § 224(a)(2), added subsec. (b).

Section Referred to in Other Sections

This section is referred to in sections 6921, 6923, 6924, 6926, 6935, 6938, 6971 of this title; title 26 section 4682.

§ 6923. Standards applicable to transporters of hazardous waste

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Fuel from hazardous waste

Not later than two years after November 8, 1984, and after opportunity for public hearing, the Administrator shall promulgate regulations establishing standards, applicable to transporters of fuel produced (1) from any hazardous waste identified or listed under section 6921 of this title, or (2) from any hazardous waste identified or listed under section 6921 of this title and any other material, as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (4) of subsection (a) of this section as may be appropriate.

(As amended Pub. L. 98-616, title II, § 204(b)(2), Nov. 8, 1984, 98 Stat. 3238.)

References in Text

Section 6922(5) of this title, referred to in subsec. (a)(3), was redesignated section 6922(a)(5) of this title, by Pub. L. 98-616, title II, § 224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

Amendments

1984—Subsec. (c). Pub. L. 98-616 added subsec. (c).

Section Referred to in Other Sections

This section is referred to in sections 6921, 6926, 6935, 6938, 6971 of this title.

§ 6924. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities

(a) In general

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations. Such standards shall include, but need not be limited to, requirements respecting—

(1) maintaining records of all hazardous wastes identified or listed under this chapter which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;

(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 6922(5) [2] of this title;

(3) treatment, storage, or disposal of all such waste received by the facility pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;

(4) the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

(5) contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;

(6) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility (including financial responsibility for corrective action) as may be necessary or desirable; and

(7) compliance with the requirements of section 6925 of this title respecting permits for treatment, storage, or disposal.

No private entity shall be precluded by reason of criteria established under paragraph (6) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous waste.

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[2] See References in Text note below.

(b) Salt dome formations, salt bed formations, underground mines and caves

(1) Effective on November 8, 1984, the placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as—

(A) the Administrator has determined, after notice and opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment;

(B) the Administrator has promulgated performance and permitting standards for such facilities under this subchapter, and;

(C) a permit has been issued under section 6925(c) of this title for the facility concerned.

(2) Effective on November 8, 1984, the placement of any hazardous waste other than a hazardous waste referred to in paragraph (1) in a salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as a permit has been issued under section 6925(c) of this title for the facility concerned.

(3) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) of this section applies shall affect the prohibition contained in paragraph (1) or (2) of this subsection.

(4) Nothing in this subsection shall apply to the Department of Energy Waste Isolation Pilot Project in New Mexico.

(c) Liquids in landfills

(1) Effective 6 months after November 8, 1984, the placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not absorbents have been added) in any landfill is prohibited. Prior to such date the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator regarding liquid hazardous waste shall remain in force and effect to the extent such requirements are applicable to the placement of bulk or noncontainerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall promulgate final regulations which—

(A) minimize the disposal of containerized liquid hazardous waste in landfills, and

(B) minimize the presence of free liquids in containerized hazardous waste to be disposed of in landfills.

Such regulations shall also prohibit the disposal in landfills of liquids that have been absorbed in materials that biodegrade or that release liquids when compressed as might occur during routine landfill operations. Prior to the date on which such final regulations take effect, the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator shall remain in force and effect to the extent such requirements are applicable to the disposal of containerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(3) Effective twelve months after November 8, 1984, the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required under section 6925(c) of this title or which is operating pursuant to interim status granted under section 6925(e) of this title is prohibited unless the owner or operator of such landfill demonstrates to the Administrator, or the Administrator determines, that—

(A) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted under section 6925(c) of this title or operating pursuant to interim status under section 6925(e) of this title, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(B) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water.

As used in subparagraph (B), the term "underground source of drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act) [42 U.S.C. 300f et seq.].

(4) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) of this section applies shall affect the prohibition contained in paragraph (1) of this subsection.

(d) Prohibitions on land disposal of specified wastes

(1) Effective 32 months after November 8, 1984 (except as provided in subsection (f) of this section with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition on one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account—

(A) the long-term uncertainties associated with land disposal,

(B) the goal of managing hazardous waste in an appropriate manner in the first instance, and

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous wastes and their hazardous constituents.

For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section), unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) Paragraph (1) applies to the following hazardous wastes listed or identified under section 6921 of this title:

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) arsenic and/or compounds (as As) 500 mg/l;

(ii) cadmium and/or compounds (as Cd) 100 mg/l;

(iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/l;

(iv) lead and/or compounds (as Pb) 500 mg/l;

(v) mercury and/or compounds (as Hg) 20 mg/l;

(vi) nickel and/or compounds (as Ni) 134 mg/l;

(vii) selenium and/or compounds (as Se) 100 mg/l; and

(viii) thallium and/or compounds (as Th) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg.

When necessary to protect human health and the environment, the Administrator shall substitute more stringent concentration levels than the levels specified in subparagraphs (A) through (E).

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(e) Solvents and dioxins

(1) Effective twenty-four months after November 8, 1984 (except as provided in subsection (f) of this section with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition of one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraph (A) through (C) of subsection (d)(1) of this section. For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section), unless upon application by an interested person it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) The hazardous wastes to which the prohibition under paragraph (1) applies are as follows—

(A) dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 (as referred to in the proposed rule published by the Administrator in the Federal Register for April 4, 1983), and

(B) those hazardous wastes numbered F001, F002, F003, F004, and F005 in regulations promulgated by the Administrator under section 6921 of this title (40 C.F.R. 261.31 (July 1, 1983)), as those regulations are in effect on July 1, 1983.

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(f) Disposal into deep injection wells; specified subsection (d) wastes; solvents and dioxins

(1) Not later than forty-five months after November 8, 1984, the Administrator shall complete a review of the disposal of all hazardous wastes referred to in paragraph (2) of subsection (d) of this section and in paragraph (2) of subsection (e) of this section by underground injection into deep injection wells.

(2) Within forty-five months after November 8, 1984, the Administrator shall make a determination regarding the disposal by underground injection into deep injection wells of the hazardous wastes referred to in paragraph (2) of subsection (d) of this section and the hazardous wastes referred to in paragraph (2) of subsection (e) of this section. The Administrator shall promulgate final regulations prohibiting the disposal of such wastes into such wells if it may reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1) of this section. In promulgating such regulations, the Administrator shall consider each hazardous waste referred to in paragraph (2) of subsection (d) of this section or in paragraph (2) of subsection (e) of this section which is prohibited from disposal into such wells by any State.

(3) If the Administrator fails to make a determination under paragraph (2) for any hazardous waste referred to in paragraph (2) of subsection (d) of this section or in paragraph (2) of subsection (e) of this section within forty-five months after November 8, 1984, such hazardous waste shall be prohibited from disposal into any deep injection well.

(4) As used in this subsection, the term "deep injection well" means a well used for the underground injection of hazardous waste other than

a well to which section 6979a(a) of this title applies.

(g) Additional land disposal prohibition determinations

(1) Not later than twenty-four months after November 8, 1984, the Administrator shall submit a schedule to Congress for—

(A) reviewing all hazardous wastes listed (as of November 8, 1984) under section 6921 of this title other than those wastes which are referred to in subsection (d) or (e) of this section; and

(B) taking action under paragraph (5) of this subsection with respect to each such hazardous waste.

(2) The Administrator shall base the schedule on a ranking of such listed wastes considering their intrinsic hazard and their volume such that decisions regarding the land disposal of high volume hazardous wastes with high intrinsic hazard shall, to the maximum extent possible, be made by the date forty-five months after November 8, 1984. Decisions regarding low volume hazardous wastes with lower intrinsic hazard shall be made by the date sixty-six months after November 8, 1984.

(3) The preparation and submission of the schedule under this subsection shall not be subject to the Paperwork Reduction Act of 1980 [44 U.S.C. 3501 et seq.]. No hearing on the record shall be required for purposes of preparation or submission of the schedule. The schedule shall not be subject to judicial review.

(4) The schedule under this subsection shall require that the Administrator shall promulgate regulations in accordance with paragraph (5) or make a determination under paragraph (5)—

(A) for at least one-third of all hazardous wastes referred to in paragraph (1) by the date forty-five months after November 8, 1984;

(B) for at least two-thirds of all such listed wastes by the date fifty-five months after November 8, 1984; and

(C) for all such listed wastes and for all hazardous wastes identified under section 6921 of this title by the date sixty-six months after November 8, 1984.

In the case of any hazardous waste identified or listed under section 6921 of this title after November 8, 1984, the Administrator shall determine whether such waste shall be prohibited from one or more methods of land disposal in accordance with paragraph (5) within six months after the date of such identification or listing.

(5) Not later than the date specified in the schedule published under this subsection, the Administrator shall promulgate final regulations prohibiting one or more methods of land disposal of the hazardous wastes listed on such schedule except for methods of land disposal which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraph[3] (A) through (C) of subsection (d)(1) of this section. For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment (except with respect to a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section) unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(6)(A) If the Administrator fails (by the date forty-five months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first one-third of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (*o*) of this section which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(B) If the Administrator fails (by the date 55 months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first two-thirds of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (*o*) of this section which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(C) If the Administrator fails to promulgate regulations, or make a determination under paragraph (5) for any hazardous waste referred to in paragraph (1) within 66 months after November 8, 1984, such hazardous waste shall be prohibited from land disposal.

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[3] So in original. Probably should be "subparagraphs".

(h) Variance from land disposal prohibitions

(1) A prohibition in regulations under subsection (d), (e), (f), or (g) of this section shall be effective immediately upon promulgation.

(2) The Administrator may establish an effective date different from the effective date which would otherwise apply under subsection (d), (e), (f), or (g) of this section with respect to a specific hazardous waste which is subject to a prohibition under subsection (d), (e), (f), or (g) of this section or under regulations under subsection (d), (e), (f), or (g) of this section. Any such other effective date shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. Any such other effective date shall in no event be later than 2 years after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g) of this section.

(3) The Administrator, after notice and opportunity for comment and after consultation with appropriate State agencies in all affected States, may on a case-by-case basis grant an extension of the effective date which would otherwise apply under subsection (d), (e), (f), or (g) of this section or under paragraph (2) for up to one year, where the applicant demonstrates that there is a binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date. Such extension shall be renewable once for no more than one additional year.

(4) Whenever another effective date (hereinafter referred to as a "variance") is established under paragraph (2), or an extension is granted under paragraph (3), with respect to any hazardous waste, during the period for which such variance or extension is in effect, such hazardous waste may be disposed of in a landfill or surface impoundment only if such facility is in compliance with the requirements of subsection (*o*) of this section.

(i) Publication of determination

If the Administrator determines that a method of land disposal will be protective of human health and the environment, he shall promptly publish in the Federal Register notice of such determination, together with an explanation of the basis for such determination.

(j) Storage of hazardous waste prohibited from land disposal

In the case of any hazardous waste which is prohibited from one or more methods of land disposal under this section (or under regulations promulgated by the Administrator under any provision of this section) the storage of such hazardous waste is prohibited unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

(k) "Land disposal" defined

For the purposes of this section, the term "land disposal", when used with respect to a specified hazardous waste, shall be deemed to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

(*l*) Ban on dust suppression

The use of waste or used oil or other material, which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under section 6921 of this title (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

(m) Treatment standards for wastes subject to land disposal prohibition

(1) Simultaneously with the promulgation of regulations under subsection (d), (e), (f), or (g) of this section prohibiting one or more methods of land disposal of a particular hazardous waste, and as appropriate thereafter, the Administrator shall, after notice and an opportunity for hearings and after consultation with appropriate Federal and State agencies, promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

(2) If such hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to any prohibition promulgated under subsection (d), (e), (f), or (g) of this section and may be disposed of in a land disposal facility which meets the requirements of this subchapter. Any regulation promulgated under this subsection for a particular hazardous waste shall become effective on the same date as any applicable prohibition promulgated under subsection (d), (e), (f), or (g) of this section.

(n) Air emissions

Not later than thirty months after November 8, 1984, the Administrator shall promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment.

(*o*) Minimum technological requirements

(1) The regulations under subsection (a) of this section shall be revised from time to time to take into account improvements in the technology of control and measurement. At a minimum, such regulations shall require, and a permit issued pursuant to section 6925(c) of this title after November 8, 1984, by the Administrator or a State shall require—

(A) for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit, for which an application for a final determination regarding issuance of a permit under section 6925(c) of this title is received after November 8, 1984—

(i) the installation of two or more liners and a leachate collection system above (in the case of a landfill) and between such liners; and

(ii) ground water monitoring; and

(B) for each incinerator which receives a permit under section 6925(c) of this title after November 8, 1984, the attainment of the minimum destruction and removal efficiency required by regulations in effect on June 24, 1982.

The requirements of this paragraph shall apply with respect to all waste received after the issuance of the permit.

(2) Paragraph (1)(A)(i) shall not apply if the owner or operator demonstrates to the Administrator, and the Administrator finds for such landfill or surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(3) The double-liner requirement set forth in paragraph (1)(A)(i) may be waived by the Administrator for any monofill, if—

(A) such monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand,

(B) such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Extraction Procedure ("EP") toxicity characteristics set forth in regulations under this subchapter, and

(C) such monofill meets the same requirements as are applicable in the case of a waiver under section 6925(j)(2) or (4) of this title.

(4)(A) Not later than thirty months after November 8, 1984, the Administrator shall promulgate standards requiring that new landfill units, surface impoundment units, waste piles, underground tanks and land treatment units for the storage, treatment, or disposal of hazardous waste identified or listed under section 6921 of this title shall be required to utilize approved leak detection systems.

(B) For the purposes of subparagraph (A)—

(i) the term "approved leak detection system" means a system or technology which the Administrator determines to be capable of detecting leaks of hazardous constituents at the earliest practicable time; and

(ii) the term "new units" means units on which construction commences after the date of promulgation of regulations under this paragraph.

(5)(A) The Administrator shall promulgate regulations or issue guidance documents implementing the requirements of paragraph (1)(A) within two years after November 8, 1984.

(B) Until the effective date of such regulations or guidance documents, the requirement for the installation of two or more liners may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated [4] and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(6) Any permit under section 6925 of this title which is issued for a landfill located within the State of Alabama shall require the installation of two or more liners and a leachate collection system above and between such liners, notwithstanding any other provision of this chapter.

(7) In addition to the requirements set forth in this subsection, the regulations referred to in paragraph (1) shall specify criteria for the acceptable location of new and existing treatment, storage, or disposal facilities as necessary to protect human health and the environment. Within 18 months after November 8, 1984, the Administrator shall publish guidance criteria identifying areas of vulnerable hydrogeology.

(p) Ground water monitoring

The standards under this section concerning ground water monitoring which are applicable to surface impoundments, waste piles, land treatment units, and landfills shall apply to such a facility whether or not—

(1) the facility is located above the seasonal high water table;

(2) two liners and a leachate collection system have been installed at the facility; or

(3) the owner or operator inspects the liner (or liners) which has been installed at the facility.

This subsection shall not be construed to affect other exemptions or waivers from such standards provided in regulations in effect on November 8, 1984, or as may be provided in revisions to those regulations, to the extent consistent with this subsection. The Administrator is authorized on a case-by-case basis to exempt from ground water monitoring requirements under this section (including subsection (*o*) of this section) any engineered structure which the Administrator finds does not receive or contain liquid waste (nor waste containing free liquids), is designed and operated to exclude liquid from precipitation or other runoff, utilizes multiple leak detection systems within the outer layer of containment, and provides for continuing operation and maintenance of these leak detection systems during the operating period, closure, and the period required for post-closure monitoring and for which the Administrator concludes on the basis of such findings that there is a reasonable certainty hazardous constituents will not migrate beyond the outer layer of containment prior to the end of the period required for post-closure monitoring.

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[4] So in original. Probably should be followed by a comma.

(q) Hazardous waste used as fuel

(1) Not later than two years after November 8, 1984, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing such—

(A) standards applicable to the owners and operators of facilities which produce a fuel—

(i) from any hazardous waste identified or listed under section 6921 of this title, or

(ii) from any hazardous waste identified or listed under section 6921 of this title and any other material;

(B) standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title; and

(C) standards applicable to any person who distributes or markets any fuel which is produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title [5]

as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (7) of subsection (a) of this section as may be appropriate. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. For purposes of this subsection, the term "hazardous waste listed under section 6921 of this title" includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel.

(2)(A) This subsection, subsection (r) of this section, and subsection (s) of this section shall not apply to petroleum refinery wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more characteristics by which a substance would be identified as a hazardous waste under section 6921 of this title.

(B) The Administrator may exempt from the requirements of this subsection, subsection (r) of this section, or subsection (s) of this section facilities which burn de minimis quantities of hazardous waste as fuel, as defined by the Administrator, if the wastes are burned at the same facility at which such wastes are generated; the waste is burned to recover useful energy, as determined by the Administrator on the basis of the design and operating characteristics of the facility and the heating value and other characteristics of the waste; and the waste is burned in a type of device determined by the Administrator to be designed and operated at a destruction and removal efficiency sufficient such that protection of human health and environment is assured.

(C)(i) After November 8, 1984, and until standards are promulgated and in effect under paragraph (2) of this subsection, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than five hundred thousand (based on the most recent census statistics) unless such kiln fully complies with regulations (as in effect on November 8, 1984) under this subchapter which are applicable to incinerators.

(ii) Any person who knowingly violates the prohibition contained in clause (i) shall be deemed to have violated section 6928(d)(2) of this title.

(r) Labeling

(1) Notwithstanding any other provision of law, until such time as the Administrator promulgates standards under subsection (q) of this section specifically superceding this requirement, it shall be unlawful for any person who is required to file a notification in accordance with paragraph (1) or (3) of section 6930 of this title to distribute or market any fuel which is produced from any hazardous waste identified or listed under section 6921 of this title, or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title if the invoice or the bill of sale fails—

(A) to bear the following statement: "WARNING: THIS FUEL CONTAINS HAZARDOUS WASTES", and

(B) to list the hazardous wastes contained therein.

Beginning ninety days after November 8, 1984, such statement shall be located in a conspicuous place on every such invoice or bill of sale and shall appear in conspicuous and legible type in contrast by typography, layouts, or color with other printed matter on the invoice or bill of sale.

(2) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from petroleum refining waste containing oil if—

(A) such materials are generated and reinserted onsite into the refining process;

(B) contaminants are removed; and

(C) such refining waste containing oil is converted along with normal process streams into pertroleum-derived [6] fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from oily materials, resulting from normal petroleum refining, production and transportation practices, if (A) contaminants are removed; and (B) such oily materials are converted along with

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[5] So in original. Probably should be followed by a semicolon.

[6] So in original. Probably should be "petroleum-derived".

normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard [7] Classification Manual.

(s) Recordkeeping

Not later than fifteen months after November 8, 1984, the Administrator shall promulgate regulations requiring that any person who is required to file a notification in accordance with subparagraph (1), (2), or (3), of section 6930(a) of this title shall maintain such records regarding fuel blending, distribution, or use as may be necessary to protect human health and the environment.

(t) Financial responsibility provisions

(1) Financial responsibility required by subsection (a) of this section may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any State court or any Federal Court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

(u) Continuing releases at permitted facilities

Standards promulgated under this section shall require, and a permit issued after November 8, 1984, by the Administrator or a State shall require, corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit. Permits issued under section 6925 of this title shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(v) Corrective action beyond facility boundary

As promptly as practicable after November 8, 1984, the Administrator shall amend the standards under this section regarding corrective action required at facilities for the treatment, storage, or disposal, of hazardous waste listed or identified under section 6921 of this title to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Administrator that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such regulations shall take effect immediately upon promulgation, notwithstanding section 6930(b) of this title, and shall apply to—

(1) all facilities operating under permits issued under subsection (c) of this section, and

(2) all landfills, surface impoundments, and waste pile units (including any new units, replacements of existing units, or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending promulgation of such regulations, the Administrator shall issue corrective action orders for facilities referred to in paragraphs (1) and (2), on a case-by-case basis, consistent with the purposes of this subsection.

(w) Underground tanks

Not later than March 1, 1985, the Administrator shall promulgate final permitting standards under this section for underground tanks that cannot be entered for inspection. Within forty-eight months after November 8, 1984, such standards shall be modified, if necessary, to cover at a minimum all requirements and standards described in section 6991b of this title.

(x) Mining and other special wastes

If (1) solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium, (2) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, or (3) cement kiln dust waste, is subject to regulation under this subchapter, the Administrator is authorized to modify the requirements of subsections (c), (d), (e), (f), (g), (*o*), and (u) of this section and section 6925(j) of this title, in the case of landfills or surface impoundments receiving such solid waste, to take into account the special characteristics of such wastes, the practical difficulties associated with implementation of such requirements, and site-specific characteristics, including but not limited to the climate, geology, hydrology and soil chemistry at the site, so long as such modified requirements assure protection of human health and the environment.

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[7] So in original. Probably should be "Standard Industrial".

(As amended Pub. L. 98-616, title II, §§ 201(a), 202(a), 203, 204(b)(1), 205-209, Nov. 8, 1984, 98 Stat. 3226, 3233, 3234, 3236, 3238-3240.)

REFERENCES IN TEXT

Section 6922(5) of this title, referred to in subsec. (a)(2), was redesignated section 6922(a)(5) of this title, by Pub. L. 98-616, title II, § 224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

The Safe Drinking Water Act, referred to in subsec. (c)(3), is Pub. L. 93-523, Dec. 16, 1974, 88 Stat. 1660, as amended, which is classified principally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title of 1974 Amendment note set out under section 201 of this title and Tables.

The Paperwork Reduction Act of 1980, referred to in subsec. (g)(3), is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, as amended, which is classified principally to chapter 35 (§ 3501 et seq.) of Title 44, Public Printing and Documents. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Federal Bankruptcy Code, referred to in subsec. (t)(2), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, § 201(a), designated existing provisions as subsec. (a).

Subsec. (a)(6). Pub. L. 98-616, § 208, added "(including financial responsibility for corrective action)".

Subsecs. (b) to (n). Pub. L. 98-616, § 201(a), added subsecs. (b) to (n).

Subsec. (*o*). Pub. L. 98-616, § 202(a), added subsec. (*o*).

Subsec. (p). Pub. L. 98-616, § 203, added subsec. (p).

Subsecs. (q) to (s). Pub. L. 98-616, § 204(b)(1), added subsecs. (q) to (s).

Subsec. (t). Pub. L. 98-616, § 205, added subsec. (t).

Subsec. (u). Pub. L. 98-616, § 206, added subsec. (u).

Subsecs. (v), (w). Pub. L. 98-616, § 207, added subsecs. (v) and (w).

Subsec. (x). Pub. L. 98-616, § 209, added subsec. (x).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6921, 6925, 6926, 6935, 6936, 6971 of this title; title 26 section 4682.

§ 6925. Permits for treatment, storage, or disposal of hazardous waste

(a) Permit requirements

Not later than eighteen months after October 21, 1976, the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 6930 of this title and upon and after such date the treatment, storage, or disposal of any such hazardous waste and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit. No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polycholorinated [6] biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.

[*See main edition for text of* (*b*)]

(c) Permit issuance

(1) Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 6924 of this title, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 6924 of this title, the permit shall specify the time allowed to complete the modifications.

(2)(A)(i) Not later than the date four years after November 8, 1984, in the case of each application under this subsection for a permit for a land disposal facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(ii) Not later than the date five years after November 8, 1984, in the case of each application for a permit under this subsection for an incinerator facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(B) Not later than the date eight years after November 8, 1984, in the case of each application for a permit under this subsection for any facility (other than a facility referred to in subparagraph (A)) which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(C) The time periods specified in this paragraph shall also apply in the case of any State which is administering an authorized hazardous waste program under section 6926 of this title. Interim status under subsection (e) of this section shall terminate for each facility referred to in subparagraph (A)(ii) or (B) on the expiration of the five- or eight-year period referred to in subparagraph (A) or (B), whichever is applicable, unless the owner or operator of the facility applies for a final determination regarding the issuance of a permit under this subsection within—

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[6] So in original. Probably should be "polychlorinated".

(i) two years after November 8, 1984 (in the case of a facility referred to in subparagraph (A)(ii)), or

(ii) four years after November 8, 1984 (in the case of a facility referred to in subparagraph (B)).

(3) Any permit under this section shall be for a fixed term, not to exceed 10 years in the case of any land disposal facility, storage facility, or incinerator or other treatment facility. Each permit for a land disposal facility shall be reviewed five years after date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of this section and section 6924 of this title. Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.

[*See main edition for text of* (*d*)]

(e) Interim status

(1) Any person who—

(A) owns or operates a facility required to have a permit under this section which facility—

(i) was in existence on November 19, 1980, or

(ii) is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section,

(B) has complied with the requirements of section 6930(a) of this title, and

(C) has made an application for a permit under this section [9]

shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated.

(2) In the case of each land disposal facility which has been granted interim status under this subsection before November 8, 1984, interim status shall terminate on the date twelve months after November 8, 1984, unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility before the date twelve months after November 8, 1984; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(3) In the case of each land disposal facility which is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section and which is granted interim status under this subsection, interim status shall terminate on the date twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility before the date twelve months after the date on which the facility first becomes subject to such permit requirement; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

[*See main edition for text of* (*f*)]

(g) Research, development, and demonstration permits

(1) The Administrator may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under this subchapter. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits—

(A) shall provide for the construction of such facilities, as necessary, and for operation of the facility for not longer than one year (unless renewed as provided in paragraph (4)), and

(B) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(C) shall include such requirements as the Administrator deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial reponsibility, closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

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[9] So in original. Probably should be followed by a comma.

The Administrator may apply the criteria set forth in this paragraph in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(2) For the purpose of expediting review and issuance of permits under this subsection, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the Administrator's general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures established under section 6974(b)(2) of this title regarding public participation.

(3) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(4) Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

(h) Waste minimization

Effective September 1, 1985, it shall be a condition of any permit issued under this section for the treatment, storage, or disposal of hazardous waste on the premises where such waste was generated that the permittee certify, no less often than annually, that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(i) Interim status facilities receiving wastes after July 26, 1982

The standards concerning ground water monitoring, unsaturated zone monitoring, and corrective action, which are applicable under section 6924 of this title to new landfills, surface impoundments, land treatment units, and waste-pile units required to be permitted under subsection (c) of this section shall also apply to any landfill, surface impoundment, land treatment unit, or waste-pile unit qualifying for the authorization to operate under subsection (e) of this section which receives hazardous waste after July 26, 1982.

(j) Interim status surface impoundments

(1) Except as provided in paragraph (2), (3), or (4), each surface impoundment in existence on November 8, 1984, and qualifying for the authorization to operate under subsection (e) of this section shall not receive, store, or treat hazardous waste after the date four years after November 8, 1984, unless such surface impoundment is in compliance with the requirements of section 6924(*o*)(1)(A) of this title which would apply to such impoundment if it were new.

(2) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) has at least one liner, for which there is no evidence that such liner is leaking; (B) is located more than one-quarter mile from an underground source of drinking water; and (C) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section.

(3) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) contains treated waste water during the secondary or subsequent phases of an aggressive biological treatment facility subject to a permit issued under section 1342 of title 33 (or which holds such treated waste water after treatment and prior to discharge); (B) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section; and (C)(i) is part of a facility in compliance with section 1311(b)(2) of title 33, or (ii) in the case of a facility for which no effluent guidelines required under section 1314(b)(2) of title 33 are in effect and no permit under section 1342(a)(1) of title 33 implementing section 1311(b)(2) of title 33 has been issued, is part of a facility in compliance with a permit under section 1342 of title 33, which is achieving significant degradation of toxic pollutants and hazardous constituents contained in the untreated waste stream and which has identified those toxic pollutants and hazardous constituents in the untreated waste stream to the appropriate permitting authority.

(4) The Administrator (or the State, in the case of a State with an authorized program), after notice and opportunity for comment, may modify the requirements of paragraph (1) for any surface impoundment if the owner or operator demonstrates that such surface impoundment is located, designed and operated so as to assure that there will be no migration of any hazardous constitutent [10] into ground water or surface water at any future time. The Administrator or the State shall take into account locational criteria established under section 6924(*o*)(7) of this title.

(5) The owner or operator of any surface impoundment potentially subject to paragraph (1) who has reason to believe that on the basis of paragraph (2), (3), or (4) such surface impoundment is not required to comply with the requirements of paragraph (1), shall apply to the Administrator (or the State, in the case of a State with an authorized program) not later than twenty-four months after November 8, 1984, for a determination of the applicability of paragraph (1) (in the case of paragraph (2) or (3)) or for a modification of the requirements of paragraph (1) (in the case of paragraph (4)), with respect to such surface impoundment. Such owner or operator shall provide, with such application, evidence pertinent to such decision, including:

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[10] So in original. Probably should be "constituent".

(A) an application for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility, if not previously submitted;

(B) evidence as to compliance with all applicable ground water monitoring requirements and the information and analysis from such monitoring;

(C) all reasonably ascertainable evidence as to whether such surface impoundment is leaking; and

(D) in the case of applications under paragraph (2) or (3), a certification by a registered professional engineer with academic training and experience in ground water hydrology that—

(i) under paragraph (2), the liner of such surface impoundment is designed, constructed, and operated in accordance with applicable requirements, such surface impoundment is more than one-quarter mile from an underground source of drinking water and there is no evidence such liner is leaking; or

(ii) under paragraph (3), based on analysis of those toxic pollutants and hazardous constituents that are likely to be present in the untreated waste stream, such impoundment satisfies the conditions of paragraph (3).

In the case of any surface impoundment for which the owner or operator fails to apply under this paragraph within the time provided by this paragraph or paragraph (6), such surface impoundment shall comply with paragraph (1) notwithstanding paragraph (2), (3), or (4). Within twelve months after receipt of such application and evidence and not later than thirty-six months after November 8, 1984, and after notice and opportunity to comment, the Administrator (or, if appropriate, the State) shall advise such owner or operator on the applicability of paragraph (1) to such surface impoundment or as to whether and how the requirements of paragraph (1) shall be modified and applied to such surface impoundment.

(6)(A) In any case in which a surface impoundment becomes subject to paragraph (1) after November 8, 1984, due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 6921 of this title, the period for compliance in paragraph (1) shall be four years after the date of such promulgation, the period for demonstrations under paragraph (4) and for submission of evidence under paragraph (5) shall be not later than twenty-four months after the date of such promulgation, and the period for the Administrator (or if appropriate, the State) to advise such owners or operators under paragraph (5) shall be not later than thirty-six months after the date of promulgation.

(B) In any case in which a surface impoundment is initially determined to be excluded from the requirements of paragraph (1) but due to a change in condition (including the existence of a leak) no longer satisfies the provisions of paragraph (2), (3), or (4) and therefore becomes subject to paragraph (1), the period for compliance in paragraph (1) shall be two years after the date of discovery of such change of condition, or in the case of a surface impoundment excluded under paragraph (3) three years after such date of discovery.

(7)(A) The Administrator shall study and report to the Congress on the number, range of size, construction, likelihood of hazardous constituents migrating into ground water, and potential threat to human health and the environment of existing surface impoundments excluded by paragraph (3) from the requirements of paragraph (1). Such report shall address the need, feasibility, and estimated costs of subjecting such existing surface impoundments to the requirements of paragraph (1).

(B) In the case of any existing surface impoundment or class of surface impoundments from which the Administrator (or the State, in the case of a State with an authorized program) determines hazardous constituents are likely to migrate into ground water, the Administrator (or if appropriate, the State) is authorized to impose such requirements as may be necessary to protect human health and the environment, including the requirements of section 6924(*o*) of this title which would apply to such impoundments if they were new.

(C) In the case of any surface impoundment excluded by paragraph (3) from the requirements of paragraph (1) which is subsequently determined to be leaking, the Administrator (or, if appropriate, the State) shall require compliance with paragraph (1), unless the Administrator (or, if appropriate, the State) determines that such compliance is not necessary to protect human health and the environment.

(8) In the case of any surface impoundment in which the liners and leak detection system have been installed pursuant to the requirements of paragraph (1) and in good faith compliance with section 6924(*o*) of this title and the Administrator's regulations and guidance documents governing liners and leak detection systems, no liner or leak detection system which is different from that which was so installed pursuant to paragraph (1) shall be required for such unit by the Administrator when issuing the first permit under this section to such facility. Nothing in this paragraph shall preclude the Administrator from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this subsection is leaking.

(9) In the case of any surface impoundment which has been excluded by paragraph (2) on the basis of a liner meeting the definition under paragraph (12)(A)(ii), at the closure of such impoundment the Administrator shall require the owner or operator of such impoundment to remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment shall be required to comply with appropriate post-closure requirements, including but not limited to ground water monitoring and corrective action.

(10) Any incremental cost attributable to the requirements of this subsection or section

6924(*o*) of this title shall not be considered by the Administrator (or the State, in the case of a State with an authorized program under section 1342 of title 33)—

(A) in establishing effluent limitations and standards under section 1311, 1314, 1316, 1317, or 1342 of title 33 based on effluent limitations guidelines and standards promulgated any time before twelve months after November 8, 1984; or

(B) in establishing any other effluent limitations to carry out the provisions of section 1311, 1317, or 1342 of title 33 on or before October 1, 1986.

(11)(A) If the Administrator allows a hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsections) to be placed in a surface impoundment (which is operating pursuant to interim status) for storage or treatment, such impoundment shall meet the requirements that are applicable to new surface impoundments under section 6924(*o*)(1) of this title, unless such impoundment meets the requirements of paragraph (2) or (4).

(B) In the case of any hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsection) the placement or maintenance of such hazardous waste in a surface impoundment for treatment is prohibited as of the effective date of such prohibition unless the treatment residues which are hazardous are, at a minimum, removed for subsequent management within one year of the entry of the waste into the surface impoundment.

(12)(A) For the purposes of paragraph (2)(A) of this subsection, the term "liner" means—

(i) a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility; or

(ii) a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(B) For the purposes of this subsection, the term "aggressive biological treatment facility" means a system of surface impoundments in which the initial impoundment of the secondary treatment segment of the facility utilizes intense mechanical aeration to enhance biological activity to degrade waste water pollutants and

(i) the hydraulic retention time in such initial impoundment is no longer than 5 days under normal operating conditions, on an annual average basis;

(ii) the hydraulic retention time in such initial impoundment is no longer than thirty days under normal operating conditions, on an annual average basis: *Provided*, That the sludge in such impoundment does not constitute a hazardous waste as identified by the extraction procedure toxicity characteristic in effect on November 8, 1984; or

(iii) such system utilizes activated sludge treatment in the first portion of secondary treatment.

(C) For the purposes of this subsection, the term "underground source or [1] drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.]).

(13) The Administrator may modify the requirements of paragraph (1) in the case of a surface impoundment for which the owner or operator, prior to October 1, 1984, has entered into, and is in compliance with, a consent order, decree, or agreement with the Administrator or a State with an authorized program mandating corrective action with respect to such surface impoundment that provides a degree of protection of human health and the environment which is at a minimum equivalent to that provided by paragraph (1).

(As amended Pub. L. 98-616, title II, §§ 211-213(a), (c), 214(a), 215, 224(b), 243(c), Nov. 8, 1984, 98 Stat. 3240-3243, 3253, 3261.)

REFERENCES IN TEXT

The Safe Drinking Water Act, referred to in subsec. (j)(12)(C), is Pub. L. 93-523, Dec. 16, 1974, 88 Stat. 1660, as amended, which is classified principally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title of 1974 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, § 211, substituted "an existing facility or planning to construct a new" for "a", added "and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste", and added at the end "No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter."

Subsec. (c)(1), (2). Pub. L. 98-616, § 213(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(3). Pub. L. 98-616, § 212, added par. (3).

Subsec. (e). Pub. L. 98-616, § 213(a), designated existing provisions as par. (1), redesignated former pars. (1), (2), and (3) thereof as subpars. (A), (B), and (C), respectively, designated existing provisions of previously redesignated subpar. (A) as cl. (i) and added cl. (ii), added "This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated." to the closing provisions of par. (1), and added pars. (2) and (3).

Subsec. (g). Pub. L. 98-616, § 214(a), added subsec. (g).

Subsec. (h). Pub. L. 98-616, § 224(b), added subsec. (h).

Subsec. (i). Pub. L. 98-616, § 243(c), added subsec. (i).

Subsec. (j). Pub. L. 98-616, § 215, added subsec. (j).

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[1] So in original. Probably should be "of".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6921, 6924, 6926, 6927, 6928, 6933, 6935, 6936, 6937, 6939a, 6945, 6974, 6976, 9601 of this title; title 26 section 4682.

§ 6926. Authorized State hazardous waste programs

[*See main edition for text of* (*a*)]

(b) Authorization of State program

Any State which seeks to administer and enforce a hazardous waste program pursuant to this subchapter may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste (and to enforce permits deemed to have been issued under section 6935(d)(1)[12] of this title) unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subchapter, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subchapter. In authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

(c) Interim authorization

(1) Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 6922, 6923, 6924, and 6925 of this title, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subchapter. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subchapter, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subchapter for a period ending no later than January 31, 1986.

(2) The Administrator shall, by rule, establish a date for the expiration of interim authorization under this subsection.

(3) Pending interim or final authorization of a State program for any State which reflects the amendments made by the Hazardous and Solid Waste Amendments of 1984, the State may enter into an agreement with the Administrator under which the State may assist in the administration of the requirements and prohibitions which take effect pursuant to such Amendments.

(4) In the case of a State permit program for any State which is authorized under subsection (b) of this section or under this subsection, until such program is amended to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program amendments receive interim or final authorization, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984. The Administrator shall coordinate with States the procedures for issuing such permits.

[*See main edition for text of* (*d*) *and* (*e*)]

(f) Availability of information

No State program may be authorized by the Administrator under this section unless—

(1) such program provides for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and

(2) such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of this subchapter in such State.

(g) Amendments made by 1984 act

(1) Any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed under this subchapter pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984 shall take effect in each State having an interim or finally authorized State program on the same date as such requirement takes effect in other States. The Administrator shall carry out such requirement directly in each such State unless the State program is finally authorized (or is granted interim authorization as provided in paragraph (2)) with respect to such requirement.

(2) Any State which, before November 8, 1984, has an existing hazardous waste program which has been granted interim or final authorization under this section may submit to the Administrator evidence that such existing program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement referred to in paragraph (1) and may request interim authorization to carry out that requirement under this subchapter. The Administrator shall, if the evidence submitted shows the State requirement to be substantially equivalent to the requirement referred to in paragraph (1), grant an interim authorization to the State to carry out such re-

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[12] See References in Text note below.

quirement in lieu of direct administration in the State by the Administrator of such requirement.

(As amended Pub. L. 98-616, title II, §§ 225, 226(a), 227, 228, 241(b)(2), Nov. 8, 1984, 98 Stat. 3254, 3255, 3260.)

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89-272, which was renumbered section 3014(d)(1) of Pub. L. 89-272 by Pub. L. 98-616 and is classified to section 6935(d)(1) of this title.

The Hazardous and Solid Waste Amendments of 1984, referred to in subsecs. (c)(3), (4), and (g), is Pub. L. 98-616, Nov. 8, 1984, 98 Stat. 3221, which amended this chapter. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-616, §§ 225, 241(b)(2), added "(and to enforce permits deemed to have been issued under section 6935(d)(1) of this title)", and added provision that in authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later, at the end thereof.

Subsec. (c)(1). Pub. L. 98-616, § 227(1), (2), designated existing provisions as par. (1) and substituted "period ending no later than January 31, 1986" for "twenty-four month period beginning on the date six months after the date of promulgation of regulations under sections 6922 through 6925 of this title".

Subsec. (c)(2) to (4). Pub. L. 98-616, § 227(3), added pars. (2) to (4).

Subsec. (f). Pub. L. 98-616, § 226(a), added subsec. (f).

Subsec. (g). Pub. L. 98-616, § 228, added subsec. (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 226(b) of Pub. L. 98-616 provided that: "The amendment made by subsection (a) [enacting subsec. (f) of this section] shall apply with respect to State programs authorized under section 3006 [this section] before, on, or after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [Nov. 8, 1984]."

§ 6927. Inspections

[*See main edition for text of* (*a*)]

(b) Availability to public

(1) Any records, reports, or information (including records, reports, or information obtained by representatives of the Environmental Protection Agency) obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

[*See main edition for text of* (*2*) *to* (*4*)]

(c) Federal facility inspections

Beginning twelve months after November 8, 1984, the Administrator shall, or in the case of a State with an authorized hazardous waste program the State may, undertake on an annual basis a thorough inspection of each facility for the treatment, storage, or disposal of hazardous waste which is owned or operated by a Federal agency to enforce its compliance with this subchapter and the regulations promulgated thereunder. The records of such inspections shall be available to the public as provided in subsection (b) of this section.

(d) State-operated facilities

The Administrator shall annually undertake a thorough inspection of every facility for the treatment, storage, or disposal of hazardous waste which is operated by a State or local government for which a permit is required under section 6925 of this title. The records of such inspection shall be available to the public as provided in subsection (b) of this section.

(e) Mandatory inspections

(1) The Administrator (or the State in the case of a State having an authorized hazardous waste program under this subchapter) shall commence a program to thoroughly inspect every facility for the treatment, storage, or disposal of hazardous waste for which a permit is required under section 6925 of this title no less often than every two years as to its compliance with this subchapter (and the regulations promulgated under this subchapter). Such inspections shall commence not later than twelve months after November 8, 1984. The Administrator shall, after notice and opportunity for public comment, promulgate regulations governing the minimum frequency and manner of such inspections, including the manner in which records of such inspections shall be maintained and the manner in which reports of such inspections shall be filed. The Administrator may distinguish between classes and categories of facilities commensurate with the risks posed by each class or category.

(2) Not later than six months after November 8, 1984, the Administrator shall submit to the Congress a report on the potential for inspections of hazardous waste treatment, storage, or disposal facilities by nongovernmental inspectors as a supplement to inspections conducted by officers, employees, or representatives of the Environmental Protection Agency or States having authorized hazardous waste programs or operating under a cooperative agreement with the Administrator. Such report shall be prepared in cooperation with the States, insurance companies offering environmental impairment insurance, independent companies providing inspection services, and other such groups as appropriate. Such report shall contain recommendations on provisions and requirements for a

program of private inspections to supplement governmental inspections.

(As amended Pub. L. 98-616, title II, §§ 229-231, title V, § 502(a), Nov. 8, 1984, 98 Stat. 3255, 3256, 3276.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-616, § 502(a), modified directory language for amendment by sec. 12(b)(4) of Pub. L. 96-482.

Subsec. (c). Pub. L. 98-616, § 229, added subsec. (c).

Subsec. (d). Pub. L. 98-616, § 230, added subsec. (d).

Subsec. (e). Pub. L. 98-616, § 231, added subsec. (e).

1980—Subsec. (b)(1). Pub. L. 96-482, § 12(b)(4), as modified by Pub. L. 98-616, § 502(a), inserted "(including records, reports, or information obtained by representatives of the Environmental Protection Agency)" after "information".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6933, 6934, 6937, 6939, 6945, 9606 of this title.

§ 6928. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

[*See main edition for text of* (2)]

(3) Any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation. Any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(b) Public hearing

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Violation of compliance orders

If a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty of not more than $25,000 for each day of continued noncompliance with the order and the Administrator may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State).

(d) Criminal penalties

Any person who—

(1) knowingly transports or causes to be transported any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.],

(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter—

(A) without a permit under this subchapter or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; or

(B) in knowing violation of any material condition or requirement of such permit; or

(C) in knowing violation of any material condition or requirement of any applicable interim status regulations or standards;

(3) knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(4) knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste (whether such activity took place before or takes place after November 8, 1984) and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(5) knowingly transports without a manifest, or causes to be transported without a manifest, any hazardous waste required by regulations promulgated under this subchapter (or by a State in the case of a State program authorized under this subchapter) to be accompanied by a manifest;; [13] or

(6) knowingly exports a hazardous waste identified or listed under this subchapter (A) without the consent of the receiving country or, (B) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, in a manner which is not in conformance with such agreement [14]

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[13] So in original.

[14] So in original. Probably should be followed by a semicolon.

shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed two years (five years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(e) Knowing endangerment

Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste identified or listed under this subchapter in violation of paragraph (1), (2), (3), (4), (5), or (6) of subsection (d) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment for not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than $1,000,000.

[*See main edition for text of (f) and (g)*]

(h) Interim status corrective action orders

(1) Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under section 6925(e) of this title, the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment or the Administrator may commence a civil action in the United States district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.

(2) Any order issued under this subsection may include a suspension or revocation of authorization to operate under section 6925(e) of this title, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Administrator may assess, and such person shall be liable to the United States for, a civil penalty in an amount not to exceed $25,000 for each day of noncompliance with the order.

(As amended Pub. L. 98-616, title II, §§ 232, 233, 245(c), title IV, § 403(d)(1)-(3), Nov. 8, 1984, 98 Stat. 3256, 3257, 3264, 3272.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-616, § 403(d)(1), in amending par. (1) generally, expanded the authority of the Administrator by empowering him to determine that a person "has violated" a requirement of this subchapter, and to assess a civil penalty for a past or current violation.

Subsec. (a)(3). Pub. L. 98-616, § 403(d)(2), in amending par. (3) generally, substituted provision that any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation, and provision that any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation of a requirement of this subchapter, and that in assessing such a penalty, the Administrator take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, for provision that if such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance and the Administrator may suspend or revoke any permit issued to the violator, whether issued by the Administrator or the State.

Subsec. (b). Pub. L. 98-616, § 233(b), added "issued under this section".

Subsec. (c). Pub. L. 98-616, § 403(d)(3), substituted provisions relating to penalties for violation of compliance orders for former provisions which set forth requirements for compliance orders.

Subsec. (d). Pub. L. 98-616, § 232(a)(3), amended closing provisions generally. Prior to the amendment the closing provisions read as follows: "shall, upon conviction, be subject to a fine of not more than $25,000 ($50,000 in the case of a violation of paragraph (1) or (2)) for each day of violation, or to imprisonment not to exceed one year (two years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both."

Subsec. (d)(1). Pub. L. 98-616, § 232(a)(1), inserted "or causes to be transported" and substituted "this subchapter" for "section 6925 of this title (or section 6926 of this title in case of a State program)".

Subsec. (d)(2). Pub. L. 98-616, § 232(a)(2)(A), struck out "either" after "subchapter" in provision preceding subpar. (A).

Subsec. (d)(2)(A). Pub. L. 98-616, § 232(a)(2)(B), (c), substituted "this subchapter" for "section 6925 of this title (or section 6926 of this title in the case of a State program)" and struck out "having obtained" before "a permit under".

Subsec. (d)(2)(C). Pub. L. 98-616, § 232(a)(2)(C), added subpar. (C).

Subsec. (d)(3) to (5). Pub. L. 98-616, § 232(a)(3), in amending pars. (3) and (4) generally, expanded par. (3) by providing criminal penalties for one who knowingly omits material information from documents required to be filed, maintained or used under this subchapter, expanded par. (4) by providing criminal penalties for one who knowingly fails to file required material under this subchapter, and added par. (5).

Subsec. (d)(6). Pub. L. 98-616, § 245(c), added par. (6).

Subsec. (e). Pub. L. 98-616, § 232(b), in amending subsec. (e) generally, deleted provisions referring to violations of interim status standards and omission of material information from permit applications, deleted provision requiring proof of "unjustifiable and inexcusable disregard for human life" or "extreme indifference to human life" for conviction under this subsection, and added provision increasing the maximum prison sentence to fifteen years for violation of subsec. (d)(1) through (6) of this section by one who knowingly places another person in imminent danger of death or serious bodily injury, replacing former provision calling for maximum imprisonment of two years, or five years in cases evidencing extreme indifference to human life.

Subsec. (h). Pub. L. 98-616, § 233(a), added subsec. (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6945, 6972, 9606 of this title.

§ 6929. Retention of State authority

Upon the effective date of regulations under this subchapter no State or political subdivision may impose any requirements less stringent than those authorized under this subchapter respecting the same matter as governed by such regulations, except that if application of a regulation with respect to any matter under this subchapter is postponed or enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same aspect of such matter until such time as such regulation takes effect. Nothing in this chapter shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations. Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State.

(As amended Pub. L. 98-616, title II, § 213(b), Nov. 8, 1984, 98 Stat. 3242.)

AMENDMENTS

1984—Pub. L. 98-616 added "Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State."

§ 6930. Effective date

(a) Preliminary notification

Not later than ninety days after promulgation of regulations under section 6921 of this title identifying by its characteristics or listing any substance as hazardous waste subject to this subchapter, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not later than fifteen months after November 8, 1984—

(1) the owner or operator of any facility which produces a fuel (A) from any hazardous waste identified or listed under section 6921 of this title, (B) from such hazardous waste identified or listed under section 6921 of this title and any other material, (C) from used oil, or (D) from used oil and any other material;

(2) the owner or operator of any facility (other than a single- or two-family residence) which burns for purposes of energy recovery any fuel produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title; and

(3) any person who distributes or markets any fuel which is produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title[15]

shall file with the Administrator (and with the State in the case of a State with an authorized hazardous waste program) a notification stating the location and general description of the facility, together with a description of the identified or listed hazardous waste involved and, in the case of a facility referred to in paragraph (1) or (2), a description of the production or energy recovery activity carried out at the facility and such other information as the Administrator deems necessary. For purposes of the preceding provisions, the term "hazardous waste listed under section 6921 of this title" also includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel. Notification shall not be required under the second sentence of this subsection in the case of facilities (such as residential boilers) where the Administrator determines that such notification is not necessary in order for the Administrator to obtain sufficient information respecting current practices of facilities using hazardous waste for energy recovery. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. Nothing in this subsection shall affect regulatory determinations under section 6935 of this title. In revising any regulation under section 6921 of this title identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter, the Administrator may require any person referred to in the preceding provisions to file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) the notification described in the preceding provisions. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection.

(b) Effective date of regulation

The regulations under this subchapter respecting requirements applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal) shall take effect on the date six months after the date of promulgation thereof (or six months after the date of revision in the case of any regulation which is revised after the date required for promulgation thereof). At the time a regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for:

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[15] So in original. Probably should be followed by a semicolon.

(1) a regulation with which the Administrator finds the regulated community does not need six months to come into compliance;

(2) a regulation which responds to an emergency situation; or

(3) other good cause found and published with the regulation.

(As amended Pub. L. 98-616, title II, §§ 204(a), 234, Nov. 8, 1984, 98 Stat. 3235, 3258.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, § 204(a), added provisions relating to the burning and blending of hazardous wastes, after the first sentence and substituted "the preceding provisions" for "the preceding sentence" in three places.

Subsec. (b). Pub. L. 98-616, § 234, added provision that at the time a regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for a regulation with which the Administrator finds the regulated community does not need six months to come into compliance, a regulation which responds to an emergency situation, or other good cause found and published with the regulation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6921, 6924, 6925, 6937, 6939, 6971 of this title.

§ 6931. Authorization of assistance to States

(a) Authorization of appropriations

There is authorized to be appropriated $25,000,000 for each of the fiscal years 1978 and 1979[16] $20,000,000 for fiscal year 1980, $35,000,000 for fiscal year 1981, $40,000,000 for the fiscal year 1982, $55,000,000 for the fiscal year 1985, $60,000,000 for the fiscal year 1986, $60,000,000 for the fiscal year 1987, and $60,000,000 for the fiscal year 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of authorized State hazardous waste programs.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98-616, § 2(b), Nov. 8, 1984, 98 Stat. 3222.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616 substituted "$40,000,000 for fiscal year 1982, $55,000,000 for fiscal year 1985, $60,000,000 for fiscal year 1986, $60,000,000 for fiscal year 1987, and $60,000,000 for fiscal year 1988" for "and $40,000,000 for fiscal year 1982".

§ 6932. Transferred

CODIFICATION

Section, Pub. L. 89-272, title II, § 3012, as added Pub. L. 96-463, § 7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89-272 by Pub. L. 98-616, title V, § 502(g)(1), Nov. 8, 1984, 98 Stat. 3277, and was transferred to section 6935 of this title.

§ 6933. Hazardous waste site inventory

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Grants

[*See main edition for text of* (*1*)]

(2) There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1985 through 1988.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-616, § 2(c), Nov. 8, 1984, 98 Stat. 3222.)

CODIFICATION

Another section 3012 of Pub. L. 89-272 as added by Pub. L. 96-463, § 7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89-272, and is classified to section 6935 of this title.

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-616 substituted "$25,000,000 for each of the fiscal years 1985 through 1988" for "$20,000,000".

§ 6934. Monitoring, analysis, and testing

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6939, 9606 of this title.

§ 6935. Restrictions on recycled oil

(a) In general

Not later than one year after October 15, 1980, the Administrator shall promulgate regulations establishing such performance standards and other requirements as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment.

(b) Identification or listing of used oil as hazardous waste

Not later than twelve months after November 8, 1984, the Administrator shall propose whether to list or identify used automobile and truck crankcase oil as hazardous waste under section 6921 of this title. Not later than twenty-four months after November 8, 1984, the Administrator shall make a final determination whether to list or identify used automobile and truck crankcase oil and other used oil as hazardous wastes under section 6921 of this title.

(c) Used oil which is recycled

(1) With respect to generators and transporters of used oil identified or listed as a hazardous waste under section 6921 of this title, the standards promulgated under section[17] 6921(d),

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[16] So in original. Probably should be followed by a comma.

[17] So in original. Probably should be "sections".

6922, and 6923 of this title shall not apply to such used oil if such used oil is recycled.

(2)(A) In the case of used oil which is exempt under paragraph (1), not later than twenty-four months after November 8, 1984, the Administrator shall promulgate such standards under this subsection regarding the generation and transportation of used oil which is recycled as may be necessary to protect human health and the environment. In promulgating such regulations with respect to generators, the Administrator shall take into account the effect of such regulations on environmentally acceptable types of used oil recycling and the effect of such regulations on small quantity generators and generators which are small businesses (as defined by the Administrator).

(B) The regulations promulgated under this subsection shall provide that no generator of used oil which is exempt under paragraph (1) from the standards promulgated under section [17] 6921(d), 6922, and 6923 of this title shall be subject to any manifest requirement or any associated recordkeeping and reporting requirement with respect to such used oil if such generator—

(i) either—

(I) enters into an agreement or other arrangement (including an agreement or arrangement with an independent transporter or with an agent of the recycler) for delivery of such used oil to a recycling facility which has a permit under section 6925(c) of this title (or for which a valid permit is deemed to be in effect under subsection (d) of this section), or

(II) recycles such used oil at one or more facilities of the generator which has such a permit under section 6925 of this title (or for which a valid permit is deemed to have been issued under subsection (d) of this section);

(ii) such used oil is not mixed by the generator with other types of hazardous wastes; and

(iii) the generator maintains such records relating to such used oil, including records of agreements or other arrangements for delivery of such used oil to any recycling facility referred to in clause (i)(I), as the Administrator deems necessary to protect human health and the environment.

(3) The regulations under this subsection regarding the transportation of used oil which is exempt from the standards promulgated under section [17] 6921(d), 6922, and 6923 of this title under paragraph (1) shall require the transporters of such used oil to deliver such used oil to a facility which has a valid permit under section 6925 of this title or which is deemed to have a valid permit under subsection (d) of this section. The Administrator shall also establish other standards for such transporters as may be necessary to protect human health and the environment.

(d) Permits

(1) The owner or operator of a facility which recycles used oil which is exempt under subsection (c)(1) of this section, shall be deemed to have a permit under this subsection for all such treatment or recycling (and any associated tank or container storage) if such owner and operator comply with standards promulgated by the Administrator under section 6924 of this title; except that the Administrator may require such owners and operators to obtain an individual permit under section 6925(c) of this title if he determines that an individual permit is necessary to protect human health and the environment.

(2) Notwithstanding any other provision of law, any generator who recycles used oil which is exempt under subsection (c)(1) of this section shall not be required to obtain a permit under section 6925(c) of this title with respect to such used oil until the Administrator has promulgated standards under section 6924 of this title regarding the recycling of such used oil.

(Pub. L. 89-272, title II, § 3014, formerly § 3012, as added Pub. L. 96-463, § 7(a), Oct. 15, 1980, 94 Stat. 2057, and renumbered and amended Pub. L. 98-616, title II, §§ 241(a), 242, title V, § 502(g)(1), Nov. 8, 1984, 98 Stat. 3258, 3260, 3277.)

CODIFICATION

Section was formerly classified to section 6932 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §§ 241(a), 242, designated existing provisions as subsec. (a) and added ", consistent with the protection of human health and the environment" at the end.

Subsecs. (b) to (d). Pub. L. 98-616, § 241(a), added subsecs. (b) to (d).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6926, 6930, 6976 of this title.

§ 6936. Expansion during interim status

(a) Waste piles

The owner or operator of a waste pile qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the same requirements for liners and leachate collection systems or equivalent protection provided in regulations promulgated by the Administrator under section 6924 of this title before October 1, 1982, or revised under section 6924(o) of this title (relating to minimum technological requirements), for new facilities receiving individual permits under subsection (c) of section 6925 of this title, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under section 6925 of this title, and with respect to waste received beginning six months after November 8, 1984.

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[17] So in original. Probably should be "sections".

(b) Landfills and surface impoundments

(1) The owner or operator of a landfill or surface impoundment qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the requirements of section 6924(o) of this title (relating to minimum technological requirements), with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under this section, and with respect to waste received beginning 6 months after November 8, 1984.

(2) The owner or operator of each unit referred to in paragraph (1) shall notify the Administrator (or the State, if appropriate) at least sixty days prior to receiving waste. The Administrator (or the State) shall require the filing, within six months of receipt of such notice, of an application for a final determination regarding the issuance of a permit for each facility submitting such notice.

(3) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of this section and in good faith compliance with the Administrator's regulations and guidance documents governing liners and leachate collection systems, no liner or leachate collection system which is different from that which was so installed pursuant to this section shall be required for such unit by the Administrator when issuing the first permit under section 6925 of this title to such facility, except that the Administrator shall not be precluded from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this section is leaking. The Administrator may, under section 6924 of this title, amend the requirements for liners and leachate collection systems required under this section as may be necessary to provide additional protection for human health and the environment.

(Pub. L. 89-272, title II, § 3015, as added Pub. L. 98-616, title II, § 243(a), Nov. 8, 1984, 98 Stat. 3260.)

§ 6937. Inventory of Federal agency hazardous waste facilities

(a) Program requirement; submission; availability; contents

Each Federal agency shall undertake a continuing program to compile, publish, and submit to the Administrator (and to the State in the case of sites in States having an authorized hazardous waste program) an inventory of each site which the Federal agency owns or operates or has owned or operated at which hazardous waste is stored, treated, or disposed of or has been disposed of at any time. The inventory shall be submitted every two years beginning January 31, 1986. Such inventory shall be available to the public as provided in section 6927(b) of this title. Information previously submitted by a Federal agency under section 9603 of this title, or under section 6925 or 6930 of this title, or under this section need not be resubmitted except that the agency shall update any previous submission to reflect the latest available data and information. The inventory shall include each of the following:

(1) A description of the location of each site at which any such treatment, storage, or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage, treatment, or disposal, and where hazardous waste has been disposed, a description of hydrogeology of the site and the location of withdrawal wells and surface water within one mile of the site.

(2) Such information relating to the amount, nature, and toxicity of the hazardous waste in each site as may be necessary to determine the extent of any health hazard which may be associated with any site.

(3) Information on the known nature and extent of environmental contamination at each site, including a description of the monitoring data obtained.

(4) Information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated, stored, or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

(5) A list of sites at which hazardous waste has been disposed and environmental monitoring data has not been obtained, and the reasons for the lack of monitoring data at each site.

(6) A description of response actions undertaken or contemplated at contaminated sites.

(7) An identification of the types of techniques of waste treatment, storage, or disposal which have been used at each site.

(8) The name and address and responsible Federal agency for each site, determined as of the date of preparation of the inventory.

(b) Environmental Protection Agency program

If the Administrator determines that any Federal agency under subsection (a) of this section is not adequately providing information respecting the sites referred to in subsection (a) of this section, the Administrator shall notify the chief official of such agency. If within ninety days following such notification, the Federal agency has not undertaken a program to adequately provide such information, the Administrator shall carry out the inventory program for such agency.

(Pub. L. 89-272, title II, § 3016, as added Pub. L. 98-616, title II, § 244, Nov. 8, 1984, 98 Stat. 3261.)

§ 6938. Export of hazardous wastes

(a) In general

Beginning twenty-four months after November 8, 1984, no person shall export any hazardous waste identified or listed under this subchapter unless [18]

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[18] So in original. Probably should be followed by a dash.

(1)(A) such person has provided the notification required in subsection (c) of this section,

(B) the government of the receiving country has consented to accept such hazardous waste,

(C) a copy of the receiving country's written consent is attached to the manifest accompanying each waste shipment, and

(D) the shipment conforms with the terms of the consent of the government of the receiving country required pursuant to subsection (e) of this section, or

(2) the United States and the government of the receiving country have entered into an agreement as provided for in subsection (f) of this section and the shipment conforms with the terms of such agreement.

(b) Regulations

Not later than twelve months after November 8, 1984, the Administrator shall promulgate the regulations necessary to implement this section. Such regulations shall become effective one hundred and eighty days after promulgation.

(c) Notification

Any person who intends to export a hazardous waste identified or listed under this subchapter beginning twelve months after November 8, 1984, shall, before such hazardous waste is scheduled to leave the United States, provide notification to the Administrator. Such notification shall contain the following information:

(1) the name and address of the exporter;

(2) the types and estimated quantities of hazardous waste to be exported;

(3) the estimated frequency or rate at which such waste is to be exported; and the period of time over which such waste is to be exported;

(4) the ports of entry;

(5) a description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and

(6) the name and address of the ultimate treatment, storage or disposal facility.

(d) Procedures for requesting consent of the receiving country

Within thirty days of the Administrator's receipt of a complete notification under this section, the Secretary of State, acting on behalf of the Administrator, shall—

(1) forward a copy of the notification to the government of the receiving country;

(2) advise the government that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the hazardous waste;

(3) request the government to provide the Secretary with a written consent or objection to the terms of the notification; and

(4) forward to the government of the receiving country a description of the Federal regulations which would apply to the treatment, storage, and disposal of the hazardous waste in the United States.

(e) Conveyance of written consent to exporter

Within thirty days of receipt by the Secretary of State of the receiving country's written consent or objection (or any subsequent communication withdrawing a prior consent or objection), the Administrator shall forward such a consent, objection, or other communication to the exporter.

(f) International agreements

Where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, only the requirements of subsections (a)(2) and (g) of this section shall apply.

(g) Reports

After November 8, 1984, any person who exports any hazardous waste identified or listed under section 6921 of this title shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

(h) Other standards

Nothing in this section shall preclude the Administrator from establishing other standards for the export of hazardous wastes under section 6922 of this title or section 6923 of this title.

(Pub. L. 89-272, title II, § 3017, as added Pub. L. 98-616, title II, § 245(a), Nov. 8, 1984, 98 Stat. 3262.)

§ 6939. Domestic sewage

(a) Report

The Administrator shall, not later than 15 months after November 8, 1984, submit a report to the Congress concerning those substances identified or listed under section 6921 of this title which are not regulated under this subchapter by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size and number of generators which dispose of such substances in this manner, the types and quantities disposed of in this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner sufficient to protect human health and the environment.

(b) Revisions of regulations

Within eighteen months after submitting the report specified in subsection (a) of this section, the Administrator shall revise existing regulations and promulgate such additional regulations pursuant to this subchapter (or any other authority of the Administrator, including section 1317 of title 33) as are necessary to assure that substances identified or listed under section 6921 of this title which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment.

(c) Report on wastewater lagoons

The Administrator shall, within thirty-six months after November 8, 1984, submit a report to Congress concerning wastewater lagoons at publicly owned treatment works and their effect on groundwater quality. Such report shall include—

(1) the number and size of such lagoons;

(2) the types and quantities of waste contained in such lagoons;

(3) the extent to which such waste has been or may be released from such lagoons and contaminate ground water; and

(4) available alternatives for preventing or controlling such releases.

The Administrator may utilize the authority of sections 6927 and 6934 of this title for the purpose of completing such report.

(d) Application of sections 6927 and 6930

The provisions of sections 6927 and 6930 of this title shall apply to solid or dissolved materials in domestic sewage to the same extent and in the same manner as such provisions apply to hazardous waste.

(Pub. L. 89-272, title II, § 3018, as added Pub. L. 98-616, title II, § 246(a), Nov. 8, 1984, 98 Stat. 3264.)

§ 6939a. Exposure information and health assessments

(a) Exposure information

Beginning on the date nine months after November 8, 1984, each application for a final determination regarding a permit under section 6925(c) of this title for a landfill or surface impoundment shall be accompanied by information reasonably ascertainable by the owner or operator on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(1) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(2) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (1); and

(3) the potential magnitude and nature of the human exposure resulting from such releases.

The owner or operator of a landfill or surface impoundment for which an application for such a final determination under section 6925(c) of this title has been submitted prior to November 8, 1984, shall submit the information required by this subsection to the Administrator (or the State, in the case of a State with an authorized program) no later than the date nine months after November 8, 1984.

(b) Health assessments

(1) The Administrator (or the State, in the case of a State with an authorized program) shall make the information required by subsection (a) of this section, together with other relevant information, available to the Agency for Toxic Substances and Disease Registry established by section 9604(i) of this title.

(2) Whenever in the judgment of the Administrator, or the State (in the case of a State with an authorized program), a landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of releases of hazardous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release, or the magnitude of the population exposed to such release or contamination, the Administrator or the State (with the concurrence of the Administrator) may request the Administrator of the Agency for Toxic Substances and Disease Registry to conduct a health assessment in connection with such facility and take other appropriate action with respect to such risks as authorized by section 9604(b) and (i) of this title. If funds are provided in connection with such request the Administrator of such Agency shall conduct such health assessment.

(c) Members of the public

Any member of the public may submit evidence of releases of or exposure to hazardous constituents from such a facility, or as to the risks or health effects associated with such releases or exposure, to the Administrator of the Agency for Toxic Substances and Disease Registry, the Administrator, or the State (in the case of a State with an authorized program).

(d) Priority

In determining the order in which to conduct health assessments under this subsection, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous constituents, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subsection (f) of this section.

(e) Periodic reports

The Administrator of such Agency shall issue periodic reports which include the results of all the assessments carried out under this section. Such assessments or other activities shall be reported after appropriate peer review.

(f) "Health assessments" defined

For the purposes of this section, the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities subject to this section, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

(g) Cost recovery

In any case in which a health assessment performed under this section discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 9607 of this title from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such release.

(Pub. L. 89-272, title II, § 3019, as added Pub. L. 98-616, title II, § 247(a), Nov. 8, 1984, 98 Stat. 3265.)

SUBCHAPTER IV—STATE OR REGIONAL SOLID WASTE PLANS

§ 6941. Objectives of subchapter

The objectives of this subchapter are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources including energy and materials which are recoverable from solid waste and to encourage resource conservation. Such objectives are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry. In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interest within the area encompassed by the planning process.

(As amended Pub. L. 98-616, title III, § 301(a), title V, § 501(f)(1), Nov. 8, 1984, 98 Stat. 3267, 3276.)

AMENDMENTS

1984—Pub. L. 98-616, § 501(f)(1), added ", including those needs created by thorough implementation of section 6962(h) of this title,".

Pub. L. 98-616, § 301(a), added "In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process."

§ 6943. Requirements for approval of plans

[*See main edition for text of* (*a*)]

(b) Discretionary plan provisions relating to recycled oil

Any State plan submitted under this subchapter may include, at the option of the State, provisions to carry out each of the following:

(1) Encouragement, to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of recycled oil in all appropriate areas of State and local government.

(2) Encouragement of persons contracting with the State to use recycled oil to the maximum extent feasible, consistent with protection of the public health and the environment.

(3) Informing the public of the uses of recycled oil.

(4) Establishment and implementation of a program (including any necessary licensing of persons and including the use, where appropriate, of manifests) to assure that used oil is collected, transported, treated, stored, reused, and disposed of, in a manner which does not present a hazard to the public health or the environment.

Any plan submitted under this chapter before October 15, 1980, may be amended, at the option of the State, at any time after such date to include any provision referred to in this subsection.

(c) Energy and materials conservation and recovery feasibility planning and assistance

(1) A State which has a plan approved under this subchapter or which has submitted a plan for such approval shall be eligible for assistance under section 6948(a)(3) of this title if the Administrator determines that under such plan the State will—

(A) analyze and determine the economic and technical feasibility of facilities and programs to conserve resources which contribute to the waste stream or to recover energy and materials from municipal waste;

(B) analyze the legal, institutional, and economic impediments to the development of systems and facilities for conservation of energy or materials which contribute to the waste stream or for the recovery of energy and materials from municipal waste and make recommendations to appropriate governmental authorities for overcoming such impediments;

(C) assist municipalities within the State in developing plans, programs, and projects to conserve resources or recover energy and materials from municipal waste; and

(D) coordinate the resource conservation and recovery planning under subparagraph (C).

(2) The analysis referred to in paragraph (1)(A) shall include—

(A) the evaluation of, and establishment of priorities among, market opportunities for industrial and commercial users of all types (including public utilities and industrial parks) to utilize energy and materials recovered from municipal waste;

(B) comparisons of the relative costs of energy recovered from municipal waste in relation to the costs of energy derived from fossil fuels and other sources;

(C) studies of the transportation and storage problems and other problems associated with the development of energy and materials recovery technology, including curbside source separation;

(D) the evaluation and establishment of priorities among ways of conserving energy or materials which contribute to the waste stream;

(E) comparison of the relative total costs between conserving resources and disposing of or recovering such waste; and

(F) studies of impediments to resource conservation or recovery, including business practices, transportation requirements, or storage difficulties.

Such studies and analyses shall also include studies of other sources of solid waste from which energy and materials may be recovered or minimized.

(d) Size of waste-to-energy facilities

Notwithstanding any of the above requirements, it is the intention of this chapter and the planning process developed pursuant to this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.

(As amended Pub. L. 98-616, title III, § 301(b), title V, § 502(h), Nov. 8, 1984, 98 Stat. 3267, 3277.)

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98-616, § 502(h), redesignated the subsec. (b) entitled energy and materials conservation and recovery feasibility planning and assistance, as subsec. (c).

Subsec. (d). Pub. L. 98-616, § 301(b), added subsec. (d).

§ 6944. Criteria for sanitary landfills; sanitary landfills required for all disposal

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Effective date

The prohibition contained in subsection (b) of this section shall take effect on the date six months after the date of promulgation of regulations under subsection (a) of this section.

(As amended Pub. L. 98-616, title III, § 302(b), Nov. 8, 1984, 98 Stat. 3268.)

REFERENCES IN TEXT

Section 6943(2) of this title, referred to in subsec. (b), was redesignated section 6943(a)(2) of this title by Pub. L. 96-463, § 5(b), Oct. 15, 1980, 94 Stat. 2056, and Pub. L. 96-482, § 32(d)(2), Oct. 21, 1980, 94 Stat. 2353.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-616 struck out "or on the date of approval of the State plan, whichever is later" at the end.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6903, 6943, 6945, 6948, 6949a of this title.

§ 6945. Upgrading of open dumps

(a) Closing or upgrading of existing open dumps

Upon promulgation of criteria under section 6907(a)(3) of this title, any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under this section. The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping. For purposes of complying with section 6943(a)(2) and 6943(a)(3) of this title, each State plan shall contain a requirement that all existing disposal facilities or sites for solid waste in such State which are open dumps listed in the inventory under subsection (b) of this section shall comply with such measures as may be promulgated by the Administrator to eliminate health hazards and minimize potential health hazards. Each such plan shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of criteria under section 6907(a)(3) of this title).

[*See main edition for text of* (*b*)]

(c) Control of hazardous disposal

(1)(A) Not later than 36 months after November 8, 1984, each State shall adopt and implement a permit program or other system of prior approval and conditions to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the applicable criteria promulgated under section 6944(a) and 6907(a)(3) of this title.

(B) Not later than eighteen months after the promulgation of revised criteria under subsection[2] 6944(a) of this title (as required by section 6949a(c) of this title), each State shall adopt and implement a permit program or other system or [3] prior approval and conditions, to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the criteria revised under section 6944(a) of this title.

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[2] So in original. Probably should be "section".

(C) The Administrator shall determine whether each State has developed an adequate program under this paragraph. The Administrator may make such a determination in conjunction with approval, disapproval or partial approval of a State plan under section 6947 of this title.

(2)(A) In any State that the Administrator determines has not adopted an adequate program for such facilities under paragraph (1)(B) by the date provided in such paragraph, the Administrator may use the authorities available under sections 6927 and 6928 of this title to enforce the prohibition contained in subsection (a) of this section with respect to such facilities.

(B) For purposes of this paragraph, the term "requirement of this subchapter" in section 6928 of this title shall be deemed to include criteria promulgated by the Administrator under sections 6907(a)(3) and 6944(a) of this title, and the term "hazardous wastes" in section 6927 of this title shall be deemed to include solid waste at facilities that may handle hazardous household wastes or hazardous wastes from small quantity generators.

(As amended Pub. L. 98-616, title III, § 302(c), title IV, § 403(c), title V, § 502(c), Nov. 8, 1984, 98 Stat. 3268, 3272, 3276.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, § 403(c), added "The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping."

Pub. L. 98-616, § 502(c), added a closing parenthetical mark before the period at the end.

Subsec. (c). Pub. L. 98-616, § 302(c), added subsec. (c).

§ 6947. Approval of State plan; Federal assistance

REFERENCES IN TEXT

Paragraphs (1), (2), (3), and (5) of section 6943 of this title, referred to in subsec. (a)(1), (2)(A), were redesignated as the same paragraphs of section 6943(a) of this title by Pub. L. 96-463, § 5(b), Oct. 15, 1980, 94 Stat. 2056, and Pub. L. 96-482, § 32(d)(2), Oct. 21, 1980, 94 Stat. 2353.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6903, 6943, 6945, 6948 of this title.

§ 6948. Federal assistance

(a) Authorization of Federal financial assistance

(1) There are authorized to be appropriated $30,000,000 for fiscal year 1978, $40,000,000 for fiscal year 1979, $20,000,000 for fiscal year 1980, $15,000,000 for fiscal year 1981, $20,000,000 for the fiscal year 1982, and $10,000,000 for each of the fiscal years 1985 through 1988 for purposes of financial assistance to States and local, regional, and interstate authorities for the development and implementation of plans approved by the Administrator under this subchapter (other than the provisions of such plans referred to in section 6943(b) [5] of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery).

(2) [*See main edition for text of* (*A*) *and* (*B*)]

(C) There are authorized to be appropriated $15,000,000 for each of the fiscal years 1978 and 1979 for purposes of this section. There are authorized to be appropriated $10,000,000 for fiscal year 1980, $10,000,000 for fiscal year 1981, $10,000,000 for fiscal year 1982, and $10,000,000 for each of the fiscal years 1985 through 1988 for purposes of this paragraph.

(D) There are authorized—

(i) to be made available $15,000,000 out of funds appropriated for fiscal year 1985, and

(ii) to be appropriated for each of the fiscal years 1986 though [6] 1988, $20,000,000 [7]

for grants to States (and where appropriate to regional, local, and interstate agencies) to implement programs requiring compliance by solid waste management facilities with the criteria promulgated under section 6944(a) of this title and section 6907(a)(3) of this title and with the provisions of section 6945 of this title. To the extent practicable, such programs shall require such compliance not later than thirty-six months after November 8, 1984.

[*See main edition for text of* (*3*); (*b*) *and* (*c*)]

(d) Technical assistance

[*See main edition for text of* (*1*)]

(2) In carrying out this subsection, the Administrator may, upon request, provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil. Such impediments may include laws, regulations, and policies, including State procurement policies, which are not favorable to the recycling of used oil.

(3) In carrying out this subsection, the Administrator is authorized to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies upon request, to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recovery energy and materials from municipal waste or to conserve energy or materials which contribute to the waste stream. Such impediments may include—

(A) laws, regulations, and policies, including State and local procurement policies, which are not favorable to resource conservation and recovery policies, systems, and facilities;

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[3] So in original. Probably should be "of".

[5] See References in Text note below.

[6] So in original. Probably should be "through".

[7] So in original. Probably should be followed by a comma.

(B) impediments to the financing of facilities to conserve or recover energy and materials from municipal waste through the exercise of State and local authority to issue revenue bonds and the use of State and local credit assistance; and

(C) impediments to institutional arrangements necessary to undertake projects for the conservation or recovery of energy and materials from municipal waste, including the creation of special districts, authorities, or corporations where necessary having the power to secure the supply of waste of a project, to conserve resources, to implement the project, and to undertake related activities.

[*See main edition for text of* (*e*)]

(f) Assistance to States for discretionary program for recycled oil

(1) The Administrator may make grants to States, which have a State plan approved under section 6947 of this title, or which have submitted a State plan for approval under such section, if such plan includes the discretionary provisions described in section 6943(b) of this title. Grants under this subsection shall be for purposes of assisting the State in carrying out such discretionary provisions. No grant under this subsection may be used for construction or for the acquisition of land or equipment.

(2) Grants under this subsection shall be allotted among the States in the same manner as provided in the first sentence of subsection (b) of this section.

(3) No grant may be made under this subsection unless an application therefor is submitted to, and approved by, the Administrator. The application shall be in such form, be submitted in such manner, and contain such information as the Administrator may require.

(4) For purposes of making grants under this subsection, there are authorized to be appropriated $5,000,000 for fiscal year 1982, $5,000,000 for fiscal year 1983, and $5,000,000 for each of the fiscal years 1985 through 1988.

(g) Assistance to municipalities for energy and materials conservation and recovery planning activities

(1) The Administrator is authorized to make grants to municipalities, regional authorities, and intermunicipal agencies to carry out activities described in subparagraphs (A) and (B) of section 6943(b)(1) [9] of this title. Such grants may be made only pursuant to an application submitted to the Administrator by the municipality which application has been approved by the State and determined by the State to be consistent with any State plan approved or submitted under this subchapter or any other appropriate planning carried out by the State.

(2) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, $8,000,000 for purposes of making grants to municipalities under this subsection. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(3) Assistance provided by the Administrator under this subsection shall be used only for the purposes specified in paragraph (1). Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

(As amended Pub. L. 98-616, § 2(d)-(g), (k), title V, § 502(d), (e), Nov. 8, 1984, 98 Stat. 3222, 3223, 3276.)

REFERENCES IN TEXT

Section 6943(b) of this title, referred to in subsecs. (a)(1), (3), and (g)(1), was redesignated section 6943(c) of this title by Pub. L. 98-616, title V, § 502(h), Nov. 8, 1984, 98 Stat. 3277.

CODIFICATION

Section 2(d)-(g) of Pub. L. 98-616, cited as a credit to this section, appears to contain typographical error in that the text of subsec. (f)(1) of section 2007 of the Solid Waste Disposal Act (as added by section 2(i) of Pub. L. 98-616) is also shown as the text of subsec. "(f)(1)" of such section 2. Subsec. (f) of section 2, as set out in the Conference Report (H. Rept. 98-1133) to accompany H.R. 2867 (which became Pub. L. 98-616) read:

"(f) Section 4008(e)(2) of the Solid Waste Disposal Act (relating to special communities) is amended by striking out 'and $1,500,000 for each of the fiscal years 1981 and 1982' and substituting ', $1,500,000 for each of the fiscal years 1981 and 1982, and $500,000 for each of the fiscal years 1985 through 1988'."

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-616, § 2(d), authorized appropriation of $10,000,000 for each of the fiscal years 1985 through 1988.

Subsec. (a)(2)(C). Pub. L. 98-616, § 2(e), authorized appropriation of $10,000,000 for each of the fiscal years 1985 through 1988.

Subsec. (a)(2)(D). Pub. L. 98-616, § 2(k), added subpar. (D).

Subsec. (d)(2), (3). Pub. L. 98-616, § 502(d), redesignated second par. (2), relating to the recovery of energy and materials from municipal waste, as par. (3).

Subsec. (f). Pub. L. 98-616, § 502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).

Subsec. (f)(4). Pub. L. 98-616, § 2(g), authorized appropriation of $5,000,000 for each of the fiscal years 1985 through 1988.

Subsec. (g). Pub. L. 98-616, § 502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).

§ 6949a. Adequacy of certain guidelines and criteria

(a) Study

The Administrator shall conduct a study of the extent to which the guidelines and criteria under this chapter (other than guidelines and criteria for facilities to which subchapter III of this chapter applies) which are applicable to solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments, are adequate to protect human health and the environment from ground water contamination. Such study shall include a detailed assessment of the degree to which the criteria under section 6907(a) of this title and the criteria under section 6944 of this title regarding monitoring, prevention of contamination, and remedial action are adequate to protect ground water and shall also include recommendation with respect to any additional enforcement authorities which the Administrator, in consultation with the Attorney General, deems necessary for such purposes.

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[9] See References in Text note below.

(b) Report

Not later than thirty-six months after November 8, 1984, the Administrator shall submit a report to the Congress setting forth the results of the study required under this section, together with any recommendations made by the Administrator on the basis of such study.

(c) Revisions of guidelines and criteria

Not later than March 31, 1988, the Administrator shall promulgate revisions of the criteria promulgated under paragraph (1) of section 6944(a) of this title and under section 6907(a)(3) of this title for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators under section 6921(d) of this title. The criteria shall be those necessary to protect human health and the environment and may take into account the practicable capability of such facilities. At a minimum such revisions for facilities potentially receiving such wastes should require ground water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate.

(Pub. L. 89-272, title II, § 4010, as added Pub. L. 98-616, title III, § 302(a)(1), Nov. 8, 1984, 98 Stat. 3267.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6945 of this title.

SUBCHAPTER V—DUTIES OF THE SECRETARY OF COMMERCE IN RESOURCE AND RECOVERY

§ 6956. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce $5,000,000 for each of fiscal years 1980, 1981, and 1982 and $1,500,000 for each of the fiscal years 1985 through 1988 to carry out the purposes of this subchapter.

(As amended Pub. L. 98-616, § 2(h), Nov. 8, 1984, 98 Stat. 3223.)

AMENDMENTS

1984—Pub. L. 98-616 authorized appropriation of $1,500,000 for each of the fiscal years 1985 through 1988.

SUBCHAPTER VI—FEDERAL RESPONSIBILITIES

§ 6962. Federal procurement

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Requirements

(1) After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) of this section practicable), consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items—

[*See main edition for text of* (*A*) *to* (*C*), (*2*) *and* (*3*)]

(d) Specifications

All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

(1) as expeditiously as possible but in any event no later than eighteen months after November 8, 1984, eliminate from such specifications—

[*See main edition for text of* (*A*) *and* (*B*), (*2*)]

(e) Guidelines

The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the Bureau of Standards), and the Public Printer, shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out th[illegible]bjectives of this section, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1) of this section; and

[*See main edition for text of* (*2*)]

and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

[*See main edition for text of* (*A*) *to* (*D*); (*f*)]

(g) Executive Office

The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the requirements of this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section.

(h) "Recovered materials" defined

As used in this section, in the case of paper products, the term "recovered materials" includes—

(1) postconsumer materials such as—

(A) paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(B) all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) manufacturing, forest residues, and other wastes such as—

(A) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(B) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(C) fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(D) wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and

(E) fibers recovered from waste water which otherwise would enter the waste stream.

(i) Procurement program

(1) Within one year after the date of publication of applicable guidelines under subsection (e) of this section, each procuring agency shall develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

(2) Each affirmative procurement program required under this subsection shall, at a minimum, contain—

(A) a recovered materials preference program;

(B) an agency promotion program to promote the preference program adopted under subparagraph (A);

(C) a program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications; and

(D) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

In the case of paper, the recovered materials preference program required under subparagraph (A) shall provide for the maximum use of the post consumer recovered materials referred to in subsection (h)(1) of this section.

(3) In developing the preference program, the following options shall be considered for adoption:

(A) Case-by-Case Policy Development: Subject to the limitations of subsection (c)(1)(A) through (C) of this section, a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1) of this section). Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum recovered materials content.

(B) Minimum Content Standards: Minimum recovered materials content specifications which are set in such a way as to assure that the recovered materials content (and in the case of paper, the content of post consumer materials referred to in subsection (h)(1) of this section) required is the maximum available without jeopardizing the intended end use of the item, or violating the limitations of subsection (c)(1)(A) through (C) of this section.

Procuring agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the affirmative procurement program.

(As amended Pub. L. 98-616, title V, § 501(a)-(e), Nov. 8, 1984, 98 Stat. 3274-3276.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-616, § 501(c), added "(and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) of this section practicable)".

Subsec. (d)(1). Pub. L. 98-616, § 501(e), substituted "eighteen months after November 8, 1984" for "five years after October 21, 1976".

Subsec. (e). Pub. L. 98-616, § 501(b)(2), substituted "for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985" for "for at least three product categories, including paper, by May 1, 1981, and for two additional product categories, including construction materials, by September 30, 1982." in provisions following par. (2).

Subsec. (e)(1). Pub. L. 98-616, § 501(b)(1), added ", and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1) of this section".

Subsec. (g). Pub. L. 98-616, § 501(d), substituted "the requirements of" for "the policy expressed in" and added ", and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section".

Subsecs. (h), (i). Pub. L. 98-616, § 501(a), added subsecs. (h) and (i).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6905, 6941 of this title.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§ 6972. Citizen suits

(a) In general

Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

(1)(A) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or

(B) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred or the alleged endangerment may occur. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

(b) Actions prohibited

(1) No action may be commenced under subsection (a)(1)(A) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to—

(i) the Administrator;

(ii) the State in which the alleged violation occurs; and

(iii) to any alleged violator of such permit, standard, regulation, condition, requirement, prohibition, or order,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter; or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.

In any action under subsection (a)(1)(A) of this section in a court of the United States, any person may intervene as a matter of right.

(2)(A) No action may be commenced under subsection (a)(1)(B) of this section prior to ninety days after the plaintiff has given notice of the endangerment to—

(i) the Administrator;

(ii) the State in which the alleged endangerment may occur;

(iii) any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in subsection (a)(1)(B) of this section,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter.

(B) No action may be commenced under subsection (a)(1)(B) of this section if the Administrator, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under section 6973 of this title or under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9606],[1]

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604];

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C. 9601 et seq.]; or

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[1] So in original. The comma probably should be a semicolon.

(iv) has obtained a court order (including a consent decree) or issued an administrative order under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 980 [1] [42 U.S.C. 9606] or section 6973 of this title pursuant to which a responsible party is diligently conducting a removal action, Remedial Investigation and Feasibility Study (RIFS), or proceeding with a remedial action.

In the case of an administrative order referred to in clause (iv), actions under subsection (a)(1)(B) of this section are prohibited only as to the scope and duration of the administrative order referred to in clause (iv).

(C) No action may be commenced under subsection (a)(1)(B) of this section if the State, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) of this section;

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604]; or

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C. 9601 et seq.].

(D) No action may be commenced under subsection (a)(1)(B) of this section by any person (other than a State or local government) with respect to the siting of a hazardous waste treatment, storage, or a disposal facility, nor to restrain or enjoin the issuance of a permit for such facility.

(E) In any action under subsection (a)(1)(B) of this section in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Administrator or the State shows that the applicant's interest is adequately represented by existing parties.

(F) Whenever any action is brought under subsection (a)(1)(B) of this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and with the Administrator.

[*See main edition for text of* (*c*) *and* (*d*)]

(e) Costs

The court, in issuing any final order in any action brought pursuant to this section or section 6976 of this title, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

[*See main edition for text of* (*f*)]

(g) Transporters

A transporter shall not be deemed to have contributed or to be contributing to the handling, storage, treatment, or disposal, referred to in subsection (a)(1)(B) of this section taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste.

(As amended Pub. L. 98-616, title IV, § 401, Nov. 8, 1984, 98 Stat. 3268.)

REFERENCES IN TEXT

That Act, referred to in subsec. (b)(2)(B)(iii), (C)(iii), means Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to chapter 103 (§ 9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, § 401(a), (b), designated existing provisions of subsec. (a)(1) as subpar. (A) thereof, inserted "prohibition," after "requirement,", added subpar. (B), and in provisions following par. (2) added "or the alleged endangerment may occur" in first sentence and substituted "to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title" for "to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be".

Subsec. (b). Pub. L. 98-616, § 401(d), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No action may be commenced under paragraph (a)(1) of this section—

"(1) prior to sixty days after the plaintiff has given notice of the violation (A) to the Administrator; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of such permit, standard, regulation, condition, requirement, or order; or

"(2) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, or order: *Provided, however,* That in any such action in a court of the United States, any person may intervene as a matter of right."

Subsec. (e). Pub. L. 98-616, § 401(e), substituted "to the prevailing or substantially prevailing party" for

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[1] So in original. Probably should be "1980".

"to any party" and added "or section 6976 of this title".

Subsec. (g). Pub. L. 98-616, § 401(c), added subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6945, 6979a of this title.

§ 6973. Imminent hazard

(a) Authority of Administrator

Notwithstanding any other provision of this chapter, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractural[3] arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The Administrator shall provide notice to the affected State of any such suit. The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

[*See main edition for text of* (*b*)]

(c) Immediate notice

Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the Administrator shall provide immediate notice to the appropriate local government agencies. In addition, the Administrator shall require notice of such endangerment to be promptly posted at the site where the waste is located.

(d) Public participation in settlements

Whenever the United States or the Administrator proposes to covenant not to sue or to forbear from suit or to settle any claim arising under this section, notice, and opportunity for a public meeting in the affected area, and a reasonable opportunity to comment on the proposed settlement prior to its final entry shall be afforded to the public. The decision of the United States or the Administrator to enter into or not to enter into such Consent Decree, covenant or agreement shall not constitute a final agency action subject to judicial review under this chapter or chapter 7 of title 5.

(As amended Pub. L. 98-616, title IV, §§ 402, 403(a), 404, Nov. 8, 1984, 98 Stat. 3271, 3273.)

CODIFICATION

In subsec. (d), "chapter 7 of title 5" was substituted for "the Administrative Procedure Act" on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, § 402, inserted "past or present" after "evidence that the", substituted "against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or, who is" for "to immediately restrain any person", substituted "to restrain such person from" for "to stop", substituted ", to order such person to take such other action as may be necessary, or both" for "or to take such other action as may be necessary", and added "A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal, taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractural arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste."

Subsec. (c). Pub. L. 98-616, § 403(a), added subsec. (c).

Subsec. (d). Pub. L. 98-616, § 404, added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6972, 6979a, 9606 of this title.

§ 6974. Petition for regulations; public participation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6925 of this title.

§ 6976. Judicial review

[*See main edition for text of* (*a*)]

(b) Review of certain actions under sections 6925 and 6926 of this title

Review of the Administrator's action (1) in issuing, denying, modifying, or revoking any permit under section 6925 of this title (or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1)[4] of this title), or (2) in granting, denying, or withdrawing authorization or interim authorization under section 6926 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such issuance, denial, modification, revocation, grant, or withdrawal, or after such date only if such application is based solely on grounds which arose after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement. Such review shall be in accordance with sections 701 through 706 of title 5.

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[3] So in original. Probably should be "contractual".

[4] See References in Text note below.

(As amended Pub. L. 98-616, title II, § 241(b)(1), title IV, § 403(d)(5), Nov. 8, 1984, 98 Stat. 3259, 3273.)

References in Text

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89-272, which was renumbered section 3014(d)(1) of Pub. L. 89-272 by Pub. L. 98-616 and is classified to section 6935(d)(1) of this title.

Amendments

1984—Pub. L. 98-616 added "(or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1) of this title)" and added "Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement."

Section Referred to in Other Sections

This section is referred to in section 6972 of this title.

§ 6979a. Interim control of hazardous waste injection

(a) Underground source of drinking water

No hazardous waste may be disposed of by underground injection—

(1) into a formation which contains (within one-quarter mile of the well used for such underground injection) an underground source of drinking water; or

(2) above such a formation.

The prohibitions established under this section shall take effect 6 months after November 8, 1984, except in the case of any State in which identical or more stringent prohibitions are in effect before such date under the Safe Drinking Water Act [42 U.S.C. 300f et seq.].

(b) Actions under Comprehensive Environmental Response, Compensation, and Liability Act

Subsection (a) of this section shall not apply to the injection of contaminated ground water into the aquifer from which it was withdrawn, if—

(1) such injection is—

(A) a response action taken under section 9604 or 9606 of this title, or

(B) part of corrective action required under this chapter [6] intended to clean up such contamination;

(2) such contaminated ground water is treated to substantially reduce hazardous constituents prior to such injection; and

(3) such response action or corrective action will, upon completion, be sufficient to protect human health and the environment.

(c) Enforcement

In addition to enforcement under sections 6972 and 6973 of this title, the prohibitions established under paragraphs (1) and (2) of subsection (a) of this section shall be enforceable under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] in any State—

(1) which has adopted identical or more stringent prohibitions under part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.] and which has assumed primary enforcement responsibility under that Act for enforcement of such prohibitions; or

(2) in which the Administrator has adopted identical or more stringent prohibitions under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] and is exercising primary enforcement responsibility under that Act for enforcement of such prohibitions.

(d) Definitions

The terms "primary enforcement responsibility", "underground source of drinking water", "formation" and "well" have the same meanings as provided in regulations of the Administrator under the Safe Drinking Water Act [42 U.S.C. 300f et seq.]. The term "Safe Drinking Water Act" means title XIV of the Public Health Service Act.

(Pub. L. 89-272, title II, § 7010, as added Pub. L. 98-616, title IV, § 405(a), Nov. 8, 1984, 98 Stat. 3273.)

References in Text

The Safe Drinking Water Act, referred to in subsecs. (a), (c), and (d), is Pub. L. 93-523, Dec. 16, 1974, 88 Stat. 1660, as amended, which enacted title XIV of the Public Health Service Act and which is classified to subchapter XII (§ 300f et seq.) of chapter 6A of this title. Part C of the Safe Drinking Water Act is classified generally to part C (§ 300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title of 1974 Amendments note set out under section 201 of this title and Tables.

Section Referred to in Other Sections

This section is referred to in section 6924 of this title.

§ 6979b. Law enforcement authority

The Attorney General of the United States shall, at the request of the Administrator and on the basis of a showing of need, deputize qualified employees of the Environmental Protection Agency to serve as special deputy United States marshals in criminal investigations with respect to violations of the criminal provisions of this chapter.

(Pub. L. 89-272, title II, § 7012, as added Pub. L. 98-616, title IV, § 403(b)(1), Nov. 8, 1984, 98 Stat. 3272.)

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[6] So in original. Probably should be followed by a comma.

CODIFICATION

Section 403(b)(1) of Pub. L. 98-616 directed that this section be added "after section 7011" of the Solid Waste Disposal Act, title II of Pub. L. 89-272. However, the Solid Waste Disposal Act does not contain a section 7011.

SUBCHAPTER VIII—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND INFORMATION

§ 6982. Special studies; plans for research, development, and demonstrations

[See main edition for text of (a) to (q)]

(r) Minimization of hazardous waste

The Administrator shall compile, and not later than October 1, 1986, submit to the Congress, a report on the feasibility and desirability of establishing standards of performance or of taking other additional actions under this chapter to require the generators of hazardous waste to reduce the volume or quantity and toxicity of the hazardous waste they generate, and of establishing with respect to hazardous wastes required management practices or other requirements to assure such wastes are managed in ways that minimize present and future risks to human health and the environment. Such report shall include any recommendations for legislative changes which the Administrator determines are feasible and desirable to implement the national policy established by section 6902 of this title.

(s) Extending landfill life and reusing landfilled areas

The Administrator shall conduct detailed, comprehensive studies of methods to extend the useful life of sanitary landfills and to better use sites in which filled or closed landfills are located. Such studies shall address—

(1) methods to reduce the volume of materials before placement in landfills;

(2) more efficient systems for depositing waste in landfills;

(3) methods to enhance the rate of decomposition of solid waste in landfills, in a safe and environmentally acceptable manner;

(4) methane production from closed landfill units;

(5) innovative uses of closed landfill sites, including use for energy production such as solar or wind energy and use for metals recovery;

(6) potential for use of sewage treatment sludge in reclaiming landfilled areas; and

(7) methods to coordinate use of a landfill owned by one municipality by nearby municipalities, and to establish equitable rates for such use, taking into account the need to provide future landfill capacity to replace that so used.

The Administrator is authorized to conduct demonstrations in the areas of study provided in this subsection. The Administrator shall periodically report on the results of such studies, with the first such report not later than October 1, 1986. In carrying out this subsection, the Administrator need not duplicate other studies which have been completed and may rely upon information which has previously been compiled.

(As amended Pub. L. 98-616, title II, § 224(c), title VII, § 702, Nov. 8, 1984, 98 Stat. 3253, 3289.)

AMENDMENTS

1984—Subsec. (r). Pub. L. 98-616, § 224(c), added subsec. (r).

Subsec. (s). Pub. L. 98-616, § 702, added subsec. (s).

§ 6984. Full-scale demonstration facilities

[See main edition for text of (a) and (b)]

(c) Cost sharing

(1) Wherever practicable, in constructing, operating, or providing financial assistance under this subchapter to a full-scale demonstration facility, the Administrator shall endeavor to enter into agreements and make other arrangements for maximum practicable cost sharing with other Federal, State, and local agencies, private persons, or any combination thereof.

[See main edition for text of (2); (d)]

(As amended Pub. L. 98-616, title V, § 502(f), Nov. 8, 1984, 98 Stat. 3276.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-616 added "(1)" before "Wherever".

SUBCHAPTER IX—REGULATION OF UNDERGROUND STORAGE TANKS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 6916 of this title.

§ 6991. Definitions and exemptions

For the purposes of this subchapter—

(1) The term "underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any—

(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(B) tank used for storing heating oil for consumptive use on the premises where stored,

(C) septic tank,

(D) pipeline facility (including gathering lines) regulated under—

(i) the Natural Gas Pipeline Safety Act of 1968 [49 App. U.S.C. 1671 et seq.],

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 [49 App. U.S.C. 2001 et seq.], or

(iii) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph,

(E) surface impoundment, pit, pond, or lagoon,

(F) storm water or waste water collection system,

(G) flow-through process tank,

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I).

(2) The term "regulated substance" means—

(A) any substance defined in section 9601(14) of this title (but not including any substance regulated as a hazardous waste under subchapter III of this chapter), and

(B) petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(3) The term "owner" means—

(A) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated sustances,[1] and

(B) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

(4) The term "operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(5) The term "release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

(6) The term "person" has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

(7) The term "nonoperational storage tank" means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after November 8, 1984.

(Pub. L. 89-272, title II, § 9001, as added Pub. L. 98-616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3277.)

REFERENCES IN TEXT

The Natural Gas Pipeline Safety Act of 1968, referred to in par. (1)(D)(i), is Pub. L. 90-481, Aug. 12, 1968, 82 Stat. 720, as amended, which is classified generally to chapter 24 (§ 1671 et seq.) of Title 49, Appendix, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1671 of Title 49, Appendix, and Tables.

The Hazardous Liquid Pipeline Safety Act of 1979, referred to in par. (1)(D)(ii), is title II of Pub. L. 96-129, Nov. 30, 1979, 93 Stat. 1003, as amended, which is classified principally to chapter 29 (§ 2001 et seq.) of Title 49, Appendix, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 49, Appendix, and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6991b, 6991c, 6991h of this title.

§ 6991a. Notification

(a) Underground storage tanks

(1) Within 18 months after November 8, 1984, each owner of an underground storage tank shall notify the State or local agency or department designated pursuant to subsection (b)(1) of this section of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

(2)(A) For each underground storage tank taken out of operation after January 1, 1974, the owner of such tank shall, within eighteen months after November 8, 1984, notify the State or local agency, or department designated pursuant to subsection (b)(1) of this section of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The owner of a tank taken out of operation on or before January 1, 1974, shall not be required to notify the State or local agency under this subsection.

(B) Notice under subparagraph (A) shall specify, to the extent known to the owner—

(i) the date the tank was taken out of operation,

(ii) the age of the tank on the date taken out of operation,

(iii) the size, type and location of the tank, and

(iv) the type and quantity of substances left stored in such tank on the date taken out of operation.

(3) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the designated State or local agency or department within thirty days of the existence of such tank, specifying the age, size, type, location and uses of such tank.

(4) Paragraphs (1) through (3) of this subsection shall not apply to tanks for which notice was given pursuant to section 9603(c) of this title.

(5) Beginning thirty days after the Administrator prescribes the form of notice pursuant to subsection (b)(2) of this section and for eighteen months thereafter, any person who deposits regulated substances in an underground storage tank shall reasonably notify the owner or operator of such tank of the owner's notification requirements pursuant to this subsection.

(6) Beginning thirty days after the Administrator issues new tank performance standards pursuant to section 6991b(c) of this title, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification requirements pursuant to this subsection.

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[1] So in original. Probably should be "substances,".

(b) Agency designation

(1) Within one hundred and eighty days after November 8, 1984, the Governors of each State shall designate the appropriate State agency or department or local agencies or departments to receive the notifications under subsection (a)(1), (2), or (3) of this section.

(2) Within twelve months after November 8, 1984, the Administrator, in consultation with State and local officials designated pursuant to subsection (b)(1) of this section, and after notice and opportunity for public comment, shall prescribe the form of the notice and the information to be included in the notifications under subsection (a)(1), (2), or (3) of this section. In prescribing the form of such notice, the Administrator shall take into account the effect on small businesses and other owners and operators.

(Pub. L. 89-272, title II, § 9002, as added Pub. L. 98-616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3278.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6991c, 6991e of this title.

§ 6991b. Release detection, prevention, and correction regulations

(a) Regulations

The Administrator, after notice and opportunity for public comment, and at least three months before the effective dates specified in subsection (f) of this section, shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.

(b) Distinctions in regulations

In promulgating regulations under this section, the Administrator may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the Administrator may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

(c) Requirements

The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all underground storage tanks—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;

(3) requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank; and

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment.

(d) Financial responsibility

(1) As he deems necessary or desirable, the Administrator shall promulgate regulations containing requirements for maintaining evidence of financial responsibility as he deems necessary and desirable for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(3) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person

under section 9607 or 9611 of this title or other applicable law.

(5) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(e) New tank performance standards

The Administrator shall, not later than three months prior to the effective date specified in subsection (f) of this section, issue performance standards for underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but need not be limited to, design, construction, installation, release detection, and compatibility standards.

(f) Effective dates

(1) Regulations issued pursuant to subsection [2] (c) and (d) of this section, and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section 6991(2)(B) of this title (petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure) shall be effective not later than thirty months after November 8, 1984.

(2) Standards issued pursuant to subsection (e) of this section (entitled "New Tank Performance Standards") for underground storage tanks containing regulated substances defined in section 6991(2)(A) of this title shall be effective not later than thirty-six months after November 8, 1984.

(3) Regulations issued pursuant to subsection (c) of this section (entitled "Requirements") and standards issued pursuant to subsection (d) of this section (entitled "Financial Responsibility") for underground storage tanks containing regulated substances defined in section 6991(2)(A) of this title shall be effective not later than forty-eight months after November 8, 1984.

(g) Interim prohibition

(1) Until the effective date of the standards promulgated by the Administrator under subsection (e) of this section and after one hundred and eighty days after November 8, 1984, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction)—

(A) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(B) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) Notwithstanding paragraph (1), if soil tests conducted in accordance with ASTM Standard G57-78, or another standard approved by the Administrator, show that soil resistivity in an installation location is 12,000 ohm/cm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (1).

(Pub. L. 89-272, title II, § 9003, as added Pub. L. 98-616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3279.)

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (d)(3), probably means a reference to Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6991a, 6991c, 6991e of this title.

§ 6991c. Approval of State programs

(a) Elements of State program

Beginning 30 months after November 8, 1984, any State may, submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator. The program may cover tanks used to store regulated substances referred to in [3] 6991(2)(A) or (B) or both of this title. A State program may be approved by the Administrator under this section only if the State demonstrates that the State program includes the following requirements and standards and provides for adequate enforcement of compliance with such requirements and standards—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) requirements for reporting of any releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment;

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;

(7) standards of performance for new underground storage tanks; and

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[2] So in original. Probably should be "subsections".

[3] So in original. Probably should be followed by "section".

(8) requirements—

(A) for notifying the appropriate State agency or department (or local agency or department) designated according to section 6991a(b)(1) of this title of the existence of any operational or non-operational underground storage tank; and

(B) for providing the information required on the form issued pursuant to section 6991a(b)(2) of this title.

(b) Federal standards

(1) A State program submitted under this section may be approved only if the requirements under paragraphs (1) through (7) of subsection (a) of this section are no less stringent than the corresponding requirements standards promulgated by the Administrator pursuant to section 6991b(a) of this title.

(2)(A) A State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) of this section are less stringent than the corresponding standards under section 6991b(a) of this title during the one-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title if State regulatory action but no State legislative action is required in order to adopt a State program.

(B) If such State legislative action is required, the State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) of this section are less stringent than the corresponding standards under section 6991b(a) of this title during the two-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title (and during an additional one-year period after such legislative action if regulations are required to be promulgated by the State pursuant to such legislative action).

(c) Financial responsibility

(1) Corrective action and compensation programs financed by fees on tank owners and operators and administered by State or local agencies or departments may be submitted for approval under subsection (a)(6) of this section as evidence of financial responsibility.

(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(3) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(5) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(d) EPA determination

(1) Within one hundred and eighty days of the date of receipt of a proposed State program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section.

(2) If the Administrator determines that a State program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section, he shall approve the State program in lieu of the Federal program and the State shall have primary enforcement responsibility with respect to requirements of its program.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this subchapter in accordance with the provisions of this section, he shall so notify the State. If appropriate action is not taken within a reasonable time, not to exceed one hundred and twenty days after such notification, the Administrator shall withdraw approval of such program and reestablish the Federal program pursuant to this subchapter.

(Pub. L. 89-272, title II, § 9004, as added Pub. L. 98-616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3282.)

REFERENCES IN TEXT

he Federal Bankruptcy Code, referred to in subsec. 3), probably means a reference to Title 11, Bank- tcy.

SECTION REFERRED TO IN OTHER SECTIONS

his section is referred to in section 6991e of this e.

91d. Inspections, monitoring, and testing

Furnishing information

'or the purposes of developing or assisting in e development of any regulation, conducting y study, or enforcing the provisions of this bchapter, any owner or operator of an under- ound storage tank (or any tank subject to dy under section 6991h of this title that is ed for storing regulated substances) shall, on request of any officer, employee or repre- etative of the Environmental Protection ency, duly designated by the Administrator, upon request of any duly designated officer, ployee, or representative of a State with an proved program, furnish information relating such tanks, their associated equipment, their ntents, conduct monitoring or testing, and rmit such officer at all reasonable times to ve access to, and to copy all records relating such tanks. For the purposes of developing assisting in the development of any regula- n, conducting any study, or enforcing the ovisions of this subchapter, such officers, em- oyees, or representatives are authorized—

(1) to enter at reasonable times any estab- ishment or other place where an underground storage tank is located;

(2) to inspect and obtain samples from any person of any regulated substances contained n such tank; and

(3) to conduct monitoring or testing of the anks, associated equipment, contents, or surrounding soils, air, surface water or ground water.

ch such inspection shall be commenced and mpleted with reasonable promptness.

Confidentiality

1) Any records, reports, or information ob- ined from any persons under this section all be available to the public, except that on a showing satisfactory to the Administra- r (or the State, as the case may be) by any rson that records, reports, or information, or particular part thereof, to which the Adminis- ator (or the State, as the case may be) or any ficer, employee, or representative thereof has cess under this section if made public, would vulge information entitled to protection der section 1905 of title 18, such information particular portion thereof shall be consid- ed confidential in accordance with the pur- ses of that section, except that such record, port, document, or information may be dis- osed to other officers, employees, or author- ed representatives of the United States con- rned with carrying out this chapter, or when elevent [4] in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this subchapter, a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this subchapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained, by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee (including records, reports, or information obtained by representatives of the Evironmental Protection Agency).

(Pub. L. 89-272, title II, § 9005, as added Pub. L. 98-616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3284.)

§ 6991e. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information, the Administrator determines that any person is in violation of any requirement of this subchapter, the Administrator may issue an order requiring compliance within a reasonable specified time period or the Administrator may commence a civil action in the United States district court in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State with a program approved under section 6991c of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) If a violator fails to comply with an order under this subsection within the time specified in the order, he shall be liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance.

(b) Procedure

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

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[4] So in original. Probably should be "relevant".

(c) Contents of order

Any order issued under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compliance, and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(d) Civil penalties

(1) Any owner who knowingly fails to notify or submits false information pursuant to section 6991a(a) of this title shall be subject to a civil penalty not to exceed $10,000 for each tank for which notification is not given or false information is submitted.

(2) Any owner or operator of an underground storage tank who fails to comply with—

(A) any requirement or standard promulgated by the Administrator under section 6991b of this title;

(B) any requirement or standard of a State program approved pursuant to section 6991c of this title; or

(C) the provisions of section 6991b(g) of this title (entitled "Interim Prohibition")

shall be subject to a civil penalty not to exceed $10,000 for each tank for each day of violation.

(Pub. L. 89-272, title II, § 9006, as added Pub. L. 98-616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3285.)

§ 6991f. Federal facilities

(a) Application of subchapter

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any underground storage tank shall be subject to and comply with all Federal, State, interstate, and local requirements, applicable to such tank, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable service charges. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such injunctive relief.

(b) Presidential exemption

The President may exempt any underground storage tanks of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriations. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(Pub. L. 89-272, title II, § 9007, as added Pub. L. 98-616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3286.)

§ 6991g. State authority

Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter.

(Pub. L. 89-272, title II, § 9008, as added Pub. L. 98-616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3286.)

§ 6991h. Study of underground storage tanks

(a) Petroleum tanks

Not later than twelve months after November 8, 1984, the Administrator shall complete a study of underground storage tanks used for the storage of regulated substances defined in section 6991(2)(B) of this title.

(b) Other tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall complete a study of all other underground storage tanks.

(c) Elements of studies

The studies under subsections (a) and (b) of this section shall include an assessment of the ages, types (including methods of manufacture, coatings, protection systems, the compatibility of the construction materials and the installation methods) and locations (including the climate of the locations) of such tanks; soil conditions, water tables, and the hydrogeology of tank locations; the relationship between the foregoing factors and the likelihood of releases from underground storage tanks; the effectiveness and costs of inventory systems, tank testing, and leak detection systems; and such other factors as the Administrator deems appropriate.

(d) Farm and heating oil tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall conduct a study regarding the tanks referred to in section 6991(1)(A) and (B) of this title. Such study shall include estimates of the number and location of such tanks and an analysis of the extent to which there may be releases or threatened releases from such tanks into the environment.

(e) Reports

Upon completion of the studies authorized by this section, the Administrator shall submit reports to the President and to the Congress containing the results of the studies and recommendations respecting whether or not such tanks should be subject to the preceding provisions of this subchapter.

(f) Reimbursement

(1) If any owner or operator (excepting an agency, department, or instrumentality of the United States Government, a State or a political subdivision thereof) shall incur costs, including the loss of business opportunity, due to the closure or interruption of operation of an underground storage tank solely for the purpose of conducting studies authorized by this section, the Administrator shall provide such person fair and equitable reimbursement for such costs.

(2) All claims for reimbursement shall be filed with the Administrator not later than ninety days after the closure or interruption which gives rise to the claim.

(3) Reimbursements made under this section shall be from funds appropriated by the Congress pursuant to the authorization contained in section 6916(g)[5] of this title.

(4) For purposes of judicial review, a determination by the Administrator under this subsection shall be considered final agency action.

(Pub. L. 89-272, title II, § 9009, as added Pub. L. 98-616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3287.)

References in Text

Section 6916(g) of this title, referred to in subsec. (f)(3), probably means section 6916(f) of this title which authorizes appropriations for this subchapter. There is no subsec. (g) of section 6916.

Section Referred to in Other Sections

This section is referred to in section 6991d of this title.

§ 6991i. Authorization of appropriations

For authorization of appropriations to carry out this subchapter, see section 6916(g)[5] of this title.

(Pub. L. 89-272, title II, § 9010, as added Pub. L. 98-616, title VI, § 601(a), Nov. 8, 1984, 98 Stat. 3287.)

References in Text

Section 6916(g) of this title, referred to in text, probably means section 6916(f) of this title which authorizes appropriations for this subchapter. There is no subsec. (g) of section 6916.

CHAPTER 83—ENERGY EXTENSION SERVICE

§ 7011. "Energy conservation" and "State" defined

As used in this chapter, the term—

(1) "energy conservation" means energy conservation, efficient energy use and the utilization of renewable energy resources; and

(2) "State" means a State, the District of Columbia, Puerto Rico, the Trust Territory of the Pacific Islands, or any territory or possession of the United States.

(As amended Pub. L. 98-454, title VI, § 601(g), Oct. 5, 1984, 98 Stat. 1736.)

Amendments

1984—Par. (2). Pub. L. 98-454 struck out "the Commonwealth of" before "Puerto Rico" and substituted "a State" for "any State of the United States" and "the Trust Territory of the Pacific Islands," for "Guam, the Virgin Islands, American Samoa,".

CHAPTER 84—DEPARTMENT OF ENERGY

SUBCHAPTER VI—ADMINISTRATIVE PROVISIONS

PART C—GENERAL ADMINISTRATIVE PROVISIONS

Sec.

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SUBCHAPTER II—ESTABLISHMENT OF THE DEPARTMENT

§ 7133. Assistant Secretaries; appointment and confirmation; identification of responsibilities

Marketing and Exchange of Surplus Electricity From Navajo Generating Station

Pub. L. 98-381, title I, § 107, Aug. 17, 1984, 98 Stat. 1339, provided that:

"(a) Subject to the provisions of any existing layoff contracts, electrical capacity and energy associated with the United States' interest in the Navajo generating station which is in excess of the pumping requirements of the Central Arizona project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, as amended [43 U.S.C. 1571(b)(2)(B)] (hereinafter in this Act referred to as 'Navajo surplus') shall be marketed and exchanged by the Secretary of Energy pursuant to this section.

"(b) Navajo surplus shall be marketed by the Secretary of Energy pursuant to the plan adopted under subsection (c) of this section, directly to, with or through the Arizona Power Authority and/or other entities having the status of preference entities under the reclamation law in accordance with the preference provisions of section 9(c) of the Reclamation Project Act of 1939 [43 U.S.C. 485h(c)] and as provided in part IV, section A of the Criteria.

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[5] See References in Text note below.

"(c) In the marketing and exchanging of Navajo surplus, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (or its successor in interest to the repayment obligation for the Central Arizona project), for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project. The Secretary of the Interior, in concert with the Secretary of Energy, in accordance with section 14 of the Reclamation Project Act of 1939 [43 U.S.C. 389], shall grant electrical power and energy exchange rights with Arizona entities as necessary to implement the adopted plan: *Provided, however,* That if exchange rights with Arizona entities are not required to implement the adopted plan, exchange rights may be offered to other entities.

"(d) For the purposes provided in subsection (c) of this section, the Secretary of Energy, or the marketing entity or entities under the adopted plan, are authorized to establish and collect or cause to be established and collected, rate components, in addition to those currently authorized, and to deposit the revenues received in the Lower Colorado River Basin Development Fund to be available for such purposes and if required under the adopted plan, to credit, utilize, pay over directly or assign revenues from such additional rate components to make repayment and establish reserves for repayment of funds, including interest incurred, to entities which have advanced funds for the purposes of subsection (c) of this section: *Provided, however,* That rates shall not exceed levels that allow for an appropriate saving for the contractor.

"(e) To the extent that this section may be in conflict with any other provision of law relating to the marketing and exchange of Navajo surplus, or to the disposition of any revenues therefrom, this section shall control."

SUBCHAPTER III—TRANSFERS OF FUNCTIONS

§ 7158. Naval reactor and military application programs

NAVAL NUCLEAR PROPULSION PROGRAM

Pub. L. 98-525, title XVI, § 1634, Oct. 19, 1984, 98 Stat. 2649, provided that: "The provisions of Executive Order Numbered 12344, dated February 1, 1982 [set out below], pertaining to the Naval Nuclear Propulsion Program, shall remain in force until changed by law."

SUBCHAPTER VI—ADMINISTRATIVE PROVISIONS

PART C—GENERAL ADMINISTRATIVE PROVISIONS

§ 7256a. Costs not allowed under covered contracts

(a) In general

The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Energy.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the performance of the contract and the cost of which exceeds the amount of the standard commercial fare.

(b) Regulations

Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 418b of title 41.

(c) Definition

In this section, "covered contract" means a contract for an amount more than $100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

(d) Effective date

Subsection (a) of this section shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) of this section are issued.

(Pub. L. 99-145, title XV, § 1534, Nov. 8, 1985, 99 Stat. 774.)

CODIFICATION

Section was enacted as part of the Department of Defense Authorization Act, 1986, and also as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7274. Environmental impact statements relating to defense facilities of Department of Energy

(1) The Secretary may not proceed with the preparation of an environmental impact statement relating to the construction or operation of a defense facility of the Department of

Energy if the estimated cost of preparing such statement exceeds $250,000 unless—

(A) the Secretary has notified the Committees on Armed Services of the Senate and the House of Representatives of his intent to prepare such statement and a period of thirty days has expired after the date on which such notice was received by such committees; or

(B) the Secretary has received from each such committee, before the expiration of such thirty-day period, a written notice that the committee agrees with the decision of the Secretary regarding the preparation of such statement.

(2) The provisions of paragraph (1) shall not apply in the case of any environmental impact statement on which the Secretary began preparation before December 4, 1981.

(Pub. L. 97-90, title II, § 212(b), Dec. 4, 1981, 95 Stat. 1171.)

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1982, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7275. Energy conservation program of Western Area Power Administration

(a) Long-term power service contracts; energy conservation program requirement; definitions; contents of contracts

Each long-term firm power service contract entered into or amended subsequent to one year from August 17, 1984, by the Secretary of Energy acting by and through the Western Area Power Administration (hereinafter "Western"), shall contain an article requiring the development and implementation by the purchaser thereunder of an energy conservation program. A long-term firm power service contract is any contract for the sale by Western of firm capacity, with or without energy, which is to be delivered over a period of more than one year. The term "purchaser" includes parent-type entities and their distribution or user members. If more than one such contract exists with a purchaser, only one program will be required for that purchaser. Each such contract article shall—

(1) contain time schedules for meeting program goals and delineate actions to be taken in the event such schedules are not met, which may include a reduction of the allocation of capacity or energy to such purchaser as would otherwise be provided under such contract; and

(2) provide for review and modification of the energy conservation program at not to exceed five year intervals.

(b) Energy conservation program characteristics

For purposes of sections 7275 and 7276 of this title, an energy conservation program shall—

(1) apply to all uses of energy and capacity which are provided from any Federal project;

(2) contain definite goals;

(3) encourage customer consumption efficiency improvements and demand management practices which ensure that the available supply of hydroelectric power is used in an economically efficient and environmentally sound manner.

(Pub. L. 98-381, title II, § 201, Aug. 17, 1984, 98 Stat. 1340.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7276 of this title.

§ 7276. Regulations of Western Area Power Administration; amendment; energy conservation programs

(a) Amendment of regulations; notice and comment

Within one year after August 17, 1984, Western shall amend its existing regulations (46 Fed. Reg. 56140) to reflect—

(1) the elements to be considered in the energy conservation programs required by sections 7275 and 7276 of this title, and

(2) Western's criteria for evaluating and approving such programs.

Such amended regulations shall be promulgated only after public notice and opportunity to comment in accordance with subchapter II of chapter 5 of title 5.

(b) Elements in evaluation of energy conservation program

The following elements shall be considered by Western in evaluating energy conservation programs:

(1) energy consumption efficiency improvements;

(2) use of renewable energy resources in addition to hydroelectric power;

(3) load management techniques;

(4) cogeneration;

(5) rate design improvements, including—

(i) cost of service pricing;

(ii) elimination of declining block rates;

(iii) time of day rates;

(iv) seasonal rates; and

(v) interruptible rates; and

(6) production efficiency improvements.

(c) Allowance by Western for incorporation of elements of energy conservation program

Where a purchaser is implementing one or more of the foregoing elements under a program responding to Federal, State, or other initiatives that apply to conservation and renewable energy development, in evaluating that purchaser's energy conservation program submitted pursuant to sections 7275 and 7276 of this title, Western shall make due allowance for the incorporation of such elements within the energy conservation program required by sections 7275 and 7276 of this title.

(Pub. L. 98-381, title II, § 202, Aug. 17, 1984, 98 Stat. 1341.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

In subsec. (a), "subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedure Act (5 U.S.C. 551-706)" on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7275 of this title.

§ 7277. Report concerning review of United States coal imports

(a) In general

The Energy Information Administration shall issue a report quarterly, and provide an annual summary of the quarterly reports to the Congress, on the status of United States coal imports. Such quarterly reports may be published as a part of the Quarterly Coal Report published by the Energy Information Administration.

(b) Contents

Each report required by this section shall—

(1) include current and previous year data on the quantity, quality (including heating value, sulfur content, and ash content), and delivered price of all coals imported by domestic electric utility plants that imported more than 10,000 tons during the previous calendar year into the United States;

(2) identify the foreign nations exporting the coal, the domestic electric utility plants receiving coal from each exporting nation, the domestically produced coal supplied to such plants, and the domestic coal production, by State, displaced by the imported coal;

(3) identify (to the extent allowed under disclosure policy), at regional and State levels of aggregation, transportation modes and costs for delivery of imported coal from the exporting country port of origin to the point of consumption in the United States; and

(4) specifically highlight and analyze any significant trends of unusual variations in coal imports.

(c) Date of reports

The first report required by this section shall be submitted to Congress in March 1986. Subsequent reports shall be submitted within 90 days after the end of each quarter.

(d) Limitation

Information and data required for the purpose of this section shall be subject to the law regarding the collection and disclosure of such data.

(Pub. L. 99-58, title II, § 202, July 2, 1985, 99 Stat. 107.)

CODIFICATION

Section was enacted as part of the Energy Policy and Conservation Amendments Act of 1985, and also as part of the National Coal Imports Reporting Act of 1985, and not as part of the Department of Energy Organization Act which comprises this chapter.

SHORT TITLE

Section 201 of title II of Pub. L. 99-58 provided that: "This title [enacting this section and provisions set out as a note below] may be cited as the 'National Coal Imports Reporting Act of 1985'."

ANALYSIS OF UNITED STATES COAL IMPORT MARKET; REPORT BY SECRETARY OF ENERGY TO CONGRESS

Section 203 of Pub. L. 99-58 provided that:

"(a) IN GENERAL.—The Secretary of Energy shall, through the Energy Information Administration, conduct a comprehensive analysis of the coal import market in the United States and report the findings of such analysis to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives, within nine months of the date of enactment of this Act [July 2, 1985].

"(b) CONTENTS.—The report required by this section shall—

"(1) contain a detailed analysis of potential domestic markets for foreign coals, by producing nation, between 1985 and 1995;

"(2) identify potential domestic consuming sectors of imported coal and evaluate the magnitude of any potential economic disruptions for each impacted State, including analysis of direct and indirect employment impact in the domestic coal industry and resulting income loss to each State;

"(3) identify domestically produced coal that potentially could be replaced by imported coal;

"(4) identify contractual commitments of domestic utilities expiring between 1985 and 1995 and describe spot buying practices of domestic utilities, fuel cost patterns, plant modification costs required to burn foreign coals, proximity of navigable waters to utilities, demand for compliance coal, availability of less expensive purchased power from Canada, and State and local considerations;

"(5) evaluate increased coal consumption by domestic electric utilities resulting from increased power sales and analyze the potential coal import market represented by this increased coal consumption, including consumption by existing coal-fired plants, new coal-fired plants projected up to the year 1995, and plants planning to convert to coal by 1995;

"(6) identify existing authorities available to the Federal Government relating to coal imports, assess the potential impact of exercising each of these authorities, and describe executive branch plans and strategies to address coal imports;

"(7) identify and characterize the coal export policies of all major coal exporting nations, including the United States, Australia, Canada, Colombia, Poland, and South Africa, with specific analysis of—

"(A) direct or indirect Government subsidies to coal exporters;

"(B) health, safety, and environmental regulations imposed on each coal producer; and

"(C) trade policies relating to coal exports;

"(8) evaluate the excess capacity of foreign producers, potential development of new export-oriented coal mines in foreign nations, operating costs of foreign coal mines, capacity of ocean vessels to transport foreign coal, and constraints on importing coal into the United States because of port and harbor availability;

"(9) identify specifically the participation of all United States corporations involved in mining and exporting coal from foreign nations; and

"(10) identify the policies governing coal imports of all coal-importing industrialized nations (including the United States, Japan, and European nations) by considering such factors as import duties or tariffs, import quotas, and other governmental restrictions or trade policies impacting coal imports."

CHAPTER 85—AIR POLLUTION PREVENTION AND CONTROL

SUBCHAPTER III—GENERAL PROVISIONS

Sec.
7625-1. Exemptions for certain territories.

Chapter Referred to in Other Sections

This chapter is referred to in sections 2022, 4363a, 4365, 4905, 6211, 6901, 6905, 6907, 6949, 7273, 8302, 8375, 8402, 8411, 8455, 8744 of this title; title 15 sections 793, 798, 2080, 2617, 2706, 3801; title 16 sections 460ii-4, 1456; title 23 section 109; title 26 section 169; title 30 sections 201, 1251, 1253, 1292, 1303; title 33 sections 1502, 1503; title 43 section 1334; title 49 App. section 1604.

SUBCHAPTER I—PROGRAMS AND ACTIVITIES

Part A—Air Quality and Emission Limitations

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

Section Referred to in Other Sections

This section is referred to in sections 6211, 6215, 7405, 7407, 7411, 7413, 7414, 7415, 7419, 7420, 7425, 7426, 7475, 7476, 7491, 7501, 7502, 7504, 7506, 7545, 7607, 7613, 7619, 7625-1, 8374, 8375, 9601 of this title.

§ 7411. Standards of performance for new stationary sources

Section Referred to in Other Sections

This section is referred to in sections 7410, 7412, 7413, 7414, 7416, 7417, 7418, 7420, 7422, 7425, 7475, 7479, 7501, 7604, 7607, 7608, 7616, 7617, 7618, 7625-1, 9601 of this title.

§ 7412. National emission standards for hazardous air pollutants

Section Referred to in Other Sections

This section is referred to in sections 7411, 7413, 7414, 7416, 7417, 7418, 7420, 7422, 7479, 7604, 7607, 7608, 7616, 7618, 7625-1, 9601 of this title.

Part D—Plan Requirements for Nonattainment Areas

Part Referred to in Other Sections

This part is referred to in sections 7407, 7410, 7413, 7421, 7604, 7616, 7625-1, 9601 of this title.

SUBCHAPTER II—EMISSION STANDARDS FOR MOVING SOURCES

Part A—Motor Vehicle Emission and Fuel Standards

§ 7545. Regulation of fuels

Agricultural Machinery: Study of Unleaded Fuel

Pub. L. 99-198, title XVII, § 1765, Dec. 23, 1985, 99 Stat. 1653, provided that:

"(a)(1) The Administrator of the Environmental Protection Agency and the Secretary of Agriculture shall jointly conduct a study of the use of fuel containing lead additives, and alternative lubricating additives, in gasoline engines that are—

"(A) used in agricultural machinery; and

"(B) designed to combust fuel containing such additives.

"(2) The study shall analyze the potential for mechanical problems (including but not limited to valve recession) that may be associated with the use of other fuels in such engines.

"(b)(1) For purposes of the study required under this section, the Administrator of the Environmental Protection Agency and the Secretary of Agriculture are authorized to enter into such contracts and other arrangements as may be appropriate to obtain the necessary technical information.

"(2) The Secretary of Agriculture shall specify the types and items of agricultural machinery to be included in the study required under this section. Such types and items shall be representative of the types and items of agricultural machinery used on farms in the United States.

"(3) All testing of engines carried out for purposes of such study shall reflect actual agricultural conditions to the extent practicable, including revolutions per minute and payloads.

"(c) Not later than January 1, 1987—

"(1) the Administrator of the Environmental Protection Agency and the Secretary of Agriculture shall publish the results of the study required under this section; and

"(2) the Administrator shall publish in the Federal Register notice of the publication of such study and a summary thereof.

"(d)(1) After notice and opportunity for hearing, but not later than 6 months after publication of the study, the Administrator shall—

"(A) make findings and recommendations on the need for lead additives in gasoline to be used on a farm for farming purposes, including a determination of whether a modification of the regulations limiting lead content of gasoline would be appropriate in the case of gasoline used on a farm for farming purposes; and

"(B) submit to the President and Congress a report containing—

"(i) the study;

"(ii) a summary of the comments received during the public hearing (including the comments of the Secretary); and

"(iii) the findings and recommendations of the Administrator made in accordance with clause (1).

"(2) The report shall be transmitted to—

"(A) the Committee on Energy and Commerce of the House of Representatives;

"(B) the Committee on Environment and Public Works of the Senate;

"(C) the Committee on Agriculture of the House of Representatives; and

"(D) the Committee on Agriculture, Nutrition, and Forestry of the Senate.

"(e)(1) Between January 1, 1986, and December 31, 1987, the Administrator shall monitor the actual lead content of leaded gasoline sold in the United States.

"(2) The Administrator shall determine the average lead content of such gasoline for each 3-month period between January 1, 1986, and December 31, 1987.

"(3) If the actual lead content falls below an average of 0.2 of a gram of lead per gallon in any such 3-month period, the Administrator shall—

"(A) report to Congress; and

"(B) publish a notice thereof in the Federal Register.

"(f) Until January 1, 1988, no regulation of the Administrator issued under section 211 of the Clean Air Act (42 U.S.C. 7545) regarding the control or prohibition of lead additives in gasoline may require an average lead content per gallon that is less than 0.1 of a gram per gallon.

"(g) To carry out this section, there is authorized to be appropriated $1,000,000, to be available without fiscal year limitation."

SUBCHAPTER III—GENERAL PROVISIONS

§ 7607. Administrative proceedings and judicial review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7419, 7420, 7521, 7545, 7547, 7617, 7625-1 of this title.

§ 7625-1. Exemptions for certain territories

(a)(1) Upon petition by the governor[6] of Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Administrator is authorized to exempt any person or source or class of persons or sources in such territory from any requirement under this chapter other than section 7412 of this title or any requirement under section 7410 of this title or part D of subchapter I of this chapter necessary to attain or maintain a national primary ambient air quality standard. Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 7607(d) of this title and any exemption under this subsection shall be considered final action by the Administrator for the purposes of section 7607(b) of this title.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this subsection and of the approval or rejection of such petition and the basis for such action.

(b) Notwithstanding any other provision of this chapter, any fossil fuel fired steam electric power plant operating within Guam as of December 8, 1983, is hereby exempted from:

(1) any requirement of the new source performance standards relating to sulfur dioxide promulgated under section 7411 of this title as of December 8, 1983; and

(2) any regulation relating to sulfur dioxide standards or limitations contained in a State implementation plan approved under section 7410 of this title as of December 8, 1983: *Provided*, That such exemption shall expire eighteen months after December 8, 1983, unless the Administrator determines that such plant is making all emissions reductions practicable to prevent exceedances of the national ambient air quality standards for sulfur dioxide.

(July 14, 1955, ch. 360, title III, § 325, as added Dec. 8, 1983, Pub. L. 98-213, § 11, 97 Stat. 1461.)

PRIOR PROVISIONS

A prior section 325 of act July 14, 1955, was renumbered 326 by Pub. L. 98-213 and is classified to section 7625a of this title.

Another prior section 325 of act July 14, 1955, was renumbered section 324 by Pub. L. 96-300 and is classified to section 7625 of this title.

§ 7625a. Statutory construction

[See main edition for text]

(July 14, 1955, ch. 360, title III, § 326, as added Nov. 16, 1977, Pub. L. 95-190, § 14(a)(84), 91 Stat. 1404, and renumbered § 325, July 2, 1980, Pub. L. 96-300, § 1(c), 94 Stat. 831; renumbered § 326, Dec. 8, 1983, Pub. L. 98-213, § 11, 97 Stat. 1461.)

PRIOR PROVISIONS

A prior section 326 of act July 14, 1955, was renumbered section 327 by Pub. L. 98-213 and is classified to section 7626 of this title.

§ 7626. Authorization of appropriations

[See main edition for text]

(July 14, 1955, ch. 360, title III, § 327, formerly § 325, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 315, 91 Stat. 790; renumbered § 327 and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(83), 91 Stat. 1404; renumbered § 326, July 2, 1980, Pub. L. 96-300, § 1(c), 94 Stat. 831; renumbered § 327, Dec. 8, 1983, Pub. L. 98-213, § 11, 97 Stat. 1461.)

CHAPTER 86—EARTHQUAKE HAZARDS REDUCTION

§ 7704. National earthquake hazards reduction program

[See main edition for text of (a)]

(b) Duties of President and Director of the Federal Emergency Management Agency

[See main edition for text of (1)]

(2) The Federal Emergency Management Agency (hereinafter referred to as the "Agency") is designated as the agency with the primary responsibilities to plan and coordinate the National Earthquake Hazards Reduction Program. The Director of the Agency (hereinafter referred to as the "Director") shall—

[See main edition for text of (A) to (D)]

(E) compile and maintain a written plan for the program specified in subsections (a), (e), (f), and (g) of this section, to be submitted to the Congress and updated at such times as may be required by significant program events, but in no event less frequently than every three years;

(F) make, in cooperation with the United States Geological Survey, the National Science Foundation, and the National Bureau of Standards, an annual presentation to the appropriate committee of the Congress within sixty days after the end of each fiscal year for the purpose of communicating any events and any programmatic requirements deemed significant by the National Earthquake Hazards Reduction Program; and

(G) recommend appropriate roles for State and local units of government, individuals, and private organizations.

[See main edition for text of (c) to (i)]

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[6] So in original. Probably should be "Governor".

(As amended Pub. L. 99-105, §§ 5, 6, Sept. 30, 1985, 99 Stat. 475.)

AMENDMENTS

1985—Subsec. (b)(2)(E). Pub. L. 99-105, § 5, amended subpar. (E) generally, substituting "to be submitted to the Congress and updated at such times as may be required by significant program events, but in no event less frequently than every three years;" for "which plan will recommend base and incremental budget options for the agencies to carry out the elements and programs specified through at least 1985, and which plan shall be completed by September 30, 1981, and transmitted to the Congress and shall be updated annually; and".

Subsec. (b)(2)(F), (G). Pub. L. 99-105, § 6, added subpar. (F) and redesignated former subpar. (F) as (G).

§ 7706. Authorization of appropriations

(a) General authorization for the program

[*See main edition for text of (1) to (4)*]

(5) There are authorized to be appropriated to the Director, to carry out the provisions of sections 7704 and 7705 of this title, for the fiscal year ending September 30, 1984, $3,705,000, and for the fiscal year ending September 30, 1985, $6,096,000.

(6) There are authorized to be appropriated to the Director, to carry out the provisions of sections 7704 and 7705 of this title, for the fiscal year ending September 30, 1986, $5,596,000, and for the fiscal year ending September 30, 1987, $5,848,000.

(b) Geological Survey

There are authorized to be appropriated to the Secretary of the Interior for purposes for carrying out, through the Director of the United States Geological Survey, the responsibilities that may be assigned to the Director under this chapter not to exceed $27,500,000 for the fiscal year ending September 30, 1978; not to exceed $35,000,000 for the fiscal year ending September 30, 1979; not to exceed $40,000,000 for the fiscal year ending September 30, 1980; $32,484,000 for the fiscal year ending September 30, 1981; $34,425,000 for the fiscal year ending September 30, 1982; $31,843,000 for the fiscal year ending September 30, 1983; $35,524,000 for the fiscal year ending September 30, 1984; $37,300,200 for the fiscal year ending September 30, 1985[1] $35,578,000 for the fiscal year ending September 30, 1986; and $37,179,000 for the fiscal year ending September 30, 1987.

(c) National Science Foundation

To enable the Foundation to carry out responsibilities that may be assigned to it under this chapter, there are authorized to be appropriated to the Foundation not to exceed $27,500,000 for the fiscal year ending September 30, 1978; not to exceed $35,000,000 for the fiscal year ending September 30, 1979; not to exceed $40,000,000 for the fiscal year ending September 30, 1980; $26,600,000 for the fiscal year ending September 30, 1981; $27,150,000 for the fiscal year ending September 30, 1982; $25,000,000 for the fiscal year ending September 30, 1983; $25,800,000 for the fiscal year ending September 30, 1984; $28,665,000 for the fiscal year ending September 30, 1985[1] $27,760,000 for the fiscal year ending September 30, 1986; and $29,009,000 for the fiscal year ending September 30, 1987.

(d) National Bureau of Standards

To enable the Bureau to carry out responsibilities that may be assigned to it under this chapter, there are authorized to be appropriated $425,000 for the fiscal year ending September 30, 1981; $425,000 for the fiscal year ending September 30, 1982; $475,000 for the fiscal year ending September 30, 1983; $475,000 for the fiscal year ending September 30, 1984; $498,750 for the fiscal year ending September 30, 1985[1] $499,000 for the fiscal year ending September 30, 1986; and $521,000 for the fiscal year ending September 30, 1987.

(e) Funds for certain required adjustments

For each of the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, there are authorized to be appropriated such further sums as may be necessary for adjustments required by law in salaries, pay, retirement, and employee benefits incurred in the conduct of activities for which funds are authorized by the preceding provisions of this section.

(As amended Pub. L. 98-241, title I, § 101, Mar. 22, 1984, 98 Stat. 95; Pub. L. 99-105, §§ 1-4, Sept. 30, 1985, 99 Stat. 475.)

AMENDMENTS

1985—Subsec. (a)(6). Pub. L. 99-105, § 1, added par. (6).

Subsec. (b). Pub. L. 99-105, § 2, substituted a semicolon for ", and" after "1984" and added "$35,578,000 for the fiscal year ending September 30, 1986; and $37,179,000 for the fiscal year ending September 30, 1987".

Subsec. (c). Pub. L. 99-105, § 3, struck out "and" after "1984;" and added "$27,760,000 for the fiscal year ending September 30, 1986; and $20,009,000 for the fiscal year ending September 30, 1987".

Subsec. (d). Pub. L. 99-105, § 4, struck out "and" after "1984;" and added "$499,000 for the fiscal year ending September 30, 1986; and $521,000 for the fiscal year ending September 30, 1987".

1984—Subsec. (a). Pub. L. 98-241, § 101(a), added par. (5).

Subsec. (b). Pub. L. 98-241, § 101(b), struck out "and" after "1982;" and inserted "; $35,524,000 for the fiscal year ending September 30, 1984, and $37,300,200 for the fiscal year ending September 30, 1985".

Subsec. (c). Pub. L. 98-241, § 101(c), struck out "and" after "1982;" and inserted "; $25,800,000 for the fiscal year ending September 30, 1984; and $28,665,000 for the fiscal year ending September 30, 1985".

Subsec. (d). Pub. L. 98-241, § 101(d), struck out "and" after "1982;" and inserted "; $475,000 for the fiscal year ending September 30, 1984; and $498,750 for the fiscal year ending September 30, 1985".

Subsec. (e). Pub. L. 98-241, § 101(e), substituted "1982," for "1982 and" and inserted "September 30, 1984, and September 30, 1985,".

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[1] So in original. Probably should be followed by a semicolon.

CHAPTER 87—WATER RESEARCH AND DEVELOPMENT

§§ 7801, 7802. Repealed. Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101

Section 7801, Pub. L. 95-467, § 2, Oct. 17, 1978, 92 Stat. 1305, set out Congressional findings and declarations for a water research and development program.

Section 7802, Pub. L. 95-467, § 3, Oct. 17, 1978, 92 Stat. 1305, set out Congressional statement of purpose.

For similar provisions, see section 10301 et seq. of this title.

SAVINGS PROVISION

Section 110(b) of Pub. L. 98-242 provided that: "Rules and regulations issued prior to the date of enactment of this Act [Mar. 22, 1984] under the authority of Public Law 95-467 [this chapter] shall remain in full force and effect under this Act [repealing this chapter and enacting chapter 109 (§ 10301 et seq.) of this title] until superseded by new rules and regulations promulgated under this Act."

SHORT TITLE

Section 1 of Pub. L. 95-467, which provided that Pub. L. 95-467 was to be cited as the "Water Research and Development Act of 1978", was repealed by section 110(a) of Pub. L. 98-242.

SUBCHAPTER I—WATER RESOURCES RESEARCH AND DEVELOPMENT

§§ 7811 to 7819. Repealed. Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101

Section 7811, Pub. L. 95-467, title I, § 101, Oct. 17, 1978, 92 Stat. 1306, related to establishment of research and technology institutes.

Section 7812, Pub. L. 95-467, title I, § 102, Oct. 17, 1978, 92 Stat. 1307, authorized use of appropriated funds for printing and publishing of program results, and planning, coordinating, and conducting of cooperative research.

Section 7813, Pub. L. 95-467, title I, § 103, Oct. 17, 1978, 92 Stat. 1308, set out responsibilities of Secretary of the Interior in prescribing procedures, rules, and regulations, and in developing a 5-year water resource research program.

Section 7814, Pub. L. 95-467, title I, § 104, Oct. 17, 1978, 92 Stat. 1308, related to non-impairment of legal relationship between State governments and educational institutions involved in water research and to prohibition with regard to any Federal control of educational institutions.

Section 7815, Pub. L. 95-467, title I, § 105, Oct. 17, 1978, 92 Stat. 1308, provided for making of grants and contracts.

Section 7816, Pub. L. 95-467, title I, § 106, Oct. 17, 1978, 92 Stat. 1309, set out range of program issues and provided for due consideration to be given to priority problems.

Section 7817, Pub. L. 95-467, title I, § 107, Oct. 17, 1978, 92 Stat. 1309, defined the term "State".

Section 7818, Pub. L. 95-467, title I, § 108, Oct. 17, 1978, 92 Stat. 1309, authorized advance payment of initial expenses.

Section 7819, Pub. L. 95-467, title I, § 109, Oct. 17, 1978, 92 Stat. 1309, provided for study and design of water resources programs and activities and for reports to Congress.

For similar provisions, see section 10301 et seq. of this title.

SUBCHAPTER II—WATER RESEARCH AND DEVELOPMENT FOR SALINE AND OTHER IMPAIRED WATERS

§§ 7831 to 7835. Repealed. Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101

Section 7831, Pub. L. 95-467, title II, § 200, Oct. 17, 1978, 92 Stat. 1310, set out Congressional findings and declaration of policy in establishing a program for water research and development for saline and other impaired waters.

Section 7832, Pub. L. 95-467, title II, § 201, Oct. 17, 1978, 92 Stat. 1310, set out functions of the Secretary.

Section 7833, Pub. L. 95-467, title II, § 202, Oct. 17, 1978, 92 Stat. 1310, set out additional functions of the Secretary with regard to demonstrations and prototype plants, utilization of Federal expertise, and financial assistance from State or public agencies.

Section 7834, Pub. L. 95-467, title II, § 203, Oct. 17, 1978, 92 Stat. 1311, authorized the Secretary to issue rules and regulations to carry out this subchapter.

Section 7835, Pub. L. 95-467, title II, § 204, Oct. 17, 1978, 92 Stat. 1311, defined "saline and other impaired water", "United States", "pilot plant", "demonstration", and "prototype".

For similar provisions, see section 10301 et seq. of this title.

§ 7836. Transferred

CODIFICATION

Section, Pub. L. 95-84, § 2, Aug. 2, 1977, 91 Stat. 400; Pub. L. 95-467, title II, § 205(a), (b), Oct. 17, 1978, 92 Stat. 1311; Pub. L. 96-457, § 3, Oct. 15, 1980, 94 Stat. 2032; Pub. L. 98-242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101, which directed Secretary of the Interior to construct facilities demonstrating the engineering and economic viability of various desalting processes, was transferred, and is set out as a Desalting Plants note under section 10301 of this title.

SUBCHAPTER III—TECHNOLOGY TRANSFER AND INFORMATION DISSEMINATION

§§ 7851 to 7853. Repealed. Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101

Section 7851, Pub. L. 95-467, title III, § 300, Oct. 17, 1978, 92 Stat. 1312, provided for creation and operation of a research assessment and technology transfer program.

Section 7852, Pub. L. 95-467, title III, § 301, Oct. 17, 1978, 92 Stat. 1312, authorized the Secretary to maintain a national center for acquisition, processing, and dissemination of information dealing with all areas of water research.

Section 7853, Pub. L. 95-467, title III, § 302, Oct. 17, 1978, 92 Stat. 1312, provided for establishment of a center for cataloging current scientific research in all fields of water resources.

For similar provisions, see section 10301 et seq. of this title.

SUBCHAPTER IV—GENERAL PROVISIONS

§§ 7871 to 7883. Repealed. Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101

Section 7871, Pub. L. 95-467, title IV, § 400, Oct. 17, 1978, 92 Stat. 1313, enumerated powers of Secretary of the Interior in carrying out this chapter.

Section 7872, Pub. L. 95-467, title IV, § 401, Oct. 17, 1978, 92 Stat. 1313; Pub. L. 96-457, §§ 1, 2(a), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for programs under sections 7811(a) and (c), 7815(a) and (b), and 7819 of this title.

Section 7873, Pub. L. 95-467, title IV, § 402, Oct. 17, 1978, 92 Stat. 1314; Pub. L. 96-457, § 2(b)(1), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for research, development, and demonstration plants.

Section 7874, Pub. L. 95-467, title IV, § 403, Oct. 17, 1978, 92 Stat. 1314; Pub. L. 96-457, § 2(b)(2), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for programs conducted under this chapter for which there were no specific appropriations.

Section 7875, Pub. L. 95-467, title IV, § 404, Oct. 17, 1978, 92 Stat. 1314, related to grant applications, approval of applications by the Secretary, and the basis of approvals.

Section 7876, Pub. L. 95-467, title IV, § 405, Oct. 17, 1978, 92 Stat. 1315, related to payments to institutes and accounting for such payments.

Section 7877, Pub. L. 95-467, title IV, § 406, Oct. 17, 1978, 92 Stat. 1315, related to cooperation in research programs between Federal agencies, State and local governments, private institutions, and individuals.

Section 7878, Pub. L. 95-467, title IV, § 407, Oct. 17, 1978, 92 Stat. 1316, authorized conveyance of property acquired by the Secretary to a cooperating institute, educational institution, or cooperating nonprofit organization, and empowered the Secretary to dispose of water and byproducts resulting from operations under this chapter.

Section 7879, Pub. L. 95-467, title IV, § 408, Oct. 17, 1978, 92 Stat. 1316, set out policy under this chapter with regard to patents.

Section 7880, Pub. L. 95-467, title IV, § 409, Oct. 17, 1978, 92 Stat. 1316, provided for annual reports to the Secretary by the various water research institutes.

Section 7881, Pub. L. 95-467, title IV, § 410, Oct. 17, 1978, 92 Stat. 1316, provided that the chapter was not intended to repeal, supersede, or diminish existing authorities of agencies concerning water resources, or to be construed to alter existing law with respect to ownership and control of water.

Section 7882, Pub. L. 95-467, title IV, § 411, Oct. 17, 1978, 92 Stat. 1317, Pub. L. 96-457, § 2(b)(3), Oct. 15, 1980, 94 Stat. 2032, provided for transmittal of rules, regulations, etc., to the Speaker of the House and President of the Senate.

Section 7883, Pub. L. 95-467, title IV, § 412, Oct. 17, 1978, 92 Stat. 1317, provided that authority to enter into contracts or cooperative agreements and to make payments under this chapter was effective only to the extent or in such amounts as were provided in advance in appropriations acts.

For prior provisions, see section 10301 of this title.

Limitations on Authorization of Appropriations For Fiscal Years 1982 to 1984

Pub. L. 97-35, title XVIII, § 1807(b), Aug. 13, 1979, 95 Stat. 765, provided that no funds were authorized to be appropriated to the Secretary of the Interior for the purposes of water resources research and development, saline water research, development, and demonstration, and associated activities in excess of $23,650,000 per fiscal year for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984.

CHAPTER 89—CONGREGATE HOUSING SERVICES

§ 8004. Congregate services program

[See main edition for text of (a) to (h)]

(i) Standards for provision of services

The Secretary shall establish standards for the provision of services under this chapter, and, in developing such service standards, the Secretary shall consult with the Secretary of Health and Human Services and with appropriate organizations representing the elderly and handicapped, as determined by the Secretary.

(Pub. L. 95-557, title IV, § 405, Oct. 31, 1978, 92 Stat. 2106; Pub. L. 96-399, title II, § 208, Oct. 8, 1980, 94 Stat. 1634; Pub. L. 98-479, title II, § 201(j), Oct. 17, 1984, 98 Stat. 2228.)

Amendments

1984—Subsec. (i). Pub. L. 98-479 substituted "Health and Human Services" for "the Department of Health, Education, and Welfare".

§ 8007. Evaluation of applications and programs

[See main edition for text of (a) and (b)]

(c) Report to Congress

Not later than March 15, 1984, the Secretary shall prepare and submit to the Congress a report evaluating the effects of any changes in the administration of the congregate housing services program established in this chapter which have occurred since January 1, 1983. Such report shall include an evaluation by the Secretary of the reorganization or decentralization of the administration of such program, and any legislative recommendations of the Secretary for the establishment of a permanent congregate housing services program and the reasons for such recommendations.

(As amended Pub. L. 98-181, title II, § 224(a), Nov. 30, 1983, 97 Stat. 1191.)

Amendments

1983—Subsec. (c). Pub. L. 98-181 added subsec. (c).

§ 8010. Authorization of appropriations

(a) To carry out the provisions of this chapter, there are authorized to be appropriated—

(1) for fiscal year 1979, not to exceed $20,000,000;

(2) for fiscal year 1980, not to exceed $25,000,000;

(3) for fiscal year 1981, not to exceed $35,000,000;

(4) for fiscal year 1982, not to exceed $40,000,000;

(5) for fiscal year 1984, not to exceed $4,000,000; and

(6) for fiscal year 1985, such sums as may be necessary.

[See main edition for text of (b)]

(As amended Pub. L. 98-181, title II, § 224(b), Nov. 30, 1983, 97 Stat. 1191; Pub. L. 98-479, title I, § 102(f), Oct. 17, 1984, 98 Stat. 2222.)

Amendments

1984—Subsec. (a)(4). Pub. L. 98-479 added a semicolon at the end.

1983—Subsec. (a)(5), (6). Pub. L. 98-181 added pars. (5) and (6).

CHAPTER 90—NEIGHBORHOOD AND CITY REINVESTMENT, SELF-HELP AND REVITALIZATION

SUBCHAPTER I—NEIGHBORHOOD REINVESTMENT CORPORATION

§ 8107. Appropriations

(a) Authorization

There are authorized to be appropriated to the corporation to carry out this subchapter not to exceed $16,512,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Preparation of business-type budget

The corporation shall prepare annually a business-type budget which shall be submitted to the Office of Management and Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented. The budget of the corporation as modified, amended, or revised by the President shall be transmitted to the Congress as a part of the annual budget required by chapter 11 of title 31. Amendments to the annual budget program may be submitted from time to time.

(As amended Pub. L. 98-181, title I, § 125, Nov. 30, 1983, 97 Stat. 1175; Pub. L. 98-479, title II, § 203(m), Oct. 17, 1984, 98 Stat. 2231.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-479 substituted "chapter 11 of title 31" for "the Budget and Accounting Act, 1921".

1983—Subsec. (a). Pub. L. 98-181 substituted appropriations authorization not in excess of $16,512,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985 for prior authorization not to exceed $12,500,000, $12,000,000, $13,426,000, and $14,950,000 for fiscal years 1979, 1980, 1981, and 1982, respectively.

CHAPTER 91—NATIONAL ENERGY CONSERVATION POLICY

SUBCHAPTER II—RESIDENTIAL ENERGY CONSERVATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 12 sections 1454, 1717, 1723g, 3602, 3618.

PART A—UTILITY PROGRAM

§ 8212. Coverage

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8281a of this title; title 12 section 3612.

§ 8216. Utility programs

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8211, 8214, 8215, 8217, 8219, 8220, 8235f, 8282a, 8285a of this title; title 12 section 3612.

SUBCHAPTER IV—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 12 sections 3602, 3618.

CHAPTER 92—POWERPLANT AND INDUSTRIAL FUEL USE

SUBCHAPTER IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

§ 8373. Conservation in Federal facilities, contracts, and financial assistance programs

EXECUTIVE ORDER NO. 12217

Ex. Ord. No. 12217, June 18, 1980, 45 F.R. 41623, which established the responsibilities and duties of Executive agencies for compliance with this chapter, was revoked by Ex. Ord. No. 12437, Aug. 11, 1983, 48 F.R. 36801.

CHAPTER 93—EMERGENCY ENERGY CONSERVATION

SUBCHAPTER I—EMERGENCY ENERGY CONSERVATION PROGRAM

§ 8514. Judicial review

[*See main edition for text of* (*a*)]

(b) Repealed. Pub. L. 98-620, title IV, § 402(42), Nov. 8, 1984, 98 Stat. 3360

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-620, title IV, § 402(42), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-620 struck out subsec. (b) which had required the court of appeals to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsec. (a)(2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 94—LOW-INCOME ENERGY ASSISTANCE

SUBCHAPTER II—LOW-INCOME HOME ENERGY ASSISTANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3013, 6862, 9904 of this title; title 7 section 2014.

§ 8621. Home energy grants authorized; authorization of appropriations

[*See main edition for text of* (*a*)]

(b) There is authorized to be appropriated to carry out the provisions of this subchapter $2,140,000,000 for the fiscal year 1985, and $2,275,000,000 for the fiscal year 1986.

(As amended Pub. L. 98-558, title VI, § 601, Oct. 30, 1984, 98 Stat. 2889.)

Amendments

1984—Subsec. (b). Pub. L. 98-558 substituted "$2,140,000,000 for fiscal year 1985, and $2,275,000,000 for fiscal year 1986" for "$1,875,000,000 for each of fiscal years 1982, 1983, and 1984".

Effective Date of 1984 Amendment

Section 609 of Pub. L. 98-558 provided that:

"(a) Except as provided in subsections (b), (c), and (d), the amendments made by this title [amending sections 8621 to 8624, 8626, 8627, and 8629 of this title] shall take effect on the date of enactment of this Act [Oct. 30, 1984].

"(b) The amendments made by section 605 [amending section 8624 of this title] shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act [Oct. 30, 1984].

"(c) The amendments made by section 606 [amending section 8626 of this title] shall apply to amounts held available for fiscal years beginning after September 30, 1985.

"(d) The amendment made by section 607 [amending section 8629 of this title] shall apply to data collected and compiled after the date of the enactment of this Act [Oct. 30, 1984]. Section 2610 of the Act [section 8629 of this title] as in effect before the date of the enactment of this Act shall apply with respect to the report submitted under such section 2610 for fiscal year 1984."

Section Referred to in Other Sections

This section is referred to in sections 6862, 8623, 8624 of this title.

§ 8622. Definitions

As used in this subchapter:

(1) The term "energy crisis" means weather-related and supply shortage emergencies and other household energy-related emergencies.

[See main edition for text of (2) and (3)]

(4) The term "poverty level" means, with respect to a household in any State, the income poverty line as prescribed and revised at least annually pursuant to section 9902(2) of this title, as applicable to such State.

[See main edition for text of (5) to (7)]

(As amended Pub. L. 98-558, title VI, § 602, Oct. 30, 1984, 98 Stat. 2890.)

Amendments

1984—Par. (1). Pub. L. 98-558, § 602(a), struck out "intervention" after "energy crisis" and added "and other household energy-related emergencies" at the end.

Par. (4). Pub. L. 98-558, § 602(b), substituted "the income poverty line as prescribed and revised at least annually pursuant to section 9902(2) of this title," for "the income poverty guidelines for the nonfarm population of the United States as prescribed by the Office of Management and Budget (and as adjusted annually pursuant to section 9902(2) of this title)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-558, effective Oct. 30, 1984, see section 609(a) of Pub. L. 98-558, set out as a note under section 8621 of this title.

§ 8623. State allotments

(a) Amount; distribution, computation, etc.

[See main edition for text of (1)]

(2) For purposes of paragraph (1), for fiscal year 1985 and thereafter, a State's allotment percentage is the percentage which expenditures for home energy by low-income households in that State bears to such expenditures in all States, except that States which thereby receive the greatest proportional increase in allotments by reason of the application of this paragraph from the amount they received pursuant to Public Law 98-139 shall have their allotments reduced to the extent necessary to ensure that—

(A)(i) no State for fiscal year 1985 shall receive less than the amount of funds the State received in fiscal year 1984; and

(ii) no State for fiscal year 1986 and thereafter shall receive less than the amount of funds the State would have received in fiscal year 1984 if the appropriations for this subchapter for fiscal year 1984 had been $1,975,000,000, and

(B) any State whose allotment percentage out of funds available to States from a total appropriation of $2,250,000,000 would be less than 1 percent, shall not, in any year when total appropriations equal or exceed $2,250,000,000, have its allotment percentage reduced from the percentage it would receive from a total appropriation of $2,140,000,000.

[See main edition for text of (3)]

(4) For the purpose of this section, the Secretary shall determine the expenditure for home energy by low-income households on the basis of the most recent satisfactory data available to the Secretary.

[See main edition for text of (b)]

(c) Energy crisis intervention

Of the funds available to each State under subsection (a) of this section, a reasonable amount based on data from prior years shall be reserved until March 15 of each program year by each State for energy crisis intervention. The program for which funds are reserved by this subsection shall be administered by public or nonprofit entities which have experience in administering energy crisis programs under the Low-Income Energy Assistance Act of 1980, or under this subchapter,[1] experience in assisting low-income individuals in the area to be served, and the capacity to undertake a timely and effective energy crisis intervention program.

(d) Allotments to Indian tribes

(1) If, with respect to any State, the Secretary—

[See main edition for text of (A) and (B)]

the Secretary shall reserve from amounts which would otherwise be payable to such State from amounts allotted to it under this subchapter for the fiscal year involved the amount determined under paragraph (2).

[See main edition for text of (2) to (4)]

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[1] See References in Text note below.

(e) Repealed. Pub. L. 98–558, § 603(c), Oct. 30, 1984, 98 Stat. 2890

(f) Optional transfer of funds to block grants for community service programs, preventive health services, etc.

A State may transfer up to 10 percent of the funds payable to it under this section for any fiscal year for its use for such fiscal year under other provisions of Federal law providing block grants for—

[*See main edition for text of* (*1*) *to* (*3*)]

or any combination of the activities described in paragraphs (1), (2), and (3). Amounts allotted to a State under any provisions of Federal law referred to in the preceding sentence and transferred by a State for use in carrying out the purposes of this subchapter shall be treated as if they were paid to the State under this subchapter but shall not affect the computation of the State's allotment under this subchapter. The State shall inform the Secretary of any such transfer of funds.

(As amended Pub. L. 98–558, title VI, §§ 603, 604, Oct. 30, 1984, 98 Stat. 2890.)

References in Text

Public Law 98-139, referred to in subsec. (a)(2), is Pub. L. 98-139, Oct. 31, 1983, 97 Stat. 871, known as the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1984. For complete classification of this Act to the Code see Tables.

The "Low-Income Energy Assistance Act of 1980", referred to in subsec. (c), probably means the Home Energy Assistance Act of 1980, which is title III of Pub. L. 96-223, Apr. 2, 1980, 94 Stat. 288, and which was classified generally to subchapter I of this chapter prior to repeal by Pub. L. 97-35, title XXVI, § 2611, Aug. 13, 1981, 95 Stat. 902. For complete classification of this Act to the Code, see Tables.

This subchapter, referred to in subsec. (c), was in the original "this Act" which was translated as reading this title, meaning title XXVI of Pub. L. 97-35, as the probable intent of Congress.

Amendments

1984—Subsec. (a)(2). Pub. L. 98-558, § 604(a), amended par. (2) generally, substituting provisions relating to State allotment computation for former provisions which also related to computation of State allotment formulas and adding subpars. (A) and (B).

Subsec. (a)(4). Pub. L. 98-558, § 604(b), added par. (4).

Subsec. (c). Pub. L. 98-558, § 603(a), added "until March 15 of each program year" after "reserved" and added "The program for which funds are reserved by this subsection shall be administered by public or nonprofit entities which have experience in administering energy crisis programs under the Low-Income Energy Assistance Act of 1980, or under this subchapter, experience in assisting low-income individuals in the area to be served, and the capacity to undertake a timely and effective energy crisis intervention program."

Subsec. (d)(1). Pub. L. 98-558, § 603(b), substituted "otherwise be payable" for "otherwise be paid" in provisions following subpar. (B).

Subsec. (e). Pub. L. 98-558, § 603(c), struck out subsec. (e) which related to direct payments to households and State options.

Subsec. (f). Pub. L. 98-558, § 603(d), substituted "the funds payable to it" for "its allotment".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-558, effective Oct. 30, 1984, see section 609(a) of Pub. L. 98-558, set out as a note under section 8621 of this title.

Section Referred to in Other Sections

This section is referred to in sections 8624, 8626 of this title.

§ 8624. Applications and requirements

[*See main edition for text of* (*a*)]

(b) Certifications required for covered activities

As part of the annual application required by subsection (a) of this section, the chief executive officer of each State shall certify that the State agrees to—

(1) use the funds available under this subchapter for the purposes described in section 8621(a) of this title and otherwise in accordance with the requirements of this subchapter, and agrees not to use such funds for any payments other than payments specified in this section;

(2) make payments under this subchapter only with respect to—

[*See main edition for text of* (*A*)]

(B) households with incomes which do not exceed the greater of—

(i) an amount equal to 150 percent of the poverty level for such State; or

(ii) an amount equal to 60 percent of the State median income;

except that no household may be excluded from eligibility under this subclause for payments under this subchapter for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year [4]

[*See main edition for text of* (*3*) *and* (*4*)]

(5) provide, in a manner consistent with the efficient and timely payment of benefits, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between the households described in clause (2)(A) and (2)(B) of this subsection;

[*See main edition for text of* (*6*)]

(7) if the State chooses to pay home energy suppliers directly, establish procedures to—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this subchapter will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and

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[4] So in original. Probably should be followed by a semicolon.

[*See main edition for text of* (*D*)]

(8) provide assurances that (A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits under clause (2), and (B) the State will treat owners and renters equitably under the program assisted under this subchapter;

(9) provide that—

(A) the State may use for planning and administering the use of funds under this subchapter an amount not to exceed 10 percent of the funds payable to such State under this subchapter for a fiscal year and not transferred pursuant to section 8623(f) of this title for use under another block grant; and

[*See main edition for text of* (*B*)]

(10) provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under this subchapter, including procedures for monitoring the assistance provided under this subchapter and provide that at least every two years the State shall prepare an audit of its expenditures of amounts received under this subchapter and amounts transferred to carry out the purposes of this subchapter;

(11) permit and cooperate with Federal investigations undertaken in accordance with section 8627 of this title;

(12) provide for public participation in the development of the plan described in subsection (c) of this section;

(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) of this section are denied or are not acted upon with reasonable promptness;

(14) describe the procedures by which households in the State are identified as eligible to participate under this subchapter and the manner in which the State determines benefit levels;

(15) describe the amount that the State will reserve in accordance with section 8623(c) of this title in each fiscal year for energy crisis intervention activities together with the administrative procedures (A) for designating an emergency, (B) for determining the assistance to be provided in any such emergency, and (C) for the use of funds reserved under such section for the purposes under this subchapter in the event any portion of the amount so reserved is not expended for emergencies.

(16) describe energy usage and the average cost of home energy in the State, identified by type of fuel and by region of the State; and

(17) cooperate with the Secretary with respect to data collecting and reporting under section 8629 of this title.

The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection. The Secretary shall issue regulations to prevent waste, fraud, and abuse in the programs assisted by this subchapter.

(c) State plan; revision; public inspection

(1) As part of the annual application required in subsection (a) of this section, the chief executive officer of each State shall prepare and furnish to the Secretary, in such format as the Secretary may require, a plan which—

(A) describes how the State will carry out the assurances required under subsection (b) of this section;

(B) contains estimates of the amount of funds the State will use for each of the programs under such plan;

(C) describes the eligibility requirements to be used by the State for each type of assistance to be provided under this subchapter;

(D) describes weatherization and other energy-related home repair the State will provide under subsection (k) of this section; and

(E) contains any other information determined by the Secretary to be appropriate for purposes of this subchapter.

The chief executive officer may revise any plan prepared under this paragraph and shall furnish the revised plan to the Secretary.

(2) Each plan prepared under paragraph (1) and each substantial revision thereof shall be made available for public inspection within the State involved in such a manner as will facilitate review of, and comment upon, such plan or substantial revision.

(d) Expending of funds

The State shall expend funds in accordance with the State plan under this subchapter or in accordance with revisions applicable to such plan.

(e) Conduct of audits

Each State shall, in carrying out the requirements of subsection (b)(10) of this section, obtain financial and compliance audits of any funds which the State receives under this subchapter. Such audits shall be made public within the State on a timely basis. The audits shall be conducted at least every two years by an organization or person independent of any agency administering activities under this subchapter. The audits shall be conducted in accordance with the Comptroller General's standards for audit of governmental organizations, programs, activities, and functions. Within 30 days after completion of each audit, the chief executive officer of the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

(f) Payments or assistance not to be deemed income or resources for any purpose under Federal or State law

Notwithstanding any other provision of law unless enacted in express limitation of this paragraph, the amount of any home energy assistance payments or allowances provided to an eligible household under this subchapter shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law, including any law relating to taxation, food stamps, public assistance, or welfare programs.

[*See main edition for text of* (*g*)]

(h) Periodic evaluation of expenditures by Comptroller General

The Comptroller General of the United States shall, from time to time (but not less frequently than every three years), evaluate the expenditures by States of grants under this subchapter in order to assure that expenditures are consistent with the provisions of this subchapter and to determine the effectiveness of the State in accomplishing the purposes of this subchapter.

[*See main edition for text of* (*i*) *to* (*l*)]

(As amended Pub. L. 98-558, title VI, § 605, Oct. 30, 1984, 98 Stat. 2891.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-558, § 605(a)(9), added "The Secretary shall issue regulations to prevent waste, fraud, and abuse in the programs assisted by this subchapter.".

Subsec. (b)(1). Pub. L. 98-558, § 605(a)(1), substituted "section" for "subsection".

Subsec. (b)(2)(B). Pub. L. 98-558, § 605(a)(2), added "except that no household may be excluded from eligibility under this subclause for payments under this subchapter for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year".

Subsec. (b)(5). Pub. L. 98-558, § 605(a)(3), added ", except that the State may not differentiate in implementing this section between the households described in clause (2)(A) and (2)(B) of this subsection".

Subsec. (b)(7)(C). Pub. L. 98-558, § 605(a)(4), substituted "adversely" for "any differently".

Subsec. (b)(8). Pub. L. 98-558, § 605(a)(5), designated existing provisions as subpar. (B) and added subpar. (A).

Subsec. (b)(9)(A). Pub. L. 98-558, § 605(a)(6), in amending subpar. (A) generally, struck out "in each fiscal year" before "the State may" and substituted "for a fiscal year and not transferred pursuant to section 8623(f) of this title for use under another block grant" for "for such fiscal year".

Subsec. (b)(10). Pub. L. 98-558, § 605(a)(7), substituted "every two years" for "every year".

Subsec. (b)(14) to (17). Pub. L. 98-558, § 605(a)(8), added pars. (14) to (17).

Subsec. (c)(1). Pub. L. 98-558, § 605(b)(1), in amending par. (1) generally, designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (c)(2). Pub. L. 98-558, § 605(b)(2), added "and each substantial revision thereof" and "or substantial revision" at the end.

Subsec. (d). Pub. L. 98-558, § 605(c), in amending subsec. (d) generally, substituted provisions that the State shall expend funds in accordance with the State plan or revisions thereto for former provisions which related to waiver of requirements.

Subsec. (e). Pub. L. 98-558, § 605(d), in amending subsec. (e) generally, added provisions requiring that the audits be made public and that they shall be conducted in accordance with the Comptroller General's standards.

Subsec. (f). Pub. L. 98-558, § 605(e), added "unless enacted in express limitation of this paragraph".

Subsec. (h). Pub. L. 98-558, § 605(f), added "(but not less frequently than every three years)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-558, effective on the first day of the first fiscal year beginning after Oct. 30, 1984, see section 609(b) of Pub. L. 98-558, set out as a note under section 8621 of this title.

§ 8626. Payments to States; fiscal year requirements respecting availability, etc.

[*See main edition for text of* (*a*)]

(b) [*See main edition for text of* (*1*)]

(2)(A) Any State may request that an amount allotted to such State for a fiscal year be held available for such State for the following fiscal year. Such request shall include a statement of the reasons that the amount allotted to such State for a fiscal year will not be used by such State during such fiscal year and a description of the types of assistance to be provided with the amount held available for the following fiscal year. Any amount so held available for the following fiscal year shall not be taken into account in computing the allotment of or the amount payable to such State for such fiscal year under this subchapter.

(B) No amount may be held available under this paragraph for a State from a prior fiscal year to the extent such amount exceeds 15 percent of the amount payable to such State for such prior fiscal year and not transferred pursuant to section 8623(f) of this title. For purposes of the preceding sentence, the amount payable to a State but not transferred by the State for a fiscal year shall be determined without regard to any amount held available under this paragraph for such State for such fiscal year from the prior fiscal year.

(C) The Secretary shall reallot amounts made available under this paragraph for the fiscal year following the fiscal year of the original allotment in accordance with paragraph (1) of this subsection.

[*See main edition for text of* (*3*)]

(As amended Pub. L. 98-558, title VI, § 606, Oct. 30, 1984, 98 Stat. 2892.)

AMENDMENTS

1984—Subsec. (b)(2)(A). Pub. L. 98-558, § 606(a), added "Such request shall include a statement of the reasons that the amount allotted to such State for a fiscal year will not be used by such State during such fiscal year and a description of the types of assistance to be provided with the amount held available for the following fiscal year." and "or the amount payable to" after "computing the allotment of".

Subsec. (b)(2)(B). Pub. L. 98-558, § 606(b), substituted "15 percent" for "25 percent", "payable to such State for such prior fiscal year and not transferred pursuant to section 8623(f) of this title" for "allotted to such State for such prior fiscal year", and "payable to a State but not transferred by the State" for "allotted to a State" in second sentence.

Subsec. (b)(2)(C). Pub. L. 98-558, § 606(c), added subpar. (C).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-558 applicable to amounts held available for fiscal years beginning after Sept. 30, 1985, see section 609(c) of Pub. L. 98-558, set out as a note under section 8621 of this title.

§ 8627. Withholding of funds

[See main edition for text of (a)]

(b) Investigations; conduct, etc.

[See main edition for text of (1)]

(2) Whenever the Secretary determines that there is a pattern of complaints from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this subchapter by such State in order to ensure compliance with the provisions of this subchapter.

[See main edition for text of (3); (c) and (d)]

(As amended Pub. L. 98-558, title VI, § 608, Oct. 30, 1984, 98 Stat. 2893.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-558 substituted "the Secretary" for "he" before "shall conduct".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-558, effective Oct. 30, 1984, see section 609(a) of Pub. L. 98-558 set out as a note under section 8621 of this title.

§ 8629. Studies and reports

(a) The Secretary, after consultation with the Secretary of Energy, shall provide for the collection of data, including—

(1) information concerning home energy consumption;

(2) the amount, cost and type of fuels used for households eligible for assistance under this subchapter;

(3) the type of fuel used by various income groups;

(4) the number and income levels of households assisted by this subchapter;

(5) the number of households which received such assistance and include one or more individuals who are 60 years or older or handicapped; and

(6) any other information which the Secretary determines to be reasonably necessary to carry out the provisions of this subchapter.

Nothing in this subsection may be construed to require the Secretary to collect data which has been collected and made available to the Secretary by any other agency of the Federal Government.

(b) The Secretary shall, no later than June 30 of each fiscal year, submit a report to the Congress containing a detailed compilation of the data under subsection (a) of this section with respect to the prior fiscal year.

(As amended Pub. L. 98-558, title VI, § 607, Oct. 30, 1984, 98 Stat. 2893.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-558, § 607(c), added "Nothing in this subsection may be construed to require the Secretary to collect data which has been collected and made available to the Secretary by any other agency of the Federal Government."

Subsec. (a)(2). Pub. L. 98-558, § 607(a), added "amount," before "cost" and "for households eligible for assistance under this subchapter".

Subsec. (a)(5), (6). Pub. L. 98-558, § 607(b), added par. (5) and redesignated former par. (5) as (6).

Subsec. (b). Pub. L. 98-558, § 607(d), in amending subsec. (b) generally, added "no later than June 30 of each fiscal year," and substituted "a detailed compilation of the data under subsection (a) of this section with respect to the prior fiscal year" for "a summary of data collected under subsection (a) of this section".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-558, applicable to data collected and compiled after Oct. 30, 1984, and this section as in effect before Oct. 30, 1984, applicable with respect to the report submitted under this section for fiscal year 1984, see section 609(d) of Pub. L. 98-558, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8624 of this title.

CHAPTER 95—UNITED STATES SYNTHETIC FUELS CORPORATION

SUBCHAPTER II—ESTABLISHMENT OF CORPORATION

§ 8712. Board of Directors

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8713, 8714, 8715, 8717, 8768 of this title.

§ 8713. Officers and employees

[See main edition for text of (a) to (e)]

(f) Standards of ethical conduct; reporting requirements

Subject to section 8714 of this title, Directors, officers, and employees of the Corporation shall be subject to the same standards of ethical conduct and financial reporting as are set forth in Executive Order 11222. The Chairman shall promptly implement such standards.

(As amended Pub. L. 98-473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1860.)

REFERENCES IN TEXT

Executive Order 11222, referred to in subsec. (f), is set out under section 201 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-473 added subsec. (f).

§ 8714. Conflicts of interest and financial disclosure

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8713, 8715 of this title.

§ 8717. Public access to information

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8768 of this title.

SUBCHAPTER VII—UNLAWFUL ACTS, PENALTIES, AND SUITS AGAINST THE CORPORATION

§ 8768. Civil actions against Corporation

(a) Jurisdiction; liability of Corporation

District courts of the United States constituted under chapter 5 of title 28, and courts constituted under section 1424 of title 48, section 1611 of title 48, section 1 of title 3 of the Canal Zone Code, and section 1694 of title 48, shall have original jurisdiction for all civil actions against the Corporation: *Provided, however,* That the Federal Tort Claims Act (28 U.S.C. 2671 et seq.) shall apply to the Corporation as if it were a Federal agency and any judgment or compromised claim resulting from any action thereunder shall be paid by the Corporation from its funds: *And provided further,* That the Corporation shall be liable for contract claims only if such claims are based upon a written contract to which the Corporation is an executing party. The liability of the Corporation shall be limited to the assets of the Corporation.

(b) Public disclosure of information; open meetings of Board of Directors

An aggrieved person may bring action in the district courts of the United States to enforce, and secure compliance with, the policies and guidelines of the Corporation implementing the requirements of section 8717(a) and (b) of this title for public disclosure of information and the requirements of section 8712(f) of this title for meetings of the Board of Directors to be open to the public and preceded by reasonable public notice.

(As amended Pub. L. 98-473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1860.)

REFERENCES IN TEXT

The Federal Tort Claims Act (28 U.S.C. 2671 et seq.), referred to in subsec. (a), is classified generally to section 1346(b) and chapter 171 (§ 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Pub. L. 98-473 designated existing provisions as subsec. (a) and added subsec. (b).

SUBCHAPTER VIII—GENERAL PROVISIONS

§ 8775. Relationship to other laws

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Longshore and Harbor Workers' Compensation Act provisions

The Longshore and Harbor Workers' Compensation Act [33 U.S.C. 901 et seq.] shall apply with respect to the injury and disability or death resulting from injury as defined in section 2(2) of such Act [33 U.S.C. 902(2)] occurring to any Director, officer, or employee of the Corporation.

[*See main edition for text of* (*i*) *to* (*k*)]

(As amended Pub. L. 98-426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, referred to in subsec. (h), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

AMENDMENTS

1984—Subsec. (h). Pub. L. 98-426 substituted "Longshore and Harbor Workers' Compensation Act" for "Longshoremen's and Harbor Workers' Compensation Act".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

SUBCHAPTER X—TERMINATION OF CORPORATION

§ 8791. Dates of termination

CESSATION OF ACTIVITIES, TERMINATION OF DIRECTORS, OFFICERS AND EMPLOYEES, ETC., OF SYNTHETIC FUELS CORPORATION

Pub. L. 99-190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1249, provided: "That notwithstanding section 191 of the Energy Security Act (Public Law 96-294) [42 U.S.C. 8791], effective the date of enactment of this Act [Dec. 19, 1985], the Board may not make any legally binding awards or commitments for financial assistance (including any changes in an existing award or commitment) pursuant to the Energy Security Act [Pub. L. 96-294, see Short Title note set out under 42 U.S.C. 8701] for synthetic fuel project proposals, except that nothing in this Act [probably means the Department of the Interior and Related Agencies Appropriations Act, 1986, as enacted by § 101(d) of Pub. L. 99-190] shall impair or alter the powers, duties, rights, obligations, privileges, or liabilities of the Corporation, its Board or Chairman, or project sponsors in the performance and completion of the terms and undertakings of a legally binding award or commitment entered into prior to the date of enactment of the Act: *Provided further*, That (1) within 60 days of enactment of this Act, the Directors of the Synthetic Fuels Corporation shall terminate their duties under the Energy Security Act and be discharged; and (2) within 120 days of enactment of this Act, the Corporation shall terminate in accordance with Subtitle J of said Act [42 U.S.C. 8791 et seq.]: *Provided further*, That within 60 days of enactment of this Act (or earlier, in the event of absence of a Chairman of the Synthetic Fuels Corporation) the Secretary of the Treasury shall assume the duties of the Chairman: *Provided further*, That, notwithstanding any other provisions of law, the duties and responsibilities of the Secretary of the Treasury under Subtitle J of said Act or this Act may not be transferred to any other Federal department or agency: *Provided further*, That notwithstanding such termination, the Advisory Committee established under section 123 of the Energy Security Act (42 U.S.C. 8719) shall remain in effect to advise the Secretary of the Treasury regarding the administration of any contract or obligation of the Corporation pursuant to subtitle D of said Act [42 U.S.C. 8731 et seq.]: *Provided further*, That the Director of the Office of Personnel Management shall, before February 1, 1986, determine the amount of compensation rights which each Director, officer, or employee shall be legally entitled to under any contract in effect on the date of enactment of this Act: *Provided further*, That effective on the date of enactment of this Act, no change in any compensation or benefit in effect on the date of enactment of this Act shall be allowed or permitted, unless the Director of the Office of Personnel Management agrees that such change is reasonable: *Provided further*, That effective on the date of enactment of this Act, (1) no officer or employee of the Corporation shall receive a salary in excess of the rate of basic pay payable for level IV of the Executive Schedule under title 5 of the United States Code; and (2) the Corporation shall not waive any requirements in its By-Laws which are necessary for a Director, officer, or employee to qualify for pension or termination benefits under the By-Laws and written personnel policies and procedures in effect on the date of enactment of this Act: *Provided further*, That the Corporation, by September 15, 1986, shall transmit to the Committee on Energy and Natural Resources of the Senate and to the Committee on Energy and Commerce and Committee on Banking, Housing and Urban Affairs of the House of Representatives a report (1) containing a review of implementation of its Phase I Business Plan dated February 19, 1985 and (2) fulfilling the requirements of section 126(b)(3) of the Energy Security Act (42 U.S.C. 8722(c)(3))."

CHAPTER 96—BIOMASS ENERGY AND ALCOHOL FUELS

SUBCHAPTER I—GENERAL BIOMASS ENERGY DEVELOPMENT

§ 8821. Termination of authorities

No insured loan, loan guarantee, price guarantee, or purchase agreement may be committed to or made under this subchapter after September 30, 1984, except that all conditional commitments for loan guarantees under this subchapter which were in existence on September 30, 1984, are hereby extended through September 30, 1985. This section shall not be construed to affect the authority of the Secretary concerned to spend funds after such date pursuant to any contract for financial assistance made on or before that date under this subchapter.

(As amended Pub. L. 99-24, § 1(a), Apr. 16, 1985, 99 Stat. 50.)

AMENDMENTS

1985—Pub. L. 99-24, inserted ", except that all conditional commitments for loan guarantees under this subchapter which were in existence on September 30, 1984, are hereby extended through September 30, 1985".

PENDING CONDITIONAL COMMITMENTS

Section 1(b) of Pub. L. 99-24 provided that: "Enactment of this Act [amending this section] shall not be interpreted as indicating congressional approval with respect to any pending conditional commitments under this Act."

CHAPTER 99—OCEAN THERMAL ENERGY CONVERSION

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

Sec.
9168. Report to Congress on promotion and enhancement of export potential of ocean thermal energy conversion components, facilities, and plantships.

§ 9101. Congressional declaration of policy

(a) It is declared to be the purposes of the Congress in this chapter to—

(1) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion facilities connected to the United States by pipeline or cable, or located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States consistent with the Convention on the High Seas, and general principles of international law;

[*See main edition for text of* (*2*) *to* (*5*)]

(6) make applicable certain provisions of the Merchant Marine Act, 1936 (46 U.S.C. 1177 et seq.) [46 App. U.S.C. 1101 et seq.] to assist in financing of ocean thermal energy conversion facilities and plantships;

[*See main edition for text of* (*7*) *and* (*8*); (*b*)]

(As amended Pub. L. 98-623, title VI, § 602(a)(1), Nov. 8, 1984, 98 Stat. 3410.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, (46 U.S.C. 1177 et seq.), referred to in subsec. (a)(6), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended, which is classified principally to chapter 27 (§ 1101 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1245 of Title 46, Appendix, and Tables.

CODIFICATION

Subsec. (a)(6) is set out in this supplement to reflect the transfer of the Merchant Marine Act, 1936, to title 46, Appendix.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-623 substituted "located in whole or in part between the highwater mark and the seaward boundary of the territorial sea" for "located in the territorial sea".

SHORT TITLE

Section 1 of Pub. L. 96-320 provided: "That this Act [enacting this chapter and section 1279c of Title 46, Appendix, Shipping, amending sections 1271, 1273, and 1274 of Title 46, Appendix, and enacting provisions set out as a note under section 1273 of Title 46, Appendix] may be cited as the 'Ocean Thermal Energy Conversion Act of 1980'."

§ 9102. Definitions

As used in this chapter, unless the context otherwise requires, the term—

[*See main edition for text of* (*1*) *to* (*10*)]

(11) "ocean thermal energy conversion facility" means any facility which is standing, fixed or moored in whole or in part seaward of the highwater mark and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, fresh water, or product to shore, and all other associated equipment and appurtenances of such facility, to the extent they are located seaward of the highwater mark;

[See main edition for text of (12) to (18)]

(As amended Pub. L. 98-623, title VI, § 602(a)(2), (e)(7), Nov. 8, 1984, 98 Stat. 3410, 3412.)

AMENDMENTS

1984—Par. (11). Pub. L. 98-623, § 602(a)(2), substituted "standing, fixed or moored in whole or in part seaward of the highwater mark" for "standing or moored in or beyond the territorial sea of the United States".

Pub. L. 98-623, § 602(e)(7), substituted "fresh water" for "freshwater".

SUBCHAPTER I — REGULATION OF OCEAN THERMAL ENERGY CONVERSION FACILITIES AND PLANTSHIPS

§ 9111. License for ownership, construction, and operation of ocean thermal energy conversion facilities or plantships

(a) License requirement

No person may engage in the ownership, construction, or operation of an ocean thermal energy conversion facility which is documented under the laws of the United States, which is located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or which is connected to the United States by pipeline or cable, except in accordance with a license issued pursuant to this chapter. No citizen of the United States may engage in the ownership, construction or operation of an ocean thermal energy conversion plantship except in accordance with a license issued pursuant to this chapter, or in accordance with a license issued by a foreign nation whose licenses are found by the Administrator, after consultation with the Secretary of State, to be compatible with licenses issued pursuant to this chapter.

(b) Documented plantships; documented facilities; facilities located in territorial sea; facilities connected to United States by pipeline or cable

The Administrator shall, upon application and in accordance with the provisions of this chapter, issue, transfer, amend, or renew licenses for the ownership, construction, and operation of—

(1) ocean thermal energy conversion plantships documented under the laws of the United States, and

(2) ocean thermal energy conversion facilities documented under the laws of the United States, located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or connected to the United States by pipeline or cable.

(c) License issuance prerequisites

The Administrator may issue a license to a citizen of the United States in accordance with the provisions of this chapter unless—

(1) he determines that the applicant cannot or will not comply with applicable laws, regulations, and license conditions;

[See main edition for text of (2) and (3)]

(4) he has been informed, within 45 days after the conclusion of public hearings on that application, or on proposed licenses for the designated application area, by the Administrator of the Environmental Protection Agency that the ocean thermal energy conversion facility or plantship will not conform with all applicable provisions of any law for which he has regulatory authority;

(5) he has received the opinion of the Attorney General, pursuant to section 9114 of this title, stating that issuance of the license would create a situation in violation of the antitrust laws, or the 90-day period provided in section 9114 of this title has not expired;

(6) he has consulted with the Secretary of Energy, the Secretary of Transportation, the Secretary of State, the Secretary of the Interior, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions and determines on the basis thereof, that the application for a license is inadequate;

(7) the proposed ocean thermal energy conversion facility or plantship will be documented under the laws of a foreign nation;

[See main edition for text of (8) and (9)]

(10) the Governor of any adjacent coastal State with an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) determines that, in his or her view, the application is inadequate or inconsistent with respect to programs within his or her jurisdiction;

[See main edition for text of (11) and (12)]

(13) when the license is for an ocean thermal energy conversion plantship, he determines that the applicant has not provided adequate assurance that the plantship will be operated in such a way as to prevent its thermal plume from impinging on so as to degrade the thermal gradient used by any other ocean thermal energy conversion facility or plantship without the consent of its owner, and from impinging on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State approves such impingement after consultation with such nation; or

(14) if a regulation has been adopted which places an upper limit on the number or total capacity of ocean thermal energy conversion facilities or plantships to be licensed under this chapter for simultaneous operation, either overall or within specific geographic areas, pursuant to a determination under the provisions of section 9117(b)(4) of this title, issuance of the license will cause such upper limit to be exceeded.

(d) Issuance conditions; written agreement of compliance; disposal or removal requirements

[See main edition for text of (1)]

(2) No license shall be issued, transferred, or renewed under this chapter unless the applicant, licensee or transferee first agrees in writ-

ing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Administrator, and (B) he will comply with conditions the Administrator may prescribe in accordance with the provisions of this chapter.

[*See main edition for text of* (*3*)*;* (*e*) *to* (*g*)]

(As amended Pub. L. 98–623, title VI, § 602(a)(3)–(5), (b), (e)(8)–(11), Nov. 8, 1984, 98 Stat. 3410–3412.)

AMENDMENTS

1984—Subsecs. (a), (b)(2). Pub. L. 98–623, § 602(a)(3), (4), substituted "located in whole or in part between the highwater mark and the seaward boundary of the territorial sea" for "located in the territorial sea".

Subsec. (c)(1). Pub. L. 98–623, § 602(b)(1), substituted "cannot or will not" for "cannot and will not".

Subsec. (c)(4). Pub. L. 98–623, § 602(e)(8), substituted "regulatory authority" for "enforcement authority".

Subsec. (c)(5). Pub. L. 98–623, § 602(b)(2), substituted "has not expired" for "has expired".

Subsec. (c)(6). Pub. L. 98–623, § 602(e)(9), substituted "application for a license" for "application for license".

Subsec. (c)(7). Pub. L. 98–623, § 602(a)(5), substituted "will be documented under the laws of a foreign nation" for "will not be documented under the laws of the United States".

Subsec. (c)(10). Pub. L. 98–623, § 602(b)(3), (5), substituted "any adjacent" for "each adjacent" and "(16 U.S.C. 1451 et seq.)" for "(33 U.S.C. 1451 et seq.)".

Subsec. (c)(13). Pub. L. 98–623, § 602(b)(4), substituted "or" for "and" after the semicolon at the end.

Subsec. (c)(14). Pub. L. 98–623, § 602(e)(10), substituted "if a regulation" for "when a regulation".

Subsec. (d)(2). Pub. L. 98–623, § 602(e)(11), substituted "applicant, licensee" for "licensee".

§ 9112. Procedure

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Administrative fee

The Administrator shall not take final action on any application unless the applicant has paid to the Administrator a reasonable administrative fee, which shall be deposited into miscellaneous receipts of the Treasury. The amount of the fee imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred by the National Oceanic and Atmospheric Administration in reviewing and processing the application.

[*See main edition for text of* (*i*)]

(As amended Pub. L. 98–623, title VI, § 602(f), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (h). Pub. L. 98–623 substituted "The Administrator shall not take final action on any application unless the applicant has paid to the Administrator a reasonable administrative fee" for "Each person applying for a license pursuant to this chapter shall remit to the Administrator at the time the application is filed a nonrefundable application fee" and "imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred by the National Oceanic and Atmospheric Administration" for "shall be established by regulation by the Administrator, and shall reflect the reasonable administrative costs incurred".

§ 9115. Adjacent coastal States

(a) Designation of adjacent coastal State

[*See main edition for text of* (*1*)]

(2) The Administrator shall, upon request of a State, designate such State as an "adjacent coastal State" if he determines (A) that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State required to be designated as an "adjacent coastal State" by paragraph (1) of this subsection or (B) that the thermal plume of the proposed ocean thermal energy conversion facility or plantship is likely to impinge on so as to degrade the thermal gradient at possible locations for ocean thermal energy conversion facilities which could reasonably be expected to be directly connected by electric transmission cable or pipeline to such State. This paragraph shall apply only with respect to requests made by a State not later than the 14th day after the date of publication of notice of application for a proposed ocean thermal energy conversion facility in the Federal Register in accordance with section 9112(d) of this title. The Administrator shall make any designation required by this paragraph not later than the 45th day after the date he receives such a request from a State.

(b) State coastal zone management program

(1) Not later than 5 days after the designation of an adjacent coastal State pursuant to this section, the Administrator shall transmit a complete copy of the application to the Governor of such State. The Administrator shall not issue a license without consultation with the Governor of each adjacent coastal State which has an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.). If the Governor of such a State has not transmitted his approval or disapproval to the Administrator by the 45th day after public hearings on the application are concluded pursuant to section 9112(g) of this title, such approval shall be conclusively presumed. If the Governor of such a State notifies the Administrator that an application which the Governor would otherwise approve pursuant to this paragraph is inconsistent in some respect with the State's coastal zone management program, the Administrator shall condition the license granted so as to make it consistent with such State program.

[*See main edition for text of* (*2*)*;* (*c*)]

(As amended Pub. L. 98–623, title VI, § 602(e)(12)–(14), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98–623, § 602(e)(12), substituted "(A) that" for "that (A)".

Subsec. (b)(1). Pub. L. 98–623, § 602(e)(13), (14), substituted "of an adjacent coastal State" for "of adjacent coastal State" and "application are concluded" for "application is concluded".

§ 9118. Marine environmental protection and safety of life and property at sea

[*See main edition for text of* (a) *to* (c)]

(d) Safety zones

(1) Subject to recognized principles of international law and after consultation with the Secretary of Commerce, the Secretary of the Interior, the Secretary of State, and the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating shall designate a zone of appropriate size around and including any ocean thermal energy conversion facility licensed under this chapter and may designate such a zone around and including any ocean thermal energy conversion plantship licensed under this chapter for the purposes of navigational safety and protection of the facility or plantship. The Secretary of the department in which the Coast Guard is operating shall by regulation define permitted activities within such zone consistent with the purpose for which it was designated. The Secretary of the department in which the Coast Guard is operating shall, not later than 30 days after publication of notice pursuant to section 9112(d) of this title, designate such safety zone with respect to any proposed ocean thermal energy conversion facility or plantship.

[*See main edition for text of* (2)]

(3) Except in a situation involving force majeure, a licensee of an ocean thermal energy conversion facility or plantship shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, load or unload cargo at, or otherwise utilize such a facility or plantship licensed under this chapter unless (A) the foreign state involved has agreed, by specific agreement with the United States, to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this chapter, while the vessel is located within the safety zone, and (B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(e) Rules and regulations; vessels; "ocean thermal energy conversion facility" defined

[*See main edition for text of* (1)]

(2) Within 1 year after August 3, 1980, the Secretary of the department in which the Coast Guard is operating shall promulgate regulations under paragraph (1) of this subsection which require that any ocean thermal energy conversion facility or plantship—

(A) be documented;

(B) comply with minimum standards of design, construction, alteration, and repair; and

(C) be manned or crewed by United States citizens or aliens lawfully admitted to the United States for permanent residence, unless—

(i) there is not a sufficient number of United States citizens, or aliens lawfully admitted to the United States for permanent residence, qualified and available for such work, or

(ii) the President makes a specific finding, with respect to the particular vessel, platform, or moored, fixed or standing structure, that application of this requirement would not be consistent with the national interest.

(3) For the purposes of the documentation laws, for which compliance is required under paragraph (1) of this subsection, ocean thermal energy conversion facilities and plantships shall be deemed to be vessels and, if documented, vessels of the United States for the purposes of the Ship Mortgage Act, 1920 (46 U.S.C. 911-984) [46 App. U.S.C. 911 et seq.].

(4) For the purposes of this subsection the term "ocean thermal energy conversion facility" refers only to an ocean thermal energy conversion facility which has major components other than water intake or discharge pipes located seaward of the highwater mark [1]

[*See main edition for text of* (*f*)]

(As amended Pub. L. 98-623, title VI, § 602(a)(6), (7), (e)(1), (15), Nov. 8, 1984, 98 Stat. 3410-3412.)

REFERENCES IN TEXT

The Ship Mortgage Act, 1920 (46 U.S.C. 911-984), referred to in subsec. (e)(3), is section 30 of act June 5, 1920, ch. 250, 41 Stat. 1000, as amended, which is classified generally to chapter 25 (§ 911 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 984 of Title 46, Appendix, and Tables.

CODIFICATION

Subsec. (e)(3) is set out in this supplement to reflect the transfer of the Ship Mortgage Act, 1920, to title 46, Appendix.

AMENDMENTS

1984—Subsec. (d)(1). Pub. L. 98-623, § 602(e)(1), substituted "navigational safety" for "reorganizational safety".

Subsec. (d)(3). Pub. L. 98-623, § 602(e)(15), added par. (3) by inserting the text of former subsec. (b)(3) of section 9119 of this title.

Subsec. (e)(2)(C)(ii). Pub. L. 98-623, § 602(a)(6), substituted "moored, fixed or standing" for "moored or standing".

Subsec. (e)(4). Pub. L. 98-623, § 602(a)(7), added par. (4).

§ 9119. Prevention of interference with other uses of the high seas

[*See main edition for text of* (a)]

(b) Rules and regulations

The Administrator shall promulgate regulations specifying under what conditions and in what circumstances the thermal plume of an ocean thermal energy conversion facility or plantship licensed under this chapter will be deemed—

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[1] So in original. Probably should be followed by a period.

(1) to impinge on so as to degrade the thermal gradient used by another ocean thermal energy conversion facility or plantship, or

(2) to impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation.

Such regulations shall also provide for the Administrator to mediate or arbitrate any disputes among licensees regarding the extent to which the thermal plume of one licensee's facility or plantship impinges on the operation of another licensee's facility or plantship.

(c) Coast Guard operations

The Secretary of the department in which the Coast Guard is operating shall promulgate, after consultation with the Administrator, and shall enforce, regulations governing the movement and navigation of ocean thermal energy conversion plantships licensed under this chapter to ensure that the thermal plume of such an ocean thermal energy conversion plantship does not unreasonably impinge on so as to degrade the thermal gradient used by the operation of any other ocean thermal energy conversion plantship or facility except in case of force majeure or with the consent of owner of the other such plantship or facility, and to ensure that the thermal plume of such an ocean thermal energy conversion plantship does not impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State has approved such impingement after consultation with such nation.

(As amended Pub. L. 98-623, title VI, § 602(e)(2), (15), (16), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-623, § 602(e)(2), substituted "national resource jurisdiction" for "natural resource jurisdiction".

Subsec. (b)(3). Pub. L. 98-623, § 602(e)(15), struck out par. (3) which had prohibited a licensee of an ocean thermal energy conversion facility or plantship under this chapter, except in the case of force majeure, from permitting foreign vessels to call at, or load or unload cargo at, or otherwise use such facility or plantship unless the foreign state involved had specifically agreed to recognize the jurisdiction of the United States over the vessel and its personnel while such vessel was located in the safety zone and the vessel owner or operator had designated an agent in the United States for receipt of service of process for legal claims or proceedings arising from activities of the vessel or its personnel while located in such zone. See section 9118(d)(3) of this title.

Subsec. (c). Pub. L. 98-623, § 602(e)(16), substituted "the thermal plume of such" for "the thermal plume such of" in second place appearing, and substituted "impingement" for "impingment".

§ 9120. Monitoring of licensees' activities

Each license shall require the licensee—

(1) to allow the Administrator to place appropriate Federal officers or employees in or aboard the ocean thermal energy conversion facility or plantship to which the license applies, at such times and to such extent as the Administrator deems reasonable and necessary to assess compliance with any condition or regulation applicable to the license, and to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply;

[See main edition for text of (2) and (3)]

(As amended Pub. L. 98-623, title VI, § 602(a)(8), Nov. 8, 1984, 98 Stat. 3411.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-623 substituted "in or aboard" for "aboard".

§ 9121. Suspension, revocation, and termination of licenses

[See main edition for text of (a)]

(b) Immediate suspension of construction or operation pending completion of proceedings

If the Administrator determines that immediate suspension of the construction or operation of an ocean thermal energy conversion facility or plantship or any component thereof is necessary to protect public health and safety or to eliminate imminent and substantial danger to the environment the Administrator may order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section.

(As amended Pub. L. 98-623, title VI, § 602(e)(17), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-623 substituted "environment" for "environment established by any treaty or convention,".

§ 9122. Recordkeeping and public access to information

[See main edition for text of (a)]

(b) Confidential information

Any information reported to or collected by the Administrator under this chapter which is exempt from disclosure pursuant to section 552(b)(4) of title 5 (relating to trade secrets and commercial or financial information which is privileged or confidential) shall not—

[See main edition for text of (1)]

(2) be otherwise disclosed except—

[See main edition for text of (A)]

(B) when the Administrator has taken appropriate steps to inform the recipient of the confidential nature of the information.

(As amended Pub. L. 98-623, title VI, § 602(e)(3), (18), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-623, § 602(e)(3), substituted "(relating to trade secrets and commercial or financial information which is privileged or confidential)" for "(relating to trade secrets and confidential commercial and financial information)".

Subsec. (b)(2)(B). Pub. L. 98-623, § 602(e)(18), substituted "Administrator" for "administrator".

§ 9126. Exempt operations

(a) Test platforms

The provisions of this subchapter shall not apply to any test platform which will not operate as an ocean thermal energy conversion facility or plantship after conclusion of the testing period.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-623, title VI, § 602(e)(4), Nov. 8, 1984, 98 Stat. 3412.)

Amendments

1984—Subsec. (a). Pub. L. 98-623 substituted "facility or plantship" for "facility or platform".

SUBCHAPTER II—MARITIME FINANCING FOR OCEAN THERMAL ENERGY CONVERSION

§ 9141. Determinations under Merchant Marine Act, 1936

(a)(1) For the purposes of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177) [46 App. U.S.C. 1177], any ocean thermal energy conversion facility or plantship licensed pursuant to this chapter, and any vessel providing shipping service to or from such an ocean thermal energy conversion facility or plantship, shall be deemed to be a vessel operated in the foreign commerce of the United States.

(2) The provisions of paragraph (1) of this subsection shall apply for taxable years beginning after December 31, 1981.

(b) For the purposes of the Merchant Marine Act, 1936 (46 U.S.C. 1177 et seq.) [46 App. U.S.C. 1101 et seq.], any vessel documented under the laws of the United States and used in providing shipping service to or from any ocean thermal energy conversion facility or plantship licensed pursuant to the provisions of this chapter shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 905(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1244(a)) [46 App. U.S.C. 1244(a)].

(Pub. L. 96-320, title II, § 201, Aug. 3, 1980, 94 Stat. 991.)

References in Text

The Merchant Marine Act, 1936, referred to in subsec. (b), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended, which is classified principally to chapter 27 (§ 1101 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1245 of Title 46, Appendix, and Tables.

Codification

Section is set out in this supplement to reflect the transfer of the Merchant Marine Act, 1936, referred to in text, to title 46, Appendix.

SUBCHAPTER III—ENFORCEMENT

§ 9151. Prohibited acts

It is unlawful for any person who is a United States citizen or national, or a foreign national in or on board an ocean thermal energy conversion facility or plantship or on board any vessel documented or numbered under the laws of the United States, or who is subject to the jurisdiction of the United States by an international agreement to which the United States is a party—

[*See main edition for text of* (*1*)]

(2) to refuse to permit any Federal officer or employee authorized to monitor or enforce the provisions of sections 9120 and 9153 of this title to enter or board an ocean thermal energy conversion facility or plantship or any vessel documented or numbered under the laws of the United States, for purposes of conducting any search or inspection in connection with the monitoring or enforcement of this chapter or any rule, regulation, order, term, or condition referred to in paragraph (1) of this section;

[*See main edition for text of* (*3*) *to* (*5*)]

(As amended Pub. L. 98-623, title VI, § 602(a)(9), Nov. 8, 1984, 98 Stat. 3411.)

Amendments

1984—Pub. L. 98-623 substituted "in or on board an ocean thermal energy conversion facility or plantship or on board any vessel" for "on board an ocean thermal energy conversion facility or plantship or other vessel" in provisions preceding par. (1).

Par. (2). Pub. L. 98-623 substituted "to enter or board" for "to board".

§ 9152. Remedies and penalties

[*See main edition for text of* (*a*)]

(b) Civil actions by Attorney General; equitable relief

(1) Upon a request by the Administrator, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction, to halt any violation for which the Administrator is authorized to issue a compliance order under subsection (a)(2) of this section.

[*See main edition for text of* (*2*); (*c*) *to* (*e*)]

(As amended Pub. L. 98-623, title VI, § 602(e)(5), Nov. 8, 1984, 98 Stat. 3412.)

Amendments

1984—Subsec. (b)(1). Pub. L. 98-623 substituted "to halt any violation" for "any violation".

§ 9153. Enforcement

[*See main edition for text of* (*a*)]

(b) Enforcement activities of authorized officers

To enforce the provisions of this chapter in or on board any ocean thermal energy conversion facility or plantship or any vessel subject to the provisions of this chapter, any officer who is authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating may—

(1) enter or board, and inspect, any ocean thermal energy conversion facility or plantship or any vessel which is subject to the provisions of this chapter;

[*See main edition for text of* (2) *to* (7); (c) *and* (d)]

(As amended Pub. L. 98-623, title VI, § 602(a)(10), Nov. 8, 1984, 98 Stat. 3411.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-623 substituted "in or on board any ocean thermal energy conversion facility or plantship or any vessel" for "on board any ocean thermal energy conversion facility or plantship or other vessel" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-623 substituted "enter or board, and inspect, any ocean thermal energy conversion facility or plantship or" for "board and inspect".

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 9163. Relationship to other laws

(a) Facilities and plantships as comparable to areas of exclusive Federal jurisdiction located within a State

(1) The Constitution, laws, and treaties of the United States shall apply to an ocean thermal energy conversion facility or plantship licensed under this chapter and all of which is located seaward of the highwater mark, and to activities connected, associated, or potentially interfering with the use or operation of any such facility or plantship, in the same manner as if such facility or plantship were an area of exclusive Federal jurisdiction located within a State. Nothing in this chapter shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty.

[*See main edition for text of* (2); (b)]

(c) Customs laws

[*See main edition for text of* (1)]

(2) Except insofar as they apply to vessels documented under the laws of the United States, the customs laws administered by the Secretary of the Treasury, including the provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202), and other laws codified in title 19, shall not apply to any ocean thermal energy conversion facility or plantship documented under the laws of the United States and licensed under the provisions of this chapter, but all foreign articles to be used in the construction of any such facility or plantship, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

(As amended Pub. L. 98-623, title VI, § 602(a)(11), (12), (e)(6), Nov. 8, 1984, 98 Stat. 3411, 3412.)

REFERENCES IN TEXT

The Tariff Act of 1930, as amended, referred to in subsec. (c)(2), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§ 1202 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-623, § 602(a)(11), inserted "and all of which is located seaward of the highwater mark,".

Subsec. (c)(2). Pub. L. 98-623, § 602(a)(12), substituted "ocean thermal energy conversion facility or plantship documented under the laws of the United States and licensed" for "ocean thermal energy conversion facility or plantship licensed".

Pub. L. 98-623, § 602(e)(6), substituted "Secretary of the Treasury, including the provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202), and other laws codified in title 19," for "Secretary of the Treasury".

§ 9165. Annual report

Within 6 months after the end of each fiscal year after August 3, 1980, the Administrator shall submit to the President of the Senate and the Speaker of the House of Representatives a report on the administration of this chapter during such fiscal year. Such report shall include, with respect to the fiscal year covered by the report—

[*See main edition for text of* (1) *to* (5)]

(As amended Pub. L. 98-623, title VI, § 602(c), Nov. 8, 1984, 98 Stat. 3411.)

AMENDMENTS

1984—Pub. L. 98-623 substituted "each fiscal year" for "each of the first 3 fiscal years" in provisions preceding par. (1).

§ 9166. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce, for the use of the Administrator in carrying out the provisions of this chapter, not to exceed $3,000,000 for the fiscal year ending September 30, 1981, not to exceed $3,500,000 for the fiscal year ending September 30, 1982, not to exceed $3,500,000 for the fiscal year ending September 30, 1983, not to exceed $480,000 for each of the fiscal years ending September 30, 1984 and September 30, 1985, and not to exceed $630,000 for each of the fiscal years ending September 30, 1986 and September 30, 1987.

(As amended Pub. L. 98-623, title VI, § 601, Nov. 8, 1984, 98 Stat. 3410.)

AMENDMENTS

1984—Pub. L. 98-623 added provisions authorizing appropriations not to exceed $480,000 for each of the fiscal years ending September 30, 1984 and September 30, 1985, and not to exceed $630,000 for each of the fiscal years ending September 30, 1986 and September 30, 1987.

§ 9168. Report to Congress on promotion and enhancement of export potential of ocean thermal energy conversion components, facilities, and plantships

Within 18 months after November 8, 1984, the Administrator shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing what steps the United States Government is taking and plans to take to promote and enhance the export potential of ocean thermal energy conversion components, facilities, and plantships manufactured by United States industry. Such report shall include—

(1) the relevant views of the National Oceanic and Atmospheric Administration, International Trade Administration, Maritime Administration, Department of Energy, Small Business Administration, United States International Development Cooperative Agency, the Office of the Special Trade Representative, and other relevant United States Government agencies;

(2) the findings of studies conducted by the Administrator to fulfill the intent of this section;

(3) a summary of activities, including consultations held with representatives of both the ocean thermal energy conversion and financial industries conducted by the Administrator to fulfill the intent of this section; and

(4) such recommendations as the Administrator deems appropriate for amending this chapter or other relevant Acts to better promote and enhance the export potential of ocean thermal energy conversion components, facilities and plantships manufactured by United States industry.

(Pub. L. 96-320, title IV, § 408, as added Pub. L. 98-623, title VI, § 602(d), Nov. 8, 1984, 98 Stat. 3411.)

CHAPTER 102—MENTAL HEALTH SYSTEMS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 242a, 300x-1a, 300x-4, 300aa-12 of this title.

SUBCHAPTER V—RAPE PREVENTION AND CONTROL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 300aa-6 of this title.

CHAPTER 103—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 6972 of this title.

SUBCHAPTER I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

§ 9601. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6991, 9602, 9603, 9604, 9607, 9656 of this title; title 10 section 2692.

§ 9602. Designation of additional hazardous substances and establishment of reportable released quantities; regulations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9601, 9603 of this title; title 10 section 2692.

§ 9603. Notification requirements respecting released substances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6937, 6991a, 9602 of this title.

§ 9604. Response authorities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6939a, 6972, 6979a, 9601, 9607, 9611, 9612 of this title.

§ 9605. National contingency plan; preparation, contents, etc.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9601, 9604, 9611, 9651 of this title; title 26 section 468.

§ 9606. Abatement actions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6972, 6979a, 9607 of this title.

§ 9607. Liability

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Determination of amounts

[*See main edition for text of* (*1*)]

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 or vessels subject to the provisions of title 33, 46, or 46 Appendix, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

[*See main edition for text of* (*3*); (*d*) *to* (*g*)]

(h) Owner or operator of vessel

The owner or operator of a vessel shall be liable in accordance with this section and as provided under section 9614 of this title notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff) [46 App. U.S.C. 182, 183, 184–188].

[*See main edition for text of* (*i*) *to* (*k*); *credits*]

REFERENCES IN TEXT

Act of March 3, 1851 (46 U.S.C. 183ff), referred to in subsec. (h), is act Mar. 3, 1851, ch. 43, 9 Stat. 635, which was incorporated into the Revised Statutes as R.S. §§ 4282 to 4287 and 4289, and is classified to sections 182, 183, and 184 to 188 of Title 46, Appendix, Shipping.

CODIFICATION

Subsecs. (c)(2) and (h) are set out in this supplement to reflect the transfer of various provisions, referred to in text, to title 46, Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6939a, 6991b, 6991c, 9601, 9603, 9608, 9611, 9612, 9631, 9641, 9651, 9656 of this title.

§ 9608. Financial responsibility

(a) Establishment and maintenance by owner or operator of vessel; amount; failure to obtain certification of compliance

[*See main edition for text of* (*1*)]

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 91 of title 46, Appendix, of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

[*See main edition for text of* (*3*); (*b*) *to* (*d*); *credits*]

CODIFICATION

Subsec. (a)(2) is set out in this supplement to reflect the transfer of section 91 of title 46, referred to in text, to title 46, Appendix.

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (a) of this section delegated to the Secretary of the Department in which the Coast Guard is operating, with the Secretary responsible, in accordance with section 9609 of this title, for enforcement of civil penalties for violations of the regulations issued under subsec. (a) of this section, see section 5(b) of Ex. Ord. No. 12316, Aug. 14, 1981, 46 F.R. 42239, set out as a note under section 9615 of this title.

§ 9611. Uses of Fund

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6991b, 6991c, 9601, 9604, 9608, 9612, 9631, 9633, 9641 of this title.

§ 9615. Presidential delegation and assignment of duties or powers and promulgation of regulations

EX. ORD. NO. 12316. DELEGATION OF AUTHORITY OF PRESIDENT

Ex. Ord. No. 12316, Aug. 14, 1981, 46 F.R. 42237, as amended by Ex. Ord. No. 12418, May 5, 1983, 48 F.R. 20891, provided:

[*See main edition for text of first par.; Secs. 1 to 4*]

SEC. 5. *Financial Responsibility.* [*See main edition for text of* (*a*)]

(b) The functions vested in the President by Section 108(a) of the Act [42 U.S.C. 9608(a)] are delegated to the Secretary of the Department in which the Coast Guard is operating. The Secretary shall be responsible, in accordance with Section 109 of the Act [42 U.S.C. 9609], for the enforcement of civil penalties for violations of the regulations issued under Section 108(a) of the Act.

[*See main edition for text of* (*c*) *and* (*d*); *Secs. 6 to 8*]

CHAPTER 105—COMMUNITY SERVICES PROGRAMS

SUBCHAPTER IV—GRANTS TO STATES FOR PLANNING AND DEVELOPMENT OF DEPENDENT CARE PROGRAMS AND FOR OTHER PURPOSES

Sec.
9871. Authorization of appropriations.
9872. Allotments.
9873. Payments under allotments to States.
9874. Use of allotments.
  (a) Referral systems; information; contents.
  (b) School-age child care services; assurances; estimates.
  (c) Percentage of allotment; subsections (a) and (b).
  (d) Prohibition; use of amounts.
  (e) Federal share; cost of administration.
  (f) Duplication of services.
  (g) Technical assistance to States; planning and operational activities.
9875. Application and description of activities; requirements.
  (a) Applications.
  (b) Certifications.
  (c) Description; intended use of payments; comments; revision.
  (d) Application to Public Health Service Act.
9876. Report.
9877. Definitions.

SUBCHAPTER I—COMMUNITY ECONOMIC DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4953, 9910 of this title.

§ 9801. Statement of purpose

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-558, § 1, Oct. 30, 1984, 98 Stat. 2878, provided: "That this Act [enacting sections 9871 to 9877, 9905a, and 9910a of this title and sections 1070d-31 to 1070d-41, 1119d to 1119d-8, 1119e to 1119e-5, and 4201 to 4206 of Title 20, Education, amending sections 2991b, 2992b to 2992d, 6862, 6865, 8621 to 8624, 8626, 8627, 8629, 9832, 9834 to 9836, 9840, 9843, 9844, 9846, 9862, 9901, 9902, 9904, 9908, and 9910 of this title and section 4061 of Title 20, enacting provisions set out as notes under sections 2991, 8621, and 9904 of this title, and amending provisions set out as a note under section 9861 of this title] may be cited as the 'Human Services Reauthorization Act'."

SUBCHAPTER II—HEAD START PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4953, 9904 of this title.

§ 9832. Definitions

For purposes of this subchapter:

(1) The term "Secretary" means the Secretary of Health and Human Services.

(2) The term "State" means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pa-

cific Islands, and the Commonwealth of the Northern Mariana Islands.

[*See main edition for text of* (*3*)]

(As amended Pub. L. 98-558, title I, § 101, Oct. 30, 1984, 98 Stat. 2878.)

AMENDMENTS

1984—Par. (2). Pub. L. 98-558 added "the Commonwealth of" before "the Northern Mariana Islands".

§ 9834. Authorization of appropriations

There are authorized to be appropriated for carrying out the provisions of this subchapter $1,093,030,000 for fiscal year 1985, and $1,221,000,000 for fiscal year 1986.

(As amended Pub. L. 98-558, title I, § 102, Oct. 30, 1984, 98 Stat. 2878.)

AMENDMENTS

1984—Pub. L. 98-558 substituted "$1,093,030,000 for fiscal year 1985, and $1,221,000,000 for fiscal year 1986" for "$950,000,000 for fiscal year 1982, $1,007,000,000 for fiscal year 1983, and $1,058,357,000 for fiscal year 1984".

§ 9835. Allotment of funds

(a) Distribution of appropriations; priorities, etc.

[*See main edition for text of* (*1*)]

(2) The Secretary shall reserve 13 percent of the amount appropriated for each fiscal year for use in accordance with the following order of priorities—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) training and technical assistance activities which are sufficient to meet the needs associated with program expansion and to foster program and management improvement activities as described in section 9843 of this title, in an amount for each fiscal year which is not less than the amount expended for training and technical assistance activities under this clause for fiscal year 1982; and

(D) discretionary payments made by the Secretary.

The minimum reservation contained in clause (C) of this paragraph shall not apply in any fiscal year in which the appropriation for the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984. No funds reserved under this paragraph may be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter.

[*See main edition for text of* (*3*) *and* (*4*); (*b*) *to* (*e*)]

(As amended Pub. L. 98-558, title I, § 103, Oct. 30, 1984, 98 Stat. 2878.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-558 added "as described in section 9843 of this title, in an amount for each fiscal year which is not less than the amount expended for training and technical assistance activities under this clause for fiscal year 1982" in cl. (C), and added at the end "The minimum reservation contained in clause (C) of this paragraph shall not apply in any fiscal year in which the appropriation for the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984. No funds reserved under this paragraph may be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter."

§ 9836. Designation of Head Start agencies

(a) Authorization; prerequisites

The Secretary is authorized to designate as a Head Start agency any local public or private nonprofit agency, within a community, which (1) has the power and authority to carry out the purposes of this subchapter and perform the functions set forth in section 9837 of this title within a community; and (2) is determined by the Secretary to be capable of planning, conducting, administering, and evaluating, either directly or by other arrangements, a Head Start program.

[*See main edition for text of* (*b*)]

(c) Priority

In the administration of the provisions of this section, the Secretary shall give priority in the designation of Head Start agencies to any local public or private nonprofit agency which is receiving funds under any Head Start program on August 13, 1981, unless—

(1) the Secretary makes a finding that the agency involved fails to meet program and fiscal requirements established by the Secretary; and

(2) except that if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the Secretary shall give priority in the designation of Head Start agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds in the fiscal year preceding the fiscal year for which the determination is made.

The provisions of clause (2) shall apply only to agencies actually operating Head Start programs.

(d) Designation; Head Start agency; qualified applicants

If there is no Head Start agency as described in subsection (c)(2) of this section, and no existing Head Start program serving a community, then the Secretary may designate a Head Start agency from among qualified applicants in such community. Any such designation shall be governed by the program and fiscal requirements, criteria, and standards applicable on September 1, 1983, to then existing Head Start agencies.

(e) Applicability

The provisions of subsections (c) and (d) of this section shall be applied by the Secretary in the distribution of any additional appropriations made available under this subchapter during any fiscal year as well as to initial designations of Head Start agencies.

(f) Involvement of parents and area residents in selection of agencies

The Secretary shall require that the practice of significantly involving parents and area residents affected by the program in selection of Head Start agencies be continued.

(As amended Pub. L. 98-558, title I, § 104, Oct. 30, 1984, 98 Stat. 2878.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-558, § 104(a), added ", within a community," after "private nonprofit agency".

Subsec. (c). Pub. L. 98-558, § 104(b)(1), substituted "unless" for ", except that" in provisions preceding cl. (1).

Subsec. (c)(1). Pub. L. 98-558, § 104(b)(2), (3), substituted "makes a finding" for "shall, before giving such priority, determine" and "fails to meet" for "meet".

Subsec. (c)(2). Pub. L. 98-558, § 104(b)(4), added "except that" before "if".

Subsecs. (d) to (f). Pub. L. 98-558, § 104(c), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

§ 9840. Participation in Head Start programs

(a) Criteria for eligibility

(1) The Secretary shall by regulation prescribe eligibility for the participation of persons in Head Start programs assisted under this subchapter. Except as provided in paragraph (2), such criteria may provide (A) that children from low-income families shall be eligible for participation in programs assisted under this subchapter if their families' incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance; and (B) pursuant to such regulations as the Secretary shall prescribe, that programs assisted under this subchapter may include, to a reasonable extent, participation of children in the area served who would benefit from such programs but whose families do not meet the low-income criteria prescribed pursuant to clause (A). During the period beginning on October 30, 1984, and ending on October 1, 1986, and unless specifically authorized in any statute of the United States enacted after October 30, 1984, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.

[*See main edition for text of* (2); (*b*)]

(c) Availability of more than one year of services; children eligible

Each Head Start program operated in a community may provide more than one year of Head Start services to children from age 3 to the age of compulsory school attendance in the State in which the Head Start program is located.

(As amended Pub. L. 98-558, title I, § 105, Oct. 30, 1984, 98 Stat. 2879.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-558, § 105(a), added "During the period beginning on October 30, 1984, and ending on October 1, 1986, and unless specifically authorized in any statute of the United States enacted after October 30, 1984, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs." Notwithstanding the directory language that the new sentence be added at the end of subsec. (a), the amendment was executed by adding the sentence at the end of par. (1) to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 98-558, § 105(b), added subsec. (c).

§ 9843. Technical assistance and training

The Secretary shall provide, directly or through grants or other arrangements (1) technical assistance to communities in developing, conducting, and administering programs under this subchapter; and (2) training for specialized or other personnel needed in connection with Head Start programs, including a centralized child development training and national assessment program which may be administered at the State or local level leading to recognized credentials for such personnel, and resource access projects for personnel of handicapped children.

(As amended Pub. L. 98-558, title I, § 106, Oct. 30, 1984, 98 Stat. 2879.)

AMENDMENTS

1984—Pub. L. 98-558 substituted "shall" for "may" and added provision including a centralized child development training and national assessment program.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9835 of this title.

§ 9844. Research, demonstration, and pilot projects

[*See main edition for text of* (*a*) *and* (*b*)]

(c) No funds appropriated under this subchapter may be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this title.[1]

(As amended Pub. L. 98-558, title I, § 107, Oct. 30, 1984, 98 Stat. 2880.)

REFERENCES IN TEXT

This title, referred to in subsec. (c), is title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 483, as amended, which is classified principally to chapters 105 (§ 9801 et seq.) and 106 (§ 9901 et seq.) of this title. For complete classification of title VI to the Code, see Tables.

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[1] See References in Text note below.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-558 added subsec. (c).

§ 9846. Evaluation

[*See main edition for text of* (*a*)]

(b) Head Start performance standards

The Secretary shall operate the programs and projects covered by this subchapter in accordance with Head Start performance standards. Any revisions in such standards shall not result in the elimination of nor any reduction in the scope or types of health, education, parental involvement, social or other services required to be provided under the standards in effect on November 2, 1978. The extent to which such standards have been met shall be considered in deciding whether to renew or supplement financial assistance authorized under this subchapter.

[*See main edition for text of* (*c*) *to* (*f*)]

(As amended Pub. L. 98-558, title I, § 108, Oct. 30, 1984, 98 Stat. 2880.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-558 substituted "not result in the elimination of nor any reduction in the scope or types of health, education, parental involvement, social or other services required to be provided under the standards" for "result in standards which are no less comprehensive than those" in second sentence.

SUBCHAPTER III—FOLLOW THROUGH PROGRAMS

REPEAL OF SUBCHAPTER

Pub. L. 97-35, title V, § 587(b), title VI, § 670, Aug. 13, 1981, 95 Stat. 480, 511, as amended by Pub. L. 98-558, title III, § 302, Oct. 30, 1984, 98 Stat. 2887, provided that, effective Oct. 1, 1986, this subchapter is repealed.

§ 9861. Financial assistance for Follow Through programs

REPEAL OF SECTION

Pub. L. 97-35, title V, § 587(b), title VI, § 670, Aug. 13, 1981, 95 Stat. 480, 511, as amended by Pub. L. 98-558, title III, § 302, Oct. 30, 1984, 98 Stat. 2887, provided that, effective Oct. 1, 1986, this section is repealed.

§ 9862. Funding requirements

(a) Authorization of appropriations; availability

(1) There is authorized to be appropriated for carrying out the purposes of this subchapter $10,000,000 for the fiscal year 1985 and $7,500,000 for the fiscal year 1986.

[*See main edition for text of* (*2*); (*b*) *and* (*c*)]

(As amended Pub. L. 98-558, title III, § 301, Oct. 30, 1984, 98 Stat. 2887.)

REPEAL OF SECTION

Pub. L. 97-35, title V, § 587(b), title VI, § 670, Aug. 13, 1981, 95 Stat. 480, 511, as amended by Pub. L. 98-558, title III, § 302, Oct. 30, 1984, 98 Stat. 2887, provided that, effective Oct. 1, 1986, this section is repealed.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-558 substituted "$10,000,000 for the fiscal year 1985 and $7,500,000 for the fiscal year 1986" for "$44,300,000 for fiscal year 1982, $22,150,000 for fiscal year 1983, and $14,767,000 for fiscal year 1984".

§ 9863. Grants or contracts for research, demonstration, and pilot projects

REPEAL OF SECTION

Pub. L. 97-35, title V, § 587(b), title VI, § 670, Aug. 13, 1981, 95 Stat. 480, 511, as amended by Pub. L. 98-558, title III, § 302, Oct. 30, 1984, 98 Stat. 2887, provided that, effective Oct. 1, 1986, this section is repealed.

§ 9864. Announcement of research, demonstration, and pilot project grants or contracts

REPEAL OF SECTION

Pub. L. 97-35, title V, § 587(b), title VI, § 670, Aug. 13, 1981, 95 Stat. 480, 511, as amended by Pub. L. 98-558, title III, § 302, Oct. 30, 1984, 98 Stat. 2887, provided that, effective Oct. 1, 1986, this section is repealed.

§ 9865. Evaluation

REPEAL OF SECTION

Pub. L. 97-35, title V, § 587(b), title VI, § 670, Aug. 13, 1981, 95 Stat. 480, 511, as amended by Pub. L. 98-558, title III, § 302, Oct. 30, 1984, 98 Stat. 2887, provided that, effective Oct. 1, 1986, this section is repealed.

§ 9866. Technical assistance and training

REPEAL OF SECTION

Pub. L. 97-35, title V, § 587(b), title VI, § 670, Aug. 13, 1981, 95 Stat. 480, 511, as amended by Pub. L. 98-558, title III, § 302, Oct. 30, 1984, 98 Stat. 2887, provided that, effective Oct. 1, 1986, this section is repealed.

§ 9867. Special conditions on financial assistance

REPEAL OF SECTION

Pub. L. 97-35, title V, § 587(b), title VI, § 670, Aug. 13, 1981, 95 Stat. 480, 511, as amended by Pub. L. 98-558, title III, § 302, Oct. 30, 1984, 98 Stat. 2887, provided that, effective Oct. 1, 1986, this section is repealed.

§ 9868. Applicability of other provisions

REPEAL OF SECTION

Pub. L. 97-35, title V, § 587(b), title VI, § 670, Aug. 13, 1981, 95 Stat. 480, 511, as amended by Pub. L. 98-558, title III, § 302, Oct. 30, 1984, 98 Stat. 2887, provided that, effective Oct. 1, 1986, this section is repealed.

SUBCHAPTER IV—GRANTS TO STATES FOR PLANNING AND DEVELOPMENT OF DEPENDENT CARE PROGRAMS AND FOR OTHER PURPOSES

§ 9871. Authorization of appropriations

For the purpose of allotments to States to carry out the activities described in section 9874 of this title, there are authorized to be appropriated $20,000,000 for each of the fiscal years 1985 and 1986.

(Pub. L. 97-35, title VI, § 670A, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880.)

Section Referred to in Other Sections

This section is referred to in sections 9872, 9873 of this title.

§ 9872. Allotments

(a) From the amounts appropriated under section 9871 of this title for each fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to the total amount appropriated under such section for such fiscal year as the population of the State bears to the population of all States, except that no State may receive less than $50,000 in each fiscal year.

(b) For the purpose of the exception contained in subsection (a) of this section, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97-35, title VI, § 670B, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880.)

Section Referred to in Other Sections

This section is referred to in sections 9873, 9874, 9875 of this title.

§ 9873. Payments under allotments to States

The Secretary shall make payments, as provided by section 6503(a) of title 31, to each State from its allotments under section 9872 of this title from amounts appropriated under section 9871 of this title.

(Pub. L. 97-35, title VI, § 670C, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880.)

Section Referred to in Other Sections

This section is referred to in sections 9874, 9875 of this title.

§ 9874. Use of allotments

(a) Referral systems; information; contents

Subject to the provisions of subsections (c) and (d) of this section, amounts paid to a State under section 9873 of this title from its allotment under section 9872 of this title for fiscal year 1985 and fiscal year 1986 may be used for the planning, development, establishment, expansion, or improvement by the States, directly or by grant or contract with public or private entities, of State and local resource and referral systems to provide information concerning the availability, types, costs, and locations of dependent care services. The information provided by any such system shall include—

(1) the types of dependent care services available, including services provided by individual homes, religious organizations, community organizations, employers, private industry, and public and private institutions;

(2) the costs of available dependent care services;

(3) the locations in which dependent care services are provided;

(4) the forms of transportation available to such locations;

(5) the hours during which such dependent care services are available;

(6) the dependents eligible to enroll for such dependent care services; and

(7) any resource and referral system planned, developed, established, expanded, or improved with amounts paid to a State under this subchapter.

In carrying out clause (7) of the previous sentence, no information shall be included with respect to any dependent care services which are not provided in compliance with the laws of the State and localities in which such services are provided.

(b) School-age child care services; assurances; estimates

(1) Subject to the provisions of subsections (c) and (d) of this section, amounts paid to a State under section 9873 of this title from its allotment under section 9872 of this title for fiscal year 1985 and fiscal year 1986 may be used for the planning, development, establishment, expansion, or improvement by the States, directly, or by grant or contract, with public agencies or private nonprofit organizations of programs to furnish school-age child care services before and after school in public or private school facilities or in community centers in communities where school facilities are not available.

(2) The State, with respect to the uses of funds described in paragraph (1) of this subsection shall—

(A) provide assurances, in the case of an applicant that is not a State or local educational agency, that the applicant has or will enter into an agreement with the State or local educational agency, institution of higher education or community center containing provisions for—

(i) the use of facilities for the provision of before or after school child care services (including such use during holidays and vacation periods),

(ii) the restrictions, if any, on the use of such space, and

(iii) the times when the space will be available for the use of the applicant;

(B) provide an estimate of the costs of the establishment of the child care service program in the facilities;

(C) provide assurances that the parents of school-age children will be involved in the development and implementation of the program for which assistance is sought under this Act;

(D) provide assurances that the applicant is able and willing to seek to enroll racially, ethnically, and economically diverse as well as handicapped school-age children in the child care service program for which assistance is sought under this Act;

(E) provide assurances that the child care program is in compliance with State and local licensing laws and regulations governing day care services for school-age children to the extent that such regulations are appropriate to the age group served; and

(F) provide such other assurances as the Governor may reasonably require to carry out the provisions of this Act.

(c) Percentage of allotment; subsections (a) and (b)

Of the allotment to each State in each fiscal year—

(1) 40 percent shall be available for the activities described in subsection (a) of this section;

(2) 60 percent shall be available for the activities described in subsection (b) of this section.

(d) Prohibition; use of amounts

A State may not use amounts paid to it under this subchapter to—

(1) pay the costs of operation of any resource and referral system or before or after school child care program established, expanded, or improved under subsection (a) of this section;

(2) make cash payments to intended recipients of dependent care services including child care services;

(3) subsidize the direct provision of dependent care services including child care services;

(4) pay for construction or renovation; or

(5) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

(e) Federal share; cost of administration

(1) The Federal share of any project supported under this subchapter shall be not more than 75 percent.

(2) Not more than 10 percent of the allotment of each State under this subchapter may be available for the cost of administration.

(f) Duplication of services

Projects supported under this section to plan, develop, establish, expand, or improve a State or local resource and referral system or before or after school child care program shall not duplicate any services, which prior to October 30, 1984, are provided by the State or locality which will be served by such system.

(g) Technical assistance to States; planning and operational activities

The Secretary may provide technical assistance to States in planning and operating activities to be carried out under this subchapter.

(Pub. L. 97-35, title VI, § 670D, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(2)(C), (D), (F), is Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 357, as amended, known as the Omnibus Budget Reconciliation Act of 1981. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9871 of this title.

§ 9875. Application and description of activities; requirements

(a) Applications

(1) In order to receive an allotment under section 9872 of this title, each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require.

(2) Each application required under paragraph (1) for an allotment under section 9872 of this title shall contain assurances that the State will meet the requirements of subsection (b) of this section.

(b) Certifications

As part of the annual application required by subsection (a) of this section, the chief executive officer of each State shall—

(1) certify that the State agrees to use the funds allotted to it under section 9872 of this title in accordance with the requirements of this subchapter; and

(2) certify that the State agrees that Federal funds made available under section 9873 of this title for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.

The Secretary may not prescribe for a State the manner of compliance with the requirements of this subsection.

(c) Description; intended use of payments; comments; revision

The chief executive officer of a State shall, as part of the application required by subsection (a) of this section, also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 9873 of this title, including information on the programs and activities to be supported. The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal. The description shall be revised (consistent with this section) until September 30, 1987, as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this subchapter, and any revision shall be subject to the requirements of the preceding sentence.

(d) Application to Public Health Service Act

Except where inconsistent with the provisions of this subchapter, the provisions of section 1903(b) [42 U.S.C. 300w-2(b)], paragraphs (1) through (5) of section 1906(a) [42 U.S.C. 300w-5(a)], and sections 1906(b), 1907, 1908, and 1909 [42 U.S.C. 300w-5(b), 300w-6, 300w-7, 300w-8] of the Public Health Service Act shall apply to this subchapter in the same manner as such provisions apply to part A of title XIX of such Act [42 U.S.C. 300w et seq.].

(Pub. L. 97-35, title VI, § 670E, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2882.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (d), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part A of title XIX of the Public Health Service Act is classified generally to part A (§ 300w et seq.) of subchapter XVII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

§ 9876. Report

Within three years after October 30, 1984, the Secretary shall prepare and transmit to the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor a report concerning the activities conducted by the States with amounts provided under this subchapter.

(Pub. L. 97-35, title VI, § 670F, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2883.)

§ 9877. Definitions

For purposes of this subchapter—

(1) the term "community center" means facilities operated by nonprofit community-based organizations for the provision of recreational, social, or educational services to the general public;

(2) the term "dependent" means—

(A) an individual who has not attained the age of 17 years;

(B) an individual who has attained the age of 55 years; or

(C) a person with a developmental disability;

(3) the term "developmental disability" has the same meaning as in section 6001(7) of this title;

(4) the term "equipment" has the same meaning given that term by section 2854(a)(8) of title 20;

(5) the term "institution of higher education" has the same meaning given that term under section 1141(a) of title 20;

(6) the term "local educational agency" has the same meaning given that term under section 2854(a)(10) of title 20;

(7) the term "school-age children" means children aged five through thirteen;

(8) the term "school facilities" means classrooms and related facilities used for the provision of education;

(9) the term "Secretary" means the Secretary of Health and Human Services;

(10) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands; and

(11) the term "State educational agency" has the meaning given that term under section 2854(a)(17) of title 20.

(Pub. L. 97-35, title VI, § 670G, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2883.)

CHAPTER 106—COMMUNITY SERVICES BLOCK GRANT PROGRAM

Sec.	
9905a.	Termination of funding review.
9910a.	Community food and nutrition.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3013, 3020d, 3056a, 4953, 8623, 8624, 9812, 9819 of this title; title 31 section 6501.

§ 9901. Community services grants authorized

[*See main edition for text of* (*a*)]

(b) There is authorized to be appropriated $389,375,000 for the fiscal year 1982 and for each of the 4 succeeding fiscal years to carry out the provisions of this chapter. There is authorized to be appropriated $400,000,000 for the fiscal year 1985, and $415,000,000 for the fiscal year 1986, to carry out the provisions of this chapter.

(As amended Pub. L. 98-558, title II, § 201, Oct. 30, 1984, 98 Stat. 2884.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-558 added "There is authorized to be appropriated $400,000,000 for the fiscal year 1985, and $415,000,000 for the fiscal year 1986, to carry out the provisions of this chapter."

§ 9902. Definitions

For purposes of this chapter:

(1) The term "eligible entity" means any organization which was officially designated as a community action agency or a community action program under the provisions of section 210 of the Economic Opportunity Act of 1964 [42 U.S.C. 2790] for fiscal year 1981, unless such community action agency or a community action program lost its designation under section 210 of such Act as a result of a failure to comply with the provisions of such Act [42 U.S.C. 2701 et seq.]. The term "eligible entity" also includes any limited purpose agency designated under title II of the Economic Opportunity Act of 1964 [42 U.S.C. 2781 et seq.] for fiscal year 1981 which served the general purposes of a community action agency under title II of such Act, unless such designated agency lost its designation under title II of such Act as a result of a failure to comply with the provisions of such Act, any grantee which received financial assistance under section 222(a)(4) of the Economic Opportunity Act of 1964 [42 U.S.C. 2809(a)(4)] in fiscal year 1981, and any organization to which a State which applied for and received a waiver from the Secretary under Public Law

98-139 made a grant under this Act in fiscal year 1984. In any geographic area of a State not presently served by an eligible entity, the Governor of the State may decide to serve such a new area by—

(A) requesting an existing eligible entity which is located and provides services in an area contiguous to the new area to serve the new area;

(B) if no existing eligible entity is located and provides services in an area contiguous to the new area, requesting the eligible entity located closest to the area to be served or an existing eligible entity serving an area within reasonable proximity of the new area to provide services in the new area; or

(C) where no existing eligible entity requested to serve the new area decides to do so, designating any existing eligible entity, any organization which has a board meeting the requirements of section 9904(c)(3) of this title or any political subdivision of the State to serve the new area. The Governor's designation of an organization which has a board meeting the requirements of section 9904(c)(3) of this title or a political subdivision of the State to serve the new area shall qualify such organization as an eligible entity under this Act.

(2) The term "poverty line" means the official poverty line defined by the Office of Management and Budget based on Bureau of the Census data. The Secretary shall revise the poverty line annually (or at any shorter interval the Secretary deems feasible and desirable) which shall be used as a criterion of eligibility in community service block grant programs. The required revision shall be accomplished by multiplying the official poverty line by the percentage change in the Consumer Price Index For All Urban Consumers during the annual or other interval immediately preceding the time at which the revision is made. Whenever the State determines that it serves the objectives of the block grant established by this chapter the State may revise the poverty line to not to exceed 125 percent of the official poverty line otherwise applicable under this paragraph.

[*See main edition for text of* (*3*) *and* (*4*)]

(As amended Pub. L. 98-288, § 31(a), May 21, 1984, 98 Stat. 197; Pub. L. 98-558, title II, § 202, Oct. 30, 1984, 98 Stat. 2884.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in par. (1), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, which was classified generally to chapter 34 (§ 2701 et seq.) of this title prior to repeal, except for titles VIII and X, by Pub. L. 97-35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Title II of the Economic Opportunity Act of 1964 was classified generally to subchapter II (§ 2781 et seq.) of chapter 34 of this title. Titles VIII and X of the Act are classified generally to subchapters VIII (§ 2991 et seq.) and X (§ 2996 et seq.) of chapter 34 of this title. Sections 210 and 222(a)(4) of the Act were classified to sections 2790 and 2809(a)(4) of this title, respectively, prior to repeal by section 683(a) of Pub. L. 97-35. For complete classification of this Act to the Code, see Tables.

Public Law 98-139, referred to in par. (1), is Pub. L. 98-139, Oct. 31, 1983, 97 Stat. 871, known as the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1984. Provisions relating to a waiver by the Secretary of Health and Human Services are set out at 97 Stat. 885. For complete classification of this Act to the Code, see Tables.

This Act, referred to in par. (1), is Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 357, as amended, known as the Omnibus Budget Reconciliation Act of 1981. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1984—Par. (1). Pub. L. 98-558, § 202(a), added provision relating to any organization to which a State which applied for and received a waiver from the Secretary under Public Law 98-139 made a grant under this Act in fiscal year 1984, and added provisions authorizing Governors to serve new areas and relating to qualification as eligible entities under this chapter.

Par. (2). Pub. L. 98-558, § 202(b), added "Whenever the State determines that it serves the objectives of the block grant established by this chapter the State may revise the poverty line to not to exceed 125 percent of the official poverty line otherwise applicable under this paragraph."

Pub. L. 98-288 substituted "defined by the Office of Management and Budget based on Bureau of the Census data" for "established by the Director of the Office of Management and Budget", and added "For All Urban Consumers" after "Consumer Price Index".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 701, 5011, 8622, 9904, 9911, 9912 of this title; title 7 sections 1927, 2014, 3175; title 8 section 1154.

§ 9904. Applications and requirements

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Certifications required

As part of the annual application required by subsection (a) of this section, the chief executive officer of each State shall certify that the State agrees to—

[*See main edition for text of* (*1*)]

(2)(A) use, for fiscal year 1985 and for each subsequent fiscal year, not less than 90 percent of the funds allotted to the State under section 9903 of this title to make grants to use for the purposes described in clause (1) to eligible entities (as defined in section 9902(1) of this title) or to organizations serving seasonal or migrant farmworkers, except that no more than 7 percent of the funds available for this subclause shall be granted to organizations which were not eligible entities during the previous fiscal year; and

(B) provide assurances that the State will not expend more than the greater of $55,000 or 5 percent of its allotment under section 9903 of this title for administrative expenses at the State level;

[*See main edition for text of* (*3*) *and* (*4*)]

(5) provide assurances that the State may transfer funds, but not to exceed 5 percent of its allotment under section 9903 of this title, for the provisions set forth in this chapter to services under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], the Head Start

program under subchapter II of chapter 105 of this title, the energy crisis intervention program under subchapter II of chapter 94 of this title (relating to low-income home energy assistance), or the Temporary Emergency Food Assistance Act of 1983;

[*See main edition for text of* (*6*) *to* (*8*)]

(9) provide that fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under this chapter, including procedures for monitoring the assistance provided under this chapter, and provide that at least every year each State shall prepare, in accordance with subsection (f) of this section, an audit of its expenditures of amounts received under this chapter and amounts transferred to carry out the purposes of this chapter;

(10) permit and cooperate with Federal investigations undertaken in accordance with section 9908 of this title; and

(11) provide assurances that any community action agency or migrant and seasonal farmworker organization which received funding in the previous fiscal year under this Act will not have its present or future funding terminated under this Act unless after notice, and opportunity for hearing on the record, the State determines that cause existed for such termination subject to review by the Secretary as provided in section 9905a of this title.

The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection. The Secretary shall provide to the chief executive officer of each State appropriate information regarding designated limited purpose agencies and grantees which meet the requirements of the second sentence of section 9902(1) of this title. No eligible entity which receives funds for a project or activity under clause (2)(A)(i) of this subsection may receive funds otherwise available under this chapter for that project or activity.

[*See main edition for text of* (*d*) *to* (*h*)]

(i) Evaluation; uses of funds; submission to Congressional committees

(1) For purposes of determining compliance with this chapter the Secretary shall conduct, in several States in each fiscal year, evaluations of the uses made of funds received under this chapter by such States.

(2) The results of such evaluations shall be submitted annually to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on Labor and Human Resources of the Senate.

(As amended Pub. L. 98-558, title II, § 203(a)-(c), Oct. 30, 1984, 98 Stat. 2885.)

REFERENCES IN TEXT

The Temporary Emergency Food Assistance Act of 1983, referred to in subsec. (c)(5), is title II of Pub. L. 98-8, Mar. 24, 1983, 97 Stat. 35, as amended, which is set out as a note under section 612c of Title 7, Agriculture. For complete classification of this Act to the Code, see Tables.

This Act, referred to in subsec. (c)(11), is Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 357, as amended, known as the Omnibus Budget Reconciliation Act of 1981. For complete classification of this Act to the Code, see Tables.

CODIFICATION

This chapter, referred to in subsec. (i), was in the original "this subchapter" and was translated as reading "this subtitle", because subtitle B of title VI of Pub. L. 97-35, which is classified principally to this chapter, did not contain subchapters.

AMENDMENTS

1984—Subsec. (c)(2)(A). Pub. L. 98-558, § 203(a)(1)-(3), substituted "1985 and for each subsequent fiscal year" for "1982 only", added "except that no more than 7 percent of the funds available for this subclause shall be granted to organizations which were not eligible entities during the previous fiscal year", struck out "(i)" thereby redesignating former division (i) as subpar. (A), and struck out division (ii) which provided that, for fiscal year 1983, not less than 90 percent of allotted funds were to be used for making grants to political subdivisions directly or to private nonprofit community organizations which have a board or to migrant and seasonal farm workers.

Subsec. (c)(2)(B). Pub. L. 98-558, § 203(a)(4), added "the greater of $55,000 or".

Subsec. (c)(5). Pub. L. 98-558, § 203(a)(5), substituted "the energy" for "or the energy" before "crisis intervention program" and added ", or the Temporary Emergency Food Assistance Act of 1983".

Subsec. (c)(11). Pub. L. 98-558, § 203(b), which directed the amendment of this section by adding a par. (11), was executed by adding the par. (11) at the end of subsec. (c).

Subsec. (i). Pub. L. 98-558, § 203(c), added subsec. (i).

CONSTRUCTION

Section 207 of Pub. L. 98-558 provided that: "Notwithstanding any other provision of law the provisions of section 675(c)(2) of the Act [subsec. (c)(2) of this section] made by the amendments contained in paragraphs (1), (2), and (3) of section 203 of this Act [amending subsec. (c)(2)(A) of this section] shall apply to the funds appropriated for the Act [this chapter] for fiscal year 1985."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9902, 9903, 9905a, 9908 of this title.

§ 9905a. Termination of funding review

The Secretary shall upon request review any termination of funding to a community action agency or migrant and seasonal farmworker organization protected by a State's assurance under section 9904(c)(11) of this title. Such review shall be conducted promptly and shall be based upon the record and no determination shall become effective until a finding by the Secretary confirming the State's finding of cause.

(Pub. L. 97-35, title VI, § 676A, as added Pub. L. 98-558, title II, § 203(d), Oct. 30, 1984, 98 Stat. 2885.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9904 of this title.

§ 9908. Withholding of funds

[*See main edition for text of* (*a*)]

(b) Investigations

(1) The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this chapter in order to evaluate compliance with the provisions of this chapter.

(2) Whenever the Secretary determines that there is a pattern of complaints from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this chapter by such State in order to ensure compliance with the provisions of this chapter.

(3) The Comptroller General of the United States shall conduct an investigation of the use of funds received under this chapter by a State in order to ensure compliance with the provisions of this chapter.

[*See main edition for text of* (*c*)]

(d) Repealed. Pub. L. 98–558, title II, § 205(b), Oct. 30, 1984, 98 Stat. 2886

(As amended Pub. L. 98–558, title II, § 205, Oct. 30, 1984, 98 Stat. 2886.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98–558, § 205(a)(1), substituted "the Secretary" for "he" before "shall conduct an investigation".

Subsec. (b)(3). Pub. L. 98–558, § 205(a)(2), substituted "shall" for "may".

Subsec. (d). Pub. L. 98–558, § 205(b), struck out subsec. (d) which related to information not otherwise maintained.

§ 9910. Discretionary authority of Secretary

(a) The Secretary is authorized, either directly or through grants, loans, or guarantees to States and public agencies and private nonprofit organizations, or contracts or jointly financed cooperative arrangements with States and public agencies and private nonprofit organizations, to provide for—

(1) training related to the purposes of this chapter;

(2) ongoing activities of national or regional significance related to the purposes of this chapter, including special emphasis programs for—

[*See main edition for text of* (*A*) *to* (*E*)]

(F) national or regional programs designed to provide recreational activities for low-income youth; and

(3) training and technical assistance to aid States in carrying out their responsibilities under this chapter.

In addition, grants, loans, and guarantees made pursuant to this subsection may be made to a private nonprofit organization applying jointly with a business concern.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98–558, title II, § 204, Oct. 30, 1984, 98 Stat. 2886.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(3), was in the original "this subchapter" and was translated as reading "this subtitle", because subtitle B of title VI of Pub. L. 97–35, which is classified principally to this chapter, did not contain subchapters.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–558, § 204(a)(1), substituted "public agencies and private nonprofit organizations" for "public and other organizations and agencies" in two places in provisions preceding par. (1).

Pub. L. 98–558, § 204(b), added "In addition, grants, loans, and guarantees made pursuant to this subsection may be made to a private nonprofit organization applying jointly with a business concern."

Subsec. (a)(3). Pub. L. 98–558, § 204(a)(2), added par. (3).

§ 9910a. Community food and nutrition

(a) The Secretary may through grants to public and private nonprofit agencies, provide for community-based, local, and statewide programs—

(1) to coordinate existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income populations;

(2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas; and

(3) to develop innovative approaches at the State and local level to meet the nutrition needs of low-income people.

(b) There is authorized to be appropriated $2,500,000 for each of the fiscal years 1985 and 1986 to carry out the provisions of this section.

(Pub. L. 97–35, title VI, § 681A, as added Pub. L. 98–558, title II, § 206, Oct. 30, 1984, 98 Stat. 2886.)

§ 9912. Technical provisions

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Conforming provisions

(1) Any reference in any provision of law to the poverty line set forth in section 624 or 625 of the Economic Opportunity Act of 1964 [42 U.S.C. 2971d] shall be construed to be a reference to the poverty line defined in section 9902(2) of this title.

[*See main edition for text of* (*2*) *and* (*3*)]

(As amended Pub. L. 98–288, § 31(b), May 21, 1984, 98 Stat. 198.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, which was classified generally to chapter 34 (§ 2701 et seq.) of this title prior to repeal, except for titles VIII and X, by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Title II of the Economic Opportunity Act of 1964 was classified generally to subchapter II (§ 2781 et seq.) of chapter 34 of this title. Titles VIII and X of the Act are classified generally to subchapters VIII (§ 2991 et seq.) and X (§ 2996 et seq.) of chapter 34 of this title. Section 625 of the Act, which was subsequently renumbered section 624 of the Act, was classified to section 2971d of this title, prior to repeal by section 683(a) of Pub. L. 97-35. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-288 substituted "section 624 or 625" for "section 624".

CHAPTER 109—WATER RESOURCES RESEARCH

Sec.

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§ 10301. Congressional findings and declarations

The Congress finds and declares that—

(1) the existence of an adequate supply of water of good quality for the production of materials and energy for the Nation's needs and for the efficient use of the Nation's energy and water resources is essential to national economic stability and growth, and to the well-being of the people;

(2) the management of water resources is closely related to maintaining environmental quality and social well-being;

(3) there is an increasing threat of impairment to the quantity and quality of surface and groundwater resources;

(4) the Nation's capabilities for technological assessment and planning and for policy formulation for water resources must be strengthened at the Federal, State, and local governmental levels;

(5) there should be a continuing national investment in water and related research and technology commensurate with growing national needs;

(6) it is necessary to provide for the research and development of technology for the conversion of saline and other impaired waters to a quality suitable for municipal, industrial, agricultural, recreational, and other beneficial uses; and

(7) the Nation must provide programs to strengthen research and associated graduate education because the pool of scientists, engineers, and technicians trained in fields related to water resources constitutes an invaluable natural resource which should be increased, fully utilized, and regularly replenished.

(Pub. L. 98-242, title I, § 102, Mar. 22, 1984, 98 Stat. 97.)

SHORT TITLE

Section 101 of Pub. L. 98-242 provided that: "This Act [enacting this chapter, repealing sections 7801, 7802, 7811 to 7819, 7831 to 7835, 7851 to 7853, and 7871 to 7883 of this title, and enacting provisions set out as a note under section 7801 of this title] may be cited as the 'Water Resources Research Act of 1984'."

SAVINGS PROVISION

Rules and regulations issued prior to Mar. 22, 1984, under Pub. L. 95-467 [chapter 87 of this title] to remain in full force and effect under this chapter until superseded by new rules and regulations promulgated under this chapter, see section 110(b) of Pub. L. 98-242, set out as a note under section 7801 of this title.

DESALTING PLANTS

Pub. L. 95-84, § 2, Aug. 2, 1977, 91 Stat. 400; Pub. L. 95-467, title II, § 205(a), (b), Oct. 17, 1978, 92 Stat. 1311; Pub. L. 96-457, § 3, Oct. 15, 1980, 94 Stat. 2032; Pub. L. 98-242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101, provided that:

"(a) The Secretary of the Interior is authorized and directed to demonstrate the engineering and economic viability of membrane and phase-change desalting processes. Such demonstrations shall include the study, design, construction, operation, and maintenance of desalting plants at locations in the United States (which may include the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Mariana Islands, and the Trust Territory of the Pacific Islands): *Provided*, That at least two such plants shall demonstrate desalting of brackish ground water: *And provided further*, That the plants constructed pursuant to this section shall be for the purpose of showing that the technology being demonstrated is ready for application; such plants shall be sufficient to demonstrate the specific application of the technology, and shall be significantly different in operation and process so as not to duplicate any other demonstration plant constructed pursuant to this section. The Secretary is further authorized to conduct such demonstrations or any portion thereof by means of cooperative agreements (as defined and authorized by 41 U.S.C. 504 et seq. (the Federal Grant and Cooperative Agreement Act of 1977; Public Law 95-224)) [31 U.S.C. 6301 et seq.] with duly authorized non-Federal public entities. Title to demonstration facilities constructed by the non-Federal public entity under a cooperative agreement shall vest in the non-Federal public entity.

"(b) Funds appropriated pursuant to the authority provided by this section [this note] may not be expended until thirty calendar days (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) have elapsed following transmittal of a report to the chairman of the Committee on Interior and Insular Affairs of the House of Representatives and the chairman of the Committee on Environment and Public Works of the United States Senate. Such report shall present information that includes, but is not limited to, how the plant being proposed differs from others, if any, already constructed under this section, the location of the demonstration plant, the characteristics of the water proposed to be desalted, the process to be utilized, the water supply problems confronting the area in which the plant will be located, alternative sources of water and their probable cost, the capacity of the plant, the initial investment cost of the demonstration plant, the annual operating cost of the demonstration plant, the source of energy for the plant and its cost, the means of reject brine disposal and its environmental consequences, and the unit cost of product water, considering the amortization of all components of the demonstration plant and ancillary facilities. Such report shall be accompanied by a proposed contract (or cooperative agreement) between the Secretary and a duly authorized non-Federal entity, in which such entity shall agree to provide not less than 15 per centum and not more than 35 per centum of the total cost of the demonstration; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for a period of four years following final acceptance of the construction of the plant from the plant contractor. The contributions of the non-Federal entity under such proposed contract may be in-kind. During the participation by the Secretary in the construction and the operation and maintenance of such demonstration, access to the demonstration and its operating data will not be denied to the Secretary or his representatives. The period of participation by the Secretary in the operation and maintenance of any such demonstration shall be four years. The Secretary is authorized to include in the proposed contract a provision for conveying, as appropriate, and in such amounts as are appropriate, rights, title, and interest of the Federal Government in the demonstration project to the non-Federal public entity.

"(c) There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter, the sum of $50,000,000 to finance the total Federal share of the cost of the demonstration plants authorized by this section; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for the four-year period of Federal participation in such costs.

"(d) When appropriations have been made for the commencement or continuation of design, construction, or operation and maintenance of any demonstration plant authorized under this Act [this note], the Secretary may, in connection with such design, construction, or operation and maintenance, enter into contracts and cooperative agreements for miscellaneous services, for materials and supplies, as well as for construction, which may cover such periods of time as the Secretary may consider necessary but in which the liability of the United States shall be contingent upon appropriations being made therefor."

§ 10302. Congressional declaration of purpose

It is the purpose of this chapter to assist the Nation and the States in augmenting their water resources science and technology as a way to—

(1) assure supplies of water sufficient in quantity and quality to meet the Nation's expanding needs for the production of food, materials, and energy;

(2) discover practical solutions to the Nation's water and water resources related problems, particularly those problems related to impaired water quality;

(3) assure the protection and enhancement of environmental and social values in connection with water resources management and utilization;

(4) promote the interest of State and local governments as well as private industry in research and the development of technology that will reclaim waste water and to convert saline and other impaired waters to waters suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(5) coordinate more effectively the Nation's water resources research program; and

(6) promote the development of a cadre of trained research scientists, engineers, and technicians for future water resources problems.

(Pub. L. 98-242, title I, § 103, Mar. 22, 1984, 98 Stat. 97.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 98-242, Mar. 22, 1984, 98 Stat. 97, known as the Water Resources Research Act of 1984, which enacted this chapter, repealed sections 7801, 7802, 7811 to 7819, 7831 to 7835, 7851 to 7853, and 7871 to 7883 of this title, and enacted provisions set out as a note under section 7801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10301 of this title and Tables.

§ 10303. Water resources research and technology institutes

(a) Establishment; designation of site by State legislature or Governor

Subject to the approval of the Secretary of the Interior (hereafter in this chapter referred to as the "Secretary") under this section, one water resources research and technology institute, center, or equivalent agency (hereafter in this chapter referred to as the "institute") may be established in each State (as used in this chapter, the term "State" includes the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands and the Trust Territory of the Pacific Islands) at a college or university which was established in accordance with the Act approved July 2, 1862 (12 Stat. 503) [7 U.S.C. 301 et seq.], or at some other institution designated by act of the legislature of the State concerned. If there is more than one such college or university in a State established in accordance with such Act of July 2, 1862, the institute in such State shall, in the absence of a designation to the contrary by act of the legislature of the State, be established at the one such college or university designated by the Governor of the State. Two or more States may cooperate in the establishment of a single institute or regional institute, in which event the sums otherwise allocated to institutes in each of the cooperating States shall be paid to such single or regional institute.

(b) Scope of research; other activities; cooperation and coordination

Each institute shall—

(1) plan, conduct, or otherwise arrange for competent research with respect to water resources, including investigations and experiments of either a basic or *practical nature*, or

both; promote the dissemination and application of the results of these efforts; and provide for the training of scientists and engineers through such research, investigations, and experiments, and

(2) cooperate closely with other colleges and universities in the State that have demonstrated capabilities for research, information dissemination, and graduate training in order to develop a statewide program designed to resolve State and regional water and related land problems.

Each institute shall also cooperate closely with other institutes and other organizations in the region to increase the effectiveness of the institutes and for the purpose of regional coordination.

(c) Grants; matching funds

From the sums appropriated pursuant to subsection (f) of this section, the Secretary shall make grants to each institute to be matched on a basis of no less than one non-Federal dollar for every Federal dollar during the fiscal years ending September 30, 1985, and September 30, 1986, one and one-half non-Federal dollars for each Federal dollar during the fiscal years ending September 30, 1987, and September 30, 1988, and two non-Federal dollars for each Federal dollar during the fiscal year ending September 30, 1989.

(d) Submission and approval of water research program; requisite assurances

Prior to and as a condition of the receipt each fiscal year of funds appropriated under subsection (f) of this section, each institute shall submit to the Secretary for his approval a water research program that includes assurances, satisfactory to the Secretary, that such program was developed in close consultation and collaboration with the director of that State's department of water resources or similar agency, other leading water resources offials within the State, and interested members of the public. The program described in the preceding sentence shall include plans to promote research, training, information dissemination, and other activities meeting the needs of the State and Nation, and shall encourage regional cooperation among institutes in research into areas of water management, development, and conservation that have a regional or national character.

(e) Evaluation of each institution's water resources research program; reevaluations

(1) The Secretary shall establish procedures for a careful and detailed evaluation of each institute to determine that the quality and relevance of its water resources research and its effectiveness as an institution for planning, conducting and arranging for research warrants its continued support under this section in the national interest. The evaluation of each institute shall be made by a team of knowledgeable individuals including employees of the Department of the Interior, university faculty or administrators, water research institute directors from other institutes, State or local water resource agency personnel, and private citizens selected for this purpose. The Secretary may also secure the cooperation of the National Research Council/National Academy of Science.[1] The evaluation team shall visit the institute and shall assess the scientific quality of its research program, the potential effectiveness of its research in meeting water resource needs, and the demonstrated performance in making research results available to users in the State and elsewhere. Criteria for making the determination that an institute is an effective instrument for water resources research shall include the following: accreditation in sufficient disciplines to successfully mount a multidisciplinary research program; sufficient resources, including laboratory, library, computer, and support facilities; a sufficiently close administrative relation and physical proximity to the university and to all the parts of it needed to provide an effective working relationship with researchers in a wide range of disciplines; and institutional commitment to the support and continuation of an effective water research program.

(2) The Secretary shall arrange for each of the institutes supported under this section to be evaluated under this subsection within two years after its establishment and to be reevaluated at intervals not to exceed four years. If, as a result of any such evaluation, the Secretary determines that an institute does not qualify for further support under this section, then no further grants to the institute may be made until the institute's qualification is reestablished to the satisfaction of the Secretary.

(f) Authorization of appropriations

(1) For the purpose of carrying out this section, there is authorized to be appropriated to the Secretary the sum of $10,000,000 for each of the fiscal years ending September 30, 1985, through September 30, 1989, such sums to remain available until expended.

(2) Any sums appropriated under this subsection but which fail to be obligated by the close of the fiscal year for which they were appropriated shall be transferred by the Secretary and available for obligation during the succeeding fiscal year under the terms of section 10305 of this title.

(Pub. L. 98-242, title I, § 104, Mar. 22, 1984, 98 Stat. 98.)

REFERENCES IN TEXT

The Act approved July 2, 1862, referred to in subsec. (a), is act July 2, 1862, ch. 130, 12 Stat. 503, as amended, popularly known as the "Morrill Act" and also as the "First Morrill Act", which is classified generally to subchapter I (§ 301 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 301 of Title 7 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10304, 10305, 10307 of this title.

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[1] So in original. Probably should be "Sciences".

§ 10304. Research concerning water resource-related problems deemed to be in the national interest

(a) Grants; matching funds

(1) In addition to the grants authorized by section 10303 of this title, the Secretary is authorized to make grants, on a dollar-for-dollar matching basis, to the institutes established under such section, as well as other qualified educational institutions, private foundations, private firms, individuals, and agencies of local or State government for research concerning any aspect of a water resource-related problem which the Secretary may deem to be in the national interest. Such grants shall be made with such advice and review by peer or other expert groups of appropriate interdisciplinary composition as the Secretary deems appropriate on the basis of the merits of the project and the need for the knowledge such project is expected to produce upon completion.

(2) Research funded under this section should to the extent possible utilize the best qualified graduate students so the Nation profits from the education and training benefits resulting from the use of the latest in technological developments in solving water problems.

(3) In cases where the Secretary determines, in accordance with criteria established by him, that research under this section is of a basic nature which would not otherwise be undertaken, the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1) of this subsection.

(b) Applications for grants

Each application for a grant under this section shall state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the importance of the project to the Nation as well as to the region and State concerned, its relation to other research projects previously or currently being pursued, and the extent to which it will provide an opportunity for the training of water resources scientists.

(c) Authorization of appropriations

There is authorized to be appropriated to the Secretary the sum of $20,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1985, through September 30, 1989, such sums to remain available until expended.

(Pub. L. 98-242, title I, § 105, Mar. 22, 1984, 98 Stat. 100.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10305, 10307 of this title.

§ 10305. Development of water-related technology

(a) Grants and contracts; improvement of waters of impaired quality; test facilities

(1) The Secretary shall make grants or contracts in addition to those authorized under sections 10303 and 10304 of this title to educational institutions, private firms, private foundations, individuals, and agencies of local or State governments for technology development concerning any aspect of water-related technology which the Secretary may deem to be of State, regional, and national importance, including technology associated with improvement of waters of impaired quality and the operation of test facilities. Such grants or contracts shall be made on the basis of the merit and feasibility of the project based on expert evaluation as deemed appropriate by the Secretary, taking care to protect proprietary information of private firms or individuals associated with the technology.

(2) The Secretary may establish any condition for the matching of funds by the recipient of any grant or contract under this section which the Secretary considers to be in the best interest of the Nation considering the technology needs for water resources in the Nation.

(b) Applications for grants or contracts

Each application for a grant or contract under this section shall state the nature of the project to be undertaken, the qualifications of the personnel who will direct and conduct it, the facilities of the organization performing the technology development, the importance of the project to the Nation, region, and State concerned, and the potential benefit to be accrued from the development.

(c) Authorization of appropriations

(1) There is authorized to be appropriated to the Secretary the sum of $6,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1985, through September 30, 1989, such sums to remain available until expended.

(2) In addition to sums available under the terms of paragraph (1) of this subsection, the Secretary is also authorized to obligate funds under this section if such funds are transferred under the terms of section 10303(f)(2) of this title.

(Pub. L. 98-242, title I, § 106, Mar. 22, 1984, 98 Stat. 100.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10303, 10307 of this title.

§ 10306. Administrative costs

From the sums appropriated pursuant to this chapter, not more than 15 per centum shall be utilized for administrative costs.

(Pub. L. 98-242, title I, § 107, Mar. 22, 1984, 98 Stat. 101.)

§ 10307. Types of research and development

The type of research and development to be undertaken under the authority of sections 10304 and 10305 of this title and to be encouraged by the institutes established under section 10303 of this title shall include the following:

(1) Aspects of the hydrologic cycle;

(2) Supply and demand for water;

(3) Demineralization of saline and other impaired waters;

(4) Conservation and best use of available supplies of water and methods of increasing such supplies;

(5) Water reuse;

(6) Depletion and degradation of groundwater supplies;

(7) Improvements in the productivity of water when used for agricultural, municipal, and commercial purposes;

(8) The economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems;

(9) Scientific information dissemination activities, including identifying, assembling, and interpreting the results of scientific and engineering research on water resources problems; and

(10) Providing means for improved communication of research results, having due regard for the varying conditions and needs for the respective States and regions.

(Pub. L. 98-242, title I, § 108, Mar. 22, 1984, 98 Stat. 101.)

§ 10308. Patent policy

Notwithstanding any other provision of law, the Secretary shall be governed by the provisions of sections 5908 (except subsections (*l*) and (n)) and 5909 of this title with respect to patent policy and to the definition of title to and licensing of inventions made or conceived in the course of work performed, or under any contract or grant made, pursuant to this chapter. Subject to such patent policy, all research or development contracted for, sponsored, cosponsored, or authorized under authority of this chapter shall be provided in such manner that all information, data, and know-how, regardless of their nature or mediums, resulting from such research and development shall (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be usefully available for practice by the general public.

(Pub. L. 98-242, title I, § 109, Mar. 22, 1984, 98 Stat. 101.)

§ 10309. New spending authority; amounts provided in advance

Any new spending authority described in subsection (c)(2)(A) or (B) of section 651 of title 2 which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriations Acts.

(Pub. L. 98-242, title I, § 111, Mar. 22, 1984, 98 Stat. 101.)

CHAPTER 110—FAMILY VIOLENCE PREVENTION AND SERVICES

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§ 10401. Declaration of purpose

It is the purpose of this chapter to—

(1) demonstrate the effectiveness of assisting States in efforts to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents; and

(2) provide for technical assistance and training relating to family violence programs to States, local public agencies (including law enforcement agencies), nonprofit private organizations, and other persons seeking such assistance.

(Pub. L. 98-457, title III, § 302, Oct. 9, 1984, 98 Stat. 1757.)

SHORT TITLE

Section 301 of title III of Pub. L. 98-457 provided that: "This title [this chapter] may be cited as the 'Family Violence Prevention and Services Act'."

§ 10402. State demonstration grants authorized

(a) Authority of Secretary; application; requirements; approval

(1) In order to assist in supporting the establishment, maintenance, and expansion of pro-

grams and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents, the Secretary is authorized, in accordance with the provisions of this title, to make demonstration grants to States.

(2) No demonstration grant may be made under this subsection unless the chief executive officer of the State seeking such grant submits an application to the Secretary at such time and in such manner as the Secretary may reasonably require. Each such application shall—

(A) provide that funds provided under this subsection will be distributed in demonstration grants to local public agencies and nonprofit private organizations (including religious and charitable organizations, and voluntary associations) for programs and projects within such State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents;

(B) provide, with respect to funds provided to a State under this subsection for any fiscal year, that—

(i) not more than 5 percent of such funds will be used for State administrative costs; and

(ii) in the distribution of funds by the State under this subsection, the State will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by nonprofit private organizations, particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, alcohol and drug abuse treatment, and self-help services to abusers and victims;

(C) set forth procedures designed to involve knowledgeable individuals and interested organizations and assure an equitable distribution of grants and grant funds within the State and between urban and rural areas within such State;

(D) specify the State agency to be designated as responsible for the administration of programs and activities relating to family violence which are carried out by the State under this chapter and for coordination of related programs within the State;

(E) provide assurances that procedures will be developed to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this chapter and provide assurances that the address or location of any shelter-facility assisted under this chapter will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public;

(F) provide assurances that, within one year after receipt of funds under this subsection, the State will, provide assurances to the Secretary that the State has or has under consideration a procedure for the eviction of an abusing spouse from a shared residence; and

(G) meet such requirements as the Secretary reasonably determines are necessary to carry out the purposes and provisions of this chapter.

(3) The Secretary shall approve any application that meets the requirements of this subsection, and the Secretary shall not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove and after opportunity for correction of any deficiencies.

(b) Indian tribes and tribal organizations; application

(1) The Secretary is authorized to make demonstration grants to Indian tribes and tribal organizations for projects designed to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

(2) No demonstration grant may be made under this subsection unless an application is made to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems essential to carry out the purposes and provisions of this chapter. Such application shall comply, as applicable, with the provisions of clauses (C) (with respect only to involving knowledgeable individuals and organizations), (D), and (E) of subsection (a)(2) of this section.

(c) Funding limitations

No demonstration grant may be made under this section in any fiscal year to any single entity (other than to a State) for an amount in excess of $50,000, and the total amount of such grants to any such single entity may not exceed $150,000. A single entity may not be awarded demonstration grants under this section for a total period in excess of three fiscal years.

(d) Direct payments to victims or dependents

No funds provided through demonstration grants made under this section may be used as direct payment to any victim of family violence or to any dependent of such victim.

(e) Income eligibility standards

No income eligibility standard may be imposed upon individuals with respect to eligibility for assistance or services supported with funds appropriated to carry out this chapter.

(f) Grants to entities other than States; local share

No demonstration grant may be made under this section to any entity other than a State unless the entity provides for the following local share as a proportion of the total amount of funds provided under this chapter to the project involved: 35 percent in the first year such project receives a grant under this chapter, 55 percent in the second such year, and 65 percent in the third such year. Except in the case of a public entity, not less than 50 percent of the local share of such agency or organization shall be raised from private sources. The local share required under this subsection may be in cash or in-kind. The local share may not include any Federal funds provided under any authority other than this chapter.

(g) Shelter and related assistance

The Secretary shall assure that not less than 60 percent of the funds distributed under subsection (a) or (b) of this section shall be distributed to entities for the purpose of providing immediate shelter and related assistance to victims of family violence and their dependents.

(Pub. L. 98-457, title III, § 303, Oct. 9, 1984, 98 Stat. 1757.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10403, 10405, 10409 of this title.

§ 10403. Allotment of funds

(a) Proportionality of allotment; minimum allotment

From the sums appropriated under section 10409 of this title for grants to States for any fiscal year, each State shall be allotted for payment in a grant authorized under section 10402(a) of this title an amount which bears the same ratio to such sums as the population of such State bears to the population of all States, except that—

(1) each State shall be allotted not less than whichever is the greater of the following amounts: one-half of 1 percent of the amounts available for grants under section 10402(a) of this title for the fiscal year for which the allotment is made, or $50,000; and

(2) Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands shall each be allotted not less than one-eighth of 1 percent of the amounts available for grants under section 10402(a) of this title for the fiscal year for which the allotment is made.

For the purpose of the exception contained in clause (1) of the preceding sentence only, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(b) Determination of population of States

For the purpose of this section, the population of each State, and the total population of all the States, shall be determined by the Secretary on the basis of the most recent census data available to the Secretary, and the Secretary shall use for such purpose, if available, the annual interim current census data produced by the Secretary of Commerce pursuant to section 181 of title 13.

(c) Ratable reduction of amounts; increase on availability of additional funds

If the sums appropriated under section 10409 of this title for any fiscal year for grants to States authorized under section 10402(a) of this title are not sufficient to pay in full the total amounts which all States are entitled to receive under such section for such fiscal year, then the maximum amounts which all States are entitled to receive under such section for such fiscal year shall be ratably reduced. In the event that additional funds become available for making such grants for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(d) Reallotment; continued availability of funds

(1) If, at the end of the sixth month of any fiscal year for which sums are appropriated under section 10409 of this title, the amount allotted to a State has not been made available to such State in grants under section 10402(a) of this title because of the failure of such State to meet the requirements for a grant, then the Secretary shall reallot such amount to States which meet such requirements.

(2) Funds made available by the Secretary through reallotment under paragraph (1) shall remain available for expenditure until the end of the fiscal year following the fiscal year in which such funds become available for reallotment.

(Pub. L. 98-457, title III, § 304, Oct. 9, 1984, 98 Stat. 1759.)

§ 10404. Secretarial responsibilities

(a) The Secretary shall appoint an employee of the Department of Health and Human Services to carry out the provisions of this chapter. The individual appointed under this subsection shall, prior to such appointment, have had expertise in the field of family violence prevention and services.

(b) The Secretary shall—

(1) coordinate all programs within the Department of Health and Human Services, and seek to coordinate all other Federal programs, which involve the prevention of incidents of family violence and the provision of assistance for victims and potential victims of family violence and their dependents, and ensure that such activities as they relate to elderly persons are coordinated with the Administration on Aging and the National Institute on Aging within the Department of Health and Human Services;

(2)(A) provide for research into the causes of family violence, and into the prevention, identification, and treatment thereof (such as research into (i) the effectiveness of reducing repeated incidents of family violence through a variety of sentencing alternatives, such as incarceration, fines, and counseling programs, individually or in combination, and through the use of civil protection orders removing the abuser from the family household, and (ii) the necessity and impact of a mandatory reporting requirement relating to incidents of family violence, particularly abuse of elderly persons), and (B) make a complete study and investigation (in consultation with the National Institute on Aging) of the national incidence of abuse, neglect, and exploitation of elderly persons, including a determination of the extent to which incidents of such abuse, neglect, and exploitation are increasing in number or severity; and

(3) provide for the training of personnel and provide technical assistance in the conduct of programs for the prevention and treatment of family violence.

(Pub. L. 98-457, title III, § 305, Oct. 9, 1984, 98 Stat. 1760.)

§ 10405. Evaluation

Not later than two years after the date on which funds are obligated under section 10402(a) of this title for the first time after October 9, 1984, the Secretary shall review, evaluate, and report to the appropriate Committees of the Congress, as to the effectiveness of the programs administered and operated pursuant to this chapter, particularly in relation to repeated incidents of family violence. Such report shall also include a summary of the assurances provided to the Secretary under section 10402(a)(2)(F) of this title.

(Pub. L. 98-457, title III, § 306, Oct. 9, 1984, 98 Stat. 1760.)

§ 10406. Discrimination prohibited

(a) Recipients of Federal financial assistance; types of discrimination prohibited

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this part[1] are considered to be programs and activities receiving Federal financial assistance.

(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part with funds made available under this chapter. Nothing in this chapter shall require any such program or activity to include any individual in any program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or programmatic factor reasonably necessary to the normal operation of that particular program or activity. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 602 of the Civil Rights Act of 1964 [42 U.S.C. 2000d-1]. Section 603 of such Act [42 U.S.C. 2000d-2] shall apply with respect to any action taken by the Secretary to enforce such sentence. This paragraph shall not be construed as affecting any other legal remedy.

(b) Notification and request to secure compliance; referral to Attorney General or other action by Secretary

Whenever the Secretary finds that a State or other entity that has received financial assistance under this chapter has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request such officer to secure compliance. If, within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], sections 504 and 505 of the Rehabilitation Act of 1973 [29 U.S.C. 794, 794a], or title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], as may be applicable, or

(3) take such other action as may be provided by law.

(c) Civil action by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(Pub. L. 98-457, title III, § 307, Oct. 9, 1984, 98 Stat. 1761.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1), (b)(2), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsecs. (a)(1), (b)(2), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1), (b)(2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of this title. For complete classification of this Act to the Code, see note set out under section 2000a of this title and Tables.

"This part", referred to in subsec. (a)(1), probably means a reference to this title, meaning title III of Pub. L. 98-457 which enacted this chapter, because title III was not divided into parts and because similar references to programs or activities funded in whole or in part with funds made available, referred to "this title".

§ 10407. National clearinghouse on family violence prevention

(a) The Secretary shall operate a national information and research clearinghouse on the prevention of family violence (including the abuse of elderly persons) in order to—

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[1] See References in Text note below.

(1) collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance to victims of family violence and their dependents; and

(2) provide information about alternative sources of assistance available with respect to the prevention of incidents of family violence and the provision of immediate shelter and related assistance to victims of family violence and their dependents.

(b) The Secretary shall ensure that the activities of the national information and research clearinghouse operated under subsection (a) of this section are coordinated with the information clearinghouse maintained by the National Center on Child Abuse and Neglect under section 5101 of this title.

(Pub. L. 98-457, title III, § 308, Oct. 9, 1984, 98 Stat. 1761.)

§ 10408. Definitions

As used in this chapter:

(1) The term "family violence" means any act or threatened act of violence, including any forceful detention of an individual, which—

(A) results or threatens to result in physical injury; and

(B) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

(2) The terms "Indian tribe" and "tribal organization" have the same meanings given such terms in subsections (b) and (c), respectively, of section 450b of title 25.

(3) The terms [2] "Secretary" means the Secretary of Health and Human Services.

(4) The terms [2] "shelter" means the provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

(5) The term "related assistance"—

(A) includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate health-care services (including alcohol and drug abuse treatment), and

(B) may include food, clothing, child care, transportation, and emergency services (but not reimbursement for any health-care services) for victims of family violence and their dependents.

(6) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and, except as otherwise provided, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(Pub. L. 98-457, title III, § 309, Oct. 9, 1984, 98 Stat. 1762.)

§ 10409. Authorization of appropriations

(a) There are authorized to be appropriated to carry out the provisions of this chapter $11,000,000 for fiscal year 1985 and $26,000,000 for each of the fiscal years 1986 and 1987.

(b) Of the sums appropriated under subsection (a) of this section for any fiscal year, not less than 85 percent shall be used by the Secretary for making grants under section 10402 of this title.

(Pub. L. 98-457, title III, § 310, Oct. 9, 1984, 98 Stat. 1763.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10403, 10410, 10411 of this title.

§ 10410. Law enforcement training and technical assistance grants and contracts

(a) Regionally-based programs

From the amount appropriated pursuant to section 10409 of this title for any fiscal year, the Secretary shall make grants and enter into contracts for the purpose of providing regionally-based training and technical assistance to provide the personnel of local and State law enforcement agencies with means for responding to incidents of family violence.

(b) Competitive awards; selection criteria

Grants and contracts under this section shall be awarded competitively on the basis of an application containing such information and assurances as the Secretary may require by regulation. In selecting grant and contract recipients, the Secretary shall select recipients who have demonstrated their effectiveness in preparing the personnel of local and State law enforcement agencies for the handling of incidents of family violence and shall give priority to those applications which propose projects or programs which will develop, demonstrate, or disseminate information with respect to improved techniques for responding to incidents of family violence by law enforcement officers.

(c) Delegation of authority and transfer of funds to Attorney General

The Secretary shall delegate to the Attorney General of the United States the Secretary's responsibilities for carrying out this section and shall transfer to the Attorney General from funds appropriated under section 10409 of this title not in excess of $2,000,000 for each fiscal year to be used for the purpose of making grants under this section.

(Pub. L. 98-457, title III, § 311, Oct. 9, 1984, 98 Stat. 1763.)

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[2] So in original. Probably should be "term".

§ 10411. Administration and statutory construction [3]

(a) Authority of Secretary

In order to carry out the provisions of this chapter, the Secretary is authorized to—

(1) appoint and fix the compensation of such personnel as are necessary;

(2) procure, to the extent authorized by section 3109 of title 5, such temporary and intermittent services of experts and consultants as are necessary;

(3) make grants to public and nonprofit private entities or enter into contracts with public or private entities; and

(4) prescribe such regulations as are reasonably necessary in order to carry out the purposes and the personnel of local and State law enforcement agencies with means for responding to incidents of family violence.

(b) Competitive awarding of grants and contracts; selection criteria

Grants and contracts under this section shall be awarded competitively on the basis of an application containing such information and assurances as the Secretary may require by regulation. In selecting grant and contract recipients, the Secretary shall select recipients who have demonstrated their effectiveness in preparing the personnel of local and State law enforcement agencies for the handling of incidents of family violence and shall give priority to those applications which propose projects or programs which will develop, demonstrate, or disseminate information with respect to improved techniques for responding to incidents of family violence by law enforcement officers.

(c) Delegation of authority and transfer of funds to Attorney General

The Secretary shall delegate to the Attorney General of the United States the Secretary's responsibilities for carrying out this section and shall transfer to the Attorney General from funds appropriated under section 10409 of this title not in excess of $2,000,000 for each fiscal year to be used for the purpose of making grants under this section.

(Pub. L. 98-457, title III, § 312, Oct. 9, 1984, 98 Stat. 1763.)

Codification

Another section 312 of Pub. L. 98-457 is classified to section 10412 of this title. The Conference Report (H. Rept. 98-1038) to accompany H.R. 1904 (which became Pub. L. 98-457) contained a single section 312, which is identical to the second section 312 of Pub. L. 98-457. That portion of subsec. (a) of the first section 312 which precedes "the personnel" in clause (4) thereof is identical to subsec. (a) of the second section 312. Subsecs. (b) and (c) of the first section 312 are identical to subsecs. (b) and (c) of section 311 of Pub. L. 98-457, which is classified to section 10410 of this title.

§ 10412. Authority of Secretary; construction with State and local law

(a) In order to carry out the provisions of this chapter, the Secretary is authorized to—

(1) appoint and fix the compensation of such personnel as are necessary;

(2) procure, to the extent authorized by section 3109 of title 5, such temporary and intermittent services of experts and consultants as are necessary;

(3) make grants to public and nonprofit private entities or enter into contracts with public or private entities; and

(4) prescribe such regulations as are reasonably necessary in order to carry out the purposes and provisions of this chapter.

(b) Nothing in this chapter shall be construed to supersede the application of State or local requirements for the reporting of incidents of suspected child abuse to the appropriate State authorities.

(Pub. L. 98-457, title III, § 312, Oct. 9, 1984, 98 Stat. 1764.)

Codification

Another section 312 of Pub. L. 98-457 is classified to section 10411 of this title.

CHAPTER 111—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

Sec.

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§ 10501. Application for assistance

(a) State as applicant

In the event that a law enforcement emergency exists throughout a State or a part of a State, a State (on behalf of itself or another appropriate unit of government) may submit an application under this section for Federal law enforcement assistance.

(b) Execution of application; period for action of Attorney General on application

An application for assistance under this section shall be submitted in writing by the chief executive officer of a State to the Attorney General, in a form prescribed by rules issued by the Attorney General. The Attorney General shall, after consultation with the Director of the Office of Justice Assistance and appropriate members of the Federal law enforcement community, approve or disapprove such application not later than 10 days after receiving such application.

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[3] See Codification note below.

(c) Criteria

Federal law enforcement assistance may be provided if such assistance is necessary to provide an adequate response to a law enforcement emergency. In determining whether to approve or disapprove an application for assistance under this section, the Attorney General shall consider—

(1) the nature and extent of such emergency throughout a State or in any part of a State,

(2) the situation or extraordinary circumstances which produced such emergency,

(3) the availability of State and local criminal justice resources to resolve the problem,

(4) the cost associated with the increased Federal presence,

(5) the need to avoid unnecessary Federal involvement and intervention in matters primarily of State and local concern, and

(6) any assistance which the State or other appropriate unit of government has received, or could receive, under any provision of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3701 et seq.].

(Pub. L. 98-473, title II, § 609M, Oct. 12, 1984, 98 Stat. 2103.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(6), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended, title I of which is classified principally to chapter 46 (§ 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

EFFECTIVE DATE

Chapter effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

§ 10502. Definitions

For purposes of this chapter—

(1) the term "Federal law enforcement assistance" means funds, equipment, training, intelligence information, and personnel,

(2) the term "Federal law enforcement community" means the heads of the following departments or agencies:

(A) the Federal Bureau of Investigation,

(B) the Drug Enforcement Administration,

(C) the Criminal Division of the Department of Justice,

(D) the Internal Revenue Service,

(E) the Customs Service,

(F) the Immigration and Naturalization Service,

(G) the United States Marshals Service,

(H) the National Park Service,

(I) the United States Postal Service,

(J) the Secret Service,

(K) the Coast Guard,

(L) the Bureau of Alcohol, Tobacco, and Firearms, and

(M) other Federal agencies with specific statutory authority to investigate violations of Federal criminal laws,

(3) the term "law enforcement emergency" means an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which State and local resources are inadequate to protect the lives and property of citizens or to enforce the criminal law, except that such term does not include—

(A) the perceived need for planning or other activities related to crowd control for general public safety projects, or

(B) a situation requiring the enforcement of laws associated with scheduled public events, including political conventions and sports events, and

(4) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

(Pub. L. 98-473, title II, § 609N, Oct. 12, 1984, 98 Stat. 2104.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this subdivision" probably meaning subtitle B (that probably should have been designated "subdivision" B) of division I of chapter VI of title II of Pub. L. 98-473, which enacted this chapter.

§ 10503. Limitation on authority

(a) Federal investigations

Nothing in this chapter authorizes the use of Federal law enforcement personnel to investigate violations of criminal law other than violations with respect to which investigation is authorized by other provisions of law.

(b) Federal supervision

Nothing in this chapter shall be construed to authorize the Attorney General or the Federal law enforcement community to exercise any direction, supervision, or control over any police force or other criminal justice agency of an applicant for Federal law enforcement assistance.

(c) Racial balance in criminal justice agencies

Nothing in this chapter shall be construed to authorize the Attorney General or the Federal law enforcement community—

(1) to condition the availability or amount of Federal law enforcement assistance upon the adoption by an applicant for such assistance of, or

(2) to deny or discontinue such assistance upon the failure of such applicant to adopt,

a percentage ratio, quota system, or other program to achieve racial balance in any criminal justice agency of such applicant.

(d) Federal supplantation of State funds

No funds provided under this chapter may be used to supplant State or local funds that would otherwise be made available for such purposes.

(e) Other authorities unaffected

Nothing in this chapter shall be construed to limit any authority to provide emergency assistance otherwise provided by law.

(Pub. L. 98-473, title II, § 609O, Oct. 12, 1984, 98 Stat. 2105.)

§ 10504. Prohibition of discrimination

(a) Federally assisted emergency assistance activities

No person in any State shall, on the ground of race, color, religion, national origin, or sex, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any activity for which Federal law enforcement assistance is provided under this chapter.

(b) Provisions of section 3789d(c)(3) and (4) of this title applicable to violations

Paragraph (3) and paragraph (4) of section 3789d(c) of this title shall apply with respect to a violation of subsection (a) of this section, except that the terms "this section" and "paragraph (1)", as such terms appear in such paragraphs, shall be deemed to be references to subsection (a) of this section, and a reference to the Office of Justice Programs in such paragraphs shall be deemed to be a reference to the Attorney General.

(Pub. L. 98-473, title II, § 609P, Oct. 12, 1984, 98 Stat. 2105.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10507 of this title.

§ 10505. Confidentiality of information

Section 3789g of this title shall apply with respect to—

(1) information furnished under this chapter,

(2) criminal history information collected, stored, or disseminated with the support of Federal law enforcement assistance provided under this chapter, and

(3) criminal intelligence systems operating with the support of Federal law enforcement assistance provided under this chapter,

except that the terms "this chapter" and "this section", as such terms appear in such section 3789g of this title, shall be deemed to be references to this chapter and this section, respectively, and a reference to the Office of Justice Programs in such section 3789g shall be deemed to be a reference to the Attorney General.

(Pub. L. 98-473, title II, § 609Q, Oct. 12, 1984, 98 Stat. 2105.)

§ 10506. Prohibition of land acquisition

No funds provided under this chapter shall be used for land acquisition.

(Pub. L. 98-473, title II, § 609R, Oct. 12, 1984, 98 Stat. 2106.)

§ 10507. Repayment

(a) Violation of conditions; amount

If Federal law enforcement assistance provided under this chapter is used by the recipient of such assistance in violation of section 10504 [1] of this title or for any purpose other than the purpose for which it is provided, then such recipient shall promptly repay to the Attorney General an amount equal to the value of such assistance.

(b) Civil action

The Attorney General may bring a civil action in an appropriate United States district court to recover any amount required to be repaid under subsection (a) of this section.

(Pub. L. 98-473, title II, § 609S, Oct. 12, 1984, 98 Stat. 2106.)

REFERENCES IN TEXT

Section 10504 of this title, referred to in subsec. (a), was in the original a reference to "section 554", and was translated as if it had been a reference to section 609P of Pub. L. 98-473, which is classified to section 10504 of this title to reflect the probable intent of Congress as manifested in earlier versions of Emergency Federal Law Enforcement Assistance provisions introduced in the Congress. Pub. L. 98-473 does not contain a section 554.

§ 10508. Recordkeeping requirement

(a) Each recipient of Federal law enforcement assistance provided under this chapter shall keep such records as the Attorney General may prescribe to facilitate an effective audit.

(b) The Attorney General and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of recipients of Federal law enforcement assistance provided under this chapter which, in the opinion of the Attorney General or the Comptroller General, are related to the receipt or use of such assistance.

(Pub. L. 98-473, title II, § 609T, Oct. 12, 1984, 98 Stat. 2106.)

§ 10509. Report to Congress

Not later than April 1 of each year, the Attorney General shall submit to the President, to the Speaker of the House of Representatives, and to the President of the Senate a report describing Federal law enforcement assistance provided under this chapter during the calendar year preceding the date such report is made.

(Pub. L. 98-473, title II, § 609U, Oct. 12, 1984, 98 Stat. 2106.)

§ 10510. Bureau of Justice Assistance

The Director of the Bureau of Justice Assistance may assist the Attorney General in providing Federal law enforcement assistance under this chapter and in coordinating the activities authorized under this chapter.

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[1] See References in Text note below.

(Pub. L. 98-473, title II, § 609V, Oct. 12, 1984, 98 Stat. 2106.)

§ 10511. Limitation on civil justice matters

Federal law enforcement assistance provided under this chapter may not be used with respect to civil justice matters except to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters.

(Pub. L. 98-473, title II, § 609W, Oct. 12, 1984, 98 Stat. 2106.)

§ 10512. Issuance of rules

The Attorney General, after consultation with appropriate members of the law enforcement community and with State and local officials, shall issue rules to carry out this chapter.

(Pub. L. 98-473, title II, § 609X, Oct. 12, 1984, 98 Stat. 2107.)

§ 10513. Authorization of appropriations

(a) Assistance in form of funds

There is authorized to be appropriated $20,000,000 for each fiscal year ending after September 30, 1984, to provide under this chapter Federal law enforcement assistance in the form of funds.

(b) Assistance other than funds

There are authorized to be appropriated for each fiscal year ending after September 30, 1984, such sums as may be necessary to provide under this chapter Federal law enforcement assistance other than funds.

(Pub. L. 98-473, title II, § 609Y, Oct. 12, 1984, 98 Stat. 2107.)

CHAPTER 112—VICTIM COMPENSATION AND ASSISTANCE

Sec.
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  (a) Authority of Attorney General; establishment of rules and regulations; delegation of functions.
  (b) Recordkeeping.
  (c) Attorney General; access; books and records; audits and examinations; expenditure of funds.
  (d) Revealing research or statistical information; prohibition; immunity from legal proceedings; permission; admission of information as evidence.
  (e) Discrimination prohibited.
  (f) Failure to comply with provisions; notice and hearing; power of Attorney General.
  (h) Report.

§ 10601. Crime Victims Fund

(a) Establishment

There is created in the Treasury a separate account to be known as the Crime Victims Fund (hereinafter in this chapter referred to as the "Fund").

(b) Fines deposited in Fund; penalties; forfeited appearance bonds

Except as limited by subsection (c) of this section, there shall be deposited in the Fund—

(1) all fines that are collected from persons convicted of offenses against the United States except—

(A) fines available for use by the Secretary of the Treasury pursuant to—

(i) section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)); and

(ii) section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)); and

(B) fines to be paid into—

(i) the railroad unemployment insurance account pursuant to the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.);

(ii) the Postal Service Fund pursuant to sections 2601(a)(2) and 2003 of title 39 and for the purposes set forth in section 404(a)(8) of title 39;

(iii) the navigable waters revolving fund pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); and

(iv) county public school funds pursuant to section 3613 of title 18;

(2) penalty assessments collected under section 3013 of title 18; [1]

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[1] See References in Text note below.

(3) the proceeds of forfeited appearance bonds, bail bonds, and collateral collected under section 3146 of title 18; and

(4) any money ordered to be paid into the Fund under section 3671(c)(2) of title 18.

(c) Excess over $100 million; deposited in general fund of the Treasury; time limitation on deposit

(1) If the total deposited in the Fund during a particular fiscal year reaches the sum of $100 million, the excess over that sum shall be deposited in the general fund of the Treasury and shall not be a part of the Fund.

(2) No deposits shall be made in the Fund after September 30, 1988.

(d) Availability of funds for expenditure; percent available for grants under sections 10602 and 10603

(1) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter [2] without fiscal year limitation.

(2) Fifty percent of the total deposited in the Fund during a particular fiscal year shall be available for grants under section 10602 of this title and fifty percent shall be available for grants under section 10603 of this title.

(e) Amounts awarded and unspent

Any sums awarded as part of a grant under this chapter that remain unspent at the end of a fiscal year in which such grant is made may be expended for the purpose for which such grant is made at any time during the next succeeding fiscal year, at the end of which year any remaining unobligated sums shall be returned to the general fund of the Treasury.

(f) "Offenses against the United States" as excluding

As used in this section, the term "offenses against the United States" does not include—

(1) a criminal violation of the Uniform Code of Military Justice (10 U.S.C. 801 et seq.);

(2) an offense against the laws of the District of Columbia; and

(3) an offense triable by an Indian tribal court or Court of Indian Offenses.

(Pub. L. 98-473, title II, § 1402, Oct. 12, 1984, 98 Stat. 2170.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(1)(B)(i), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

Section 3613 of title 18, referred to in subsec. (b)(1)(B)(iv), was repealed effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), by Pub. L. 98-473, title II, §§ 212(a)(2), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2031, as amended.

This chapter, referred to in subsec. (d)(1), was in the original "this title", and has been translated as "this chapter" to reflect the probable intent of Congress because sections 1401 to 1404 and 1407 of Pub. L. 98-473, which are classified to this chapter, were a part of chapter XIV of Pub. L. 98-473.

The Uniform Code of Military Justice, referred to in subsec. (f)(1), is classified generally to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

EFFECTIVE DATE

Section 1409 of chapter XIV of title II of Pub. L. 98-473 provided that:

"(a) Except as provided in subsection (b), this chapter [see Short Title note below] and the amendments made by this chapter shall take effect thirty days after the date of enactment of this joint resolution [Oct. 12, 1984].

"(b) Sections 1402, 1403, 1404, and 1407 of this chapter [enacting this chapter] shall take effect on October 1, 1984."

SHORT TITLE

Section 1401 of chapter XIV of title II of Pub. L. 98-473 provided that: "This chapter [enacting this chapter and sections 3013, 3671 and 3672 of Title 18, Crimes and Criminal Procedure, and amending sections 3150a, 4207 and 4215 of Title 18, and provisions set out as a note under section 1512 of Title 18] may be cited as the 'Victims of Crime Act of 1984'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10604 of this title.

§ 10602. Crime victim compensation

(a) Authority of Attorney General; grants

(1) Except as provided in paragraph (2), the Attorney General shall make an annual grant from the Fund to an eligible crime victim compensation program of 35 percent of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. A grant under this section shall be used by such program only for awards of compensation.

(2) If the sums available in the Fund for grants under this section are insufficient to provide grants of 35 percent as provided in paragraph (1), the Attorney General shall make, from the sums available, a grant to each eligible crime victim compensation program so that all such programs receive the same percentage of the amounts awarded by such program during the preceding fiscal year, other than amounts awarded for property damage.

(b) Eligible crime victim compensation programs

A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if—

(1) such program is operated by a State and offers compensation to victims of crime and survivors of victims of crime for—

(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) funeral expenses attributable to a death resulting from a compensable crime;

(2) such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

(3) such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

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[2] See References in Text note below.

(4) such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

(5) such program provides compensation to victims of crimes occurring within such State that would be compensable crimes, but for the fact that such crimes are subject to Federal jurisdiction, on the same basis that such program provides compensation to victims of compensable crimes; and

(6) such program provides such other information and assurances related to the purposes of this section as the Attorney General may reasonably require.

(c) Eligibility of State program already in effect

A State crime victim compensation program in effect on the date grants may first be made under this section shall be deemed an eligible crime victim compensation program for the purposes of this section until the day after the close of the first regular session of the legislature of that State that begins after such date.

(d) Definitions

As used in this section—

(1) the term "property damage" does not include damage to prosthetic devices or dental devices;

(2) the term "medical expenses" includes, to the extent provided under the eligible crime victim compensation program, expenses for dental services and devices and prosthetic devices and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term "compensable crime" means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program; and

(4) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

(Pub. L. 98–473, title II, § 1403, Oct. 12, 1984, 98 Stat. 2171.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10601, 10603 of this title.

§ 10603. Crime victim assistance

(a) Grant authority of Attorney General; chief executive of States; amount; insufficient funds

(1) Subject to the availability of money in the Fund, the Attorney General shall make an annual grant from any portion of the Fund not used for grants under section 10602 of this title with respect to a particular fiscal year, and after any deduction under subsection (c) of this section, to the chief executive of each State for the financial support of eligible crime victim assistance programs.

(2) Such chief executive shall—

(A) certify that priority shall be given to eligible crime victim assistance programs providing assistance to victims of sexual assault, spousal abuse, or child abuse;

(B) certify that funds awarded to eligible crime victim assistance programs will not be used to supplant State and local funds otherwise available for crime victim assistance; and

(C) provide such other information and assurances related to the purposes of this section as the Attorney General may reasonably require.

(3) The amounts of grants under paragraph (1) shall be—

(A) $100,000 to each State; and

(B) that portion of the then remaining available money to each State that results from a distribution among the States on the basis of each State's population in relation to the population of all States.

(4) If the amount available for grants under paragraph (1) is insufficient to provide $100,000 to each State, the funds available shall be distributed equally among the States.

(b) Eligibility of program; factors; limitation on expending of sums

(1) A victim assistance program is an eligible crime victim assistance program for the purposes of this section if such program—

(A) is operated by a public agency or a nonprofit organization, or a combination of such agencies or organizations or of both such agencies and organizations, and provides services to victims of crime;

(B) demonstrates—

(i) a record of providing effective services to victims of crime and financial support from sources other than the Fund; or

(ii) substantial financial support from sources other than the Fund;

(C) utilizes volunteers in providing such services, unless and to the extent the chief executive determines that compelling reasons exist to waive this requirement;

(D) promotes within the community served coordinated public and private efforts to aid crime victims; and

(E) assists potential recipients in seeking crime victim compensation benefits.

(2) An eligible crime victim assistance program shall expend sums received under subsection (a) of this section only for providing services to victims of crime.

(c) Deduction; expenditure for victims of Federal crimes; reimbursement of other instrumentalities; Federal Crime Victim Assistance Administrator; duties

(1) The Attorney General may in any fiscal year deduct from amounts available under this section an amount not to exceed 5 percent of the amount in the Fund, and may expend the amount so deducted to provide services to victims of Federal crimes by the Department of Justice, or reimburse other instrumentalities of the Federal Government otherwise authorized to provide such services.

(2) The Attorney General shall appoint or designate an official of the Department of Justice to be the Federal Crime Victim Assistance Administrator (hereinafter in this chapter referred to as the "Federal Administrator") to ex-

ercise the responsibilities of the Attorney General under this subsection.

(3) The Federal Administrator shall—

(A) be responsible for monitoring compliance with guidelines for fair treatment of crime victims and witnesses issued under section 6 of the Victim and Witness Protection Act of 1982 (Public Law 97-291) [18 U.S.C. 1512 note];

(B) consult with the heads of Federal law enforcement agencies that have responsibilities affecting victims of Federal crimes;

(C) coordinate victim services provided by the Federal Government with victim services offered by other public agencies and nonprofit organizations; and

(D) perform such other functions related to the purposes of this title as the Attorney General may assign.

(4) The Attorney General may reimburse other instrumentalities of the Federal Government and contract for the performance of functions authorized under this subsection.

(d) Definitions

As used in this section—

(1) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and, except for the purposes of paragraphs (3)(A) and (4) of subsection (a) of this section, any other territory or possession of the United States; and

(2) the term "services to victims of crime" includes—

(A) crises intervention services;

(B) providing, in an emergency, transportation to court, short-term child care services, and temporary housing and security measures;

(C) assistance in participating in criminal justice proceedings; and

(D) payment of all reasonable costs for a forensic medical examination of a crime victim, to the extent that such costs are otherwise not reimbursed or paid;

(3) the term "services to victims of Federal crime" means services to victims of crime with respect to Federal crime, and includes—

(A) training of law enforcement personnel in the delivery of services to victims of Federal crime;

(B) preparation, publication, and distribution of informational materials—

(i) setting forth services offered to victims of crime; and

(ii) concerning services to victims of Federal crime for use by Federal law enforcement personnel; and

(C) salaries of personnel who provide services to victims of crime, to the extent that such personnel provide such services;

(4) the term "crises intervention services" means counseling to provide emotional support in crises arising from the occurrence of crime; and

(5) the term "chief executive" includes a person designated by a chief executive to perform the functions of the chief executive under this section.

(Pub. L. 98-473, title II, § 1404, Oct. 12, 1984, 98 Stat. 2172.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10601 of this title.

§ 10604. Administrative provisions

(a) Authority of Attorney General; establishment of rules and regulations; delegation of functions

The Attorney General may establish such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Attorney General under this chapter and may delegate to any officer or employee of the Department of Justice any such function as the Attorney General deems appropriate.

(b) Recordkeeping

Each recipient of sums under this chapter shall keep such records as the Attorney General shall prescribe, including records that fully disclose the amount and disposition by such recipient of such sums, the total cost of the undertaking for which such sums are used, and that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(c) Attorney General; access; books and records; audits and examinations; expenditure of funds

The Attorney General or any duly authorized representative of the Attorney General shall have access, for purpose of audit and examination, to any books, documents, papers, and records of the recipient of sums under this chapter that, in the opinion of the Attorney General or any duly authorized representative of the Attorney General, may be related to the expenditure of funds received under this chapter.

(d) Revealing research or statistical information; prohibition; immunity from legal proceedings; permission; admission of information as evidence

Except as otherwise provided by Federal law, no officer or employee of the Federal Government, and no recipient of sums under this chapter, shall use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this chapter. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding.

(e) Discrimination prohibited

No person shall on the ground of race, color, religion, national origin, handicap, or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this chapter.

(f) Failure to comply with provisions; notice and hearing; power of Attorney General

If, after reasonable notice and opportunity for a hearing on the record, the Attorney General finds that a State has failed to comply substantially with any provision of this chapter or a rule, regulation, guideline, or procedure issued under this chapter, or an application submitted in accordance with this chapter or the provisions of any other applicable law, the Attorney General shall—

(1) terminate payments to such State;

(2) suspend payments to such State until the Attorney General is satisfied that such noncompliance has ended; or

(3) take such other action as the Attorney General deems appropriate.

(h)[3] Report

The Attorney General shall, no later than December 31, 1987, report to the President and to the Congress on the revenue derived from each source described in section 10601[4] of this title and on the effectiveness of the activities supported under this chapter. The Attorney General may include in such report recommendations for legislation to improve this chapter.

(Pub. L. 98-473, title II, § 1407, Oct. 12, 1984, 98 Stat. 2176.)

REFERENCES IN TEXT

In subsec. (h), "section 10601 of this title" was in the original "section 1302" and was translated as "section 1402" to reflect the probable intent of Congress.

CHAPTER 113—STATE JUSTICE INSTITUTE

Sec.
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  (b) Duties.
  (c) Duplication of functions; responsibility of State agencies.
  (d) Maintenance of offices in State of incorporation; agent for receipt of service of process.
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  (h) Grounds for removal of members.
  (i) Quarterly meetings of Board; special meetings.
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10704. Officers and employees.
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  (d) Matching fund requirements.
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10708. Special procedures.
10709. Presidential coordination.
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  (a) Reports.
  (b) Records.
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  (d) Funds accounted for and reported as receipts and disbursements separate and distinct from Federal funds.
10711. Audits.
  (a) Time and place of audits; standards; availability of books, accounts, facilities, etc., to auditors; filing of report and availability for public inspection.
  (b) Additional audits; requirements; reports and recommendations to Congress and Attorney General.
  (c) Annual audits by Institute or recipients; reports; submission of copies to Comptroller General; inspection of books, accounts, etc., availability of audit reports for public inspection.
10712. Report by Attorney General.
10713. Authorizations.

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[3] So in original. Section enacted without a subsec. (g).

[4] See References in Text note below.

§ 10701. Definitions

As used in this chapter, the term—

(1) "Board" means the Board of Directors of the Institute;

(2) "Director" means the Executive Director of the Institute;

(3) "Governor" means the Chief Executive Officer of a State;

(4) "Institute" means the State Justice Institute;

(5) "recipient" means any grantee, contractor, or recipient of financial assistance under this chapter;

(6) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States; and

(7) "Supreme Court" means the highest appellate court within a State unless, for the purposes of this chapter, a constitutionally or legislatively established judicial council acts in place of that court.

(Pub. L. 98-620, title II, § 202, Nov. 8, 1984, 98 Stat. 3336.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title" meaning title II of Pub. L. 98-620, Nov. 8, 1984, 98 Stat. 3336, known as the "State Justice Institute Act of 1984", which enacted this chapter and amended section 620 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Short Title note below and Tables.

EFFECTIVE DATE

Section 216 of title II of Pub. L. 98-620 provided that: "The provisions of this title [enacting this chapter and amending section 620 of Title 28, Judiciary and Judicial Procedure] shall take effect on October 1, 1985."

SHORT TITLE

Section 201 of title II of Pub. L. 98-620 provided that: "This title [enacting this chapter and amending section 620 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'State Justice Institute Act of 1984'."

§ 10702. Establishment of Institute; duties

(a) Establishment; purpose; incorporation; powers

There is established a private nonprofit corporation which shall be known as the State Justice Institute. The purpose of the Institute shall be to further the development and adoption of improved judicial administration in State courts in the United States. The Institute may be incorporated in any State pursuant to section 10703(a)(6) of this title. To the extent consistent with the provisions of this chapter, the Institute may exercise the powers conferred upon a nonprofit corporation by the laws of the State in which it is incorporated.

(b) Duties

The Institute shall—

(1) direct a national program of assistance designed to assure each person ready access to a fair and effective system of justice by providing funds to—

(A) State courts;

(B) national organizations which support and are supported by State courts; and

(C) any other nonprofit organization that will support and achieve the purposes of this chapter;

(2) foster coordination and cooperation with the Federal judiciary in areas of mutual concern;

(3) promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

(4) encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

(c) Duplication of functions; responsibility of State agencies

The Institute shall not duplicate functions adequately performed by existing nonprofit organizations and shall promote, on the part of agencies of State judicial administration, responsibility for the success and effectiveness of State court improvement programs supported by Federal funding.

(d) Maintenance of offices in State of incorporation; agent for receipt of service of process

The Institute shall maintain its principal offices in the State in which it is incorporated and shall maintain therein a designated agent to accept service of process for the Institute. Notice to or service upon the agent shall be deemed notice to or service upon the Institute.

(e) Tax status of Institute and programs assisted thereby

The Institute, and any program assisted by the Institute, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of title 26 and as an organization described in section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26. If such treatments are conferred in accordance with the provisions of title 26, the Institute, and programs assisted by the Institute, shall be subject to all provisions of title 26 relevant to the conduct of organizations exempt from taxation.

(f) Rules, regulations, etc.; notice and comment

The Institute shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, guidelines, and instructions under this chapter, and it shall publish in the Federal Register, at least thirty days prior to their effective date, all rules, regulations, guidelines, and instructions.

(Pub. L. 98-620, title II, § 203, Nov. 8, 1984, 98 Stat. 3336.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10712 of this title.

§ 10703. Board of Directors

(a) Appointment and membership

(1) The Institute shall be supervised by a Board of Directors, consisting of eleven voting members to be appointed by the President, by and with the advice and consent of the Senate. The Board shall have both judicial and nonjudicial members, and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the administration of justice.

(2) The Board shall consist of—

(A) six judges, to be appointed in the manner provided in paragraph (3);

(B) one State court administrator, to be appointed in the manner provided in paragraph (3); and

(C) four members from the public sector, no more than two of whom shall be of the same political party, to be appointed in the manner provided in paragraph (4).

(3) The President shall appoint six judges and one State court administrator from a list of candidates submitted to the President by the Conference of Chief Justices. The Conference of Chief Justices shall submit a list of at least fourteen individuals, including judges and State court administrators, whom the conference[1] considers best qualified to serve on the Board. Whenever the term of any of the members of the Board described in subparagraphs (A) and (B) terminates and that member is not to be reappointed to a new term, and whenever a vacancy otherwise occurs among those members, the President shall appoint a new member from a list of three qualified individuals submitted to the President by the Conference of Chief Justices. The President may reject any list of individuals submitted by the Conference under this paragraph and, if such a list is so rejected, the President shall request the Conference to submit to him another list of qualified individuals. Prior to consulting with or submitting a list to the President, the Conference of Chief Justices shall obtain and consider the recommendations of all interested organizations and individuals concerned with the administration of justice and the objectives of this chapter.

(4) In addition to those members appointed under paragraph (3), the President shall appoint four members from the public sector to serve on the Board.

(5) The President shall make the initial appointments of members of the Board under this subsection within ninety days after October 1, 1985. In the case of any other appointment of a member, the President shall make the appointment not later than ninety days after the previous term expires or the vacancy occurs, as the case may be. The Conference of Chief Justices shall submit lists of candidates under paragraph (3) in a timely manner so that the appointments can be made within the time periods specified in this paragraph.

(6) The initial members of the Board of Directors shall be the incorporators of the Institute and shall determine the State in which the Institute is to be incorporated.

(b) Term of office

(1) Except as provided in paragraph (2), the term of each voting member of the Board shall be three years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified.

(2) Five of the members first appointed by the President shall serve for a term of two years. Any member appointed to serve an unexpired term which has arisen by virtue of the death, disability, retirement, or resignation of a member shall be appointed only for such unexpired term, but shall be eligible for reappointment.

(3) The term of initial members shall commence from the date of the first meeting of the Board, and the term of each member other than an initial member shall commence from the date of termination of the preceding term.

(c) Reappointment

No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(d) Compensation; reimbursement for expenses

Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(e) Status of members of Board as officers and employees of United States

The members of the Board shall not, by reason of such membership, be considered officers or employees of the United States.

(f) Voting rights of Board members; quorum; action of Board on concurrence of majority

Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the membership present and voting.

(g) Chairman; initial selection and term of office; subsequent annual election

The Board shall select from among the voting members of the Board a chairman, the first of whom shall serve for a term of three years. Thereafter, the Board shall annually elect a chairman from among its voting members.

(h) Grounds for removal of members

A member of the Board may be removed by a vote of seven members for malfeasance in office, persistent neglect of, or inability to discharge duties, or for any offense involving moral turpitude, but for no other cause.

(i) Quarterly meetings of Board; special meetings

Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the chairman, acting at his own discretion or pursuant to the petition of any seven members.

(j) Open meetings

All meetings of the Board, any executive committee of the Board, and any council established in connection with this chapter, shall be open and subject to the requirements and provisions of section 552b of title 5 relating to open meetings.

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[1] So in original. Probably should be "Conference".

(k) Duties and functions of Board

In its direction and supervision of the activities of the Institute, the Board shall—

(1) establish policies and develop such programs for the Institute that will further the achievement of its purpose and performance of its functions;

(2) establish policy and funding priorities and issue rules, regulations, guidelines, and instructions pursuant to such priorities;

(3) appoint and fix the duties of the Executive Director of the Institute, who shall serve at the pleasure of the Board and shall be a nonvoting ex officio member of the Board;

(4) present to other Government departments, agencies, and instrumentalities whose programs or activities relate to the administration of justice in the State judiciaries of the United States, the recommendations of the Institute for the improvement of such programs or activities;

(5) consider and recommend to both public and private agencies aspects of the operation of the State courts of the United States considered worthy of special study; and

(6) award grants and enter into cooperative agreements or contracts pursuant to section 10705(a) of this title.

(Pub. L. 98-620, title II, § 204, Nov. 8, 1984, 98 Stat. 3337.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10702 of this title.

§ 10704. Officers and employees

(a) Duties of Director; appointment and removal of employees; political tests or qualifications prohibited

(1) The Director, subject to general policies established by the Board, shall supervise the activities of persons employed by the Institute and may appoint and remove such employees as he determines necessary to carry out the purposes of the Institute. The Director shall be responsible for the executive and administrative operations of the Institute, and shall perform such duties as are delegated to such Director by the Board and the Institute.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Institute, or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this chapter.

(b) Compensation

Officers and employees of the Institute shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5.

(c) Status of Institute as department, agency, or instrumentality of Federal Government; authority of Office of Management and Budget

(1) Except as otherwise specifically provided in this chapter, the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.

(2) This chapter does not limit the authority of the Office of Management and Budget to review and submit comments upon the Institute's annual budget request at the time it is transmitted to the Congress.

(d) Status of officers and employees of Institute as officers and employees of United States

(1) Except as provided in paragraph (2), officers and employees of the Institute shall not be considered officers or employees of the United States.

(2) Officers and employees of the Institute shall be considered officers and employees of the United States solely for the purposes of the following provisions of title 5: Subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Institute shall make contributions under the provisions referred to in this subsection at the same rates applicable to agencies of the Federal Government.

(e) Freedom of information requirements

The Institute and its officers and employees shall be subject to the provisions of section 552 of title 5 relating to freedom of information.

(Pub. L. 98-620, title II, § 205, Nov. 8, 1984, 98 Stat. 3339.)

§ 10705. Grants and contracts

(a) Authority of Institute; purposes of grants

The Institute is authorized to award grants and enter into cooperative agreements or contracts, in a manner consistent with subsection (b) of this section, in order to—

(1) conduct research, demonstrations, or special projects pertaining to the purposes described in this chapter, and provide technical assistance and training in support of tests, demonstrations, and special projects;

(2) serve as a clearinghouse and information center, where not otherwise adequately provided, for the preparation, publication, and dissemination of information regarding State judicial systems;

(3) participate in joint projects with other agencies, including the Federal Judicial Center, with respect to the purposes of this chapter;

(4) evaluate, when appropriate, the programs and projects carried out under this chapter to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have met or failed to meet the purposes and policies of this chapter;

(5) encourage and assist in the furtherance of judicial education;

(6) encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

(7) be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

(b) Priority in making awards; alternative recipients; approval of applications; receipt and administration of funds; accountability

The Institute is empowered to award grants and enter into cooperative agreements or contracts as follows:

(1) The Institute shall give priority to grants, cooperative agreements, or contracts with—

(A) State and local courts and their agencies,[2]

(B) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments; and

(C) national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

(2) The Institute may, if the objective can better be served thereby, award grants or enter into cooperative agreements or contracts with—

(A) other nonprofit organizations with expertise in judicial administration;

(B) institutions of higher education;

(C) individuals, partnerships, firms, or corporations; and

(D) private agencies with expertise in judicial administration.

(3) Upon application by an appropriate Federal, State, or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of Federal, State, or local government other than a court.

(4) Each application for funding by a State or local court shall be approved, consistent with State law, by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts.

(c) Permissible uses of funds

Funds available pursuant to grants, cooperative agreements, or contracts awarded under this section may be used—

(1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) to support education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

(3) to conduct research on alternative means for using nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;

(4) to assist State and local courts in meeting requirements of Federal law applicable to recipients of Federal funds;

(5) to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;

(6) to support State court planning and budgeting staffs and to provide technical assistance in resource allocation and service forecasting techniques;

(7) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(8) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and effect[3] the work of courts;

(9) to conduct studies of the causes of trial and appellate court delay in resolving cases, and to establish and evaluate experimental programs for reducing case processing time;

(10) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve the functioning of such judges and courts;

(11) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with the operation of such rules, procedures, devices, and standards, to devise alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and to test the utility of those alternative approaches;

(12) to support studies of the outcomes of cases in selected subject matter areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives;

(13) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfac-

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[2] So in original. The comma probably should be a semicolon.

[3] So in original. Probably should be "affect".

tion with court processes to improve court performance;

(14) to test and evaluate experimental approaches to providing increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

(15) to carry out such other programs, consistent with the purposes of this chapter, as may be deemed appropriate by the Institute.

(d) Matching fund requirements

The Institute shall incorporate in any grant, cooperative agreement, or contract awarded under this section in which a State or local judicial system is the recipient, the requirement that the recipient provide a match, from private or public sources, not less than 50 per centum of the total cost of such grant, cooperative agreement, or contract, except that such requirement may be waived in exceptionally rare circumstances upon the approval of the chief justice of the highest court of the State and a majority of the Board of Directors.

(e) Compliance monitoring and evaluation by Institute

The Institute shall monitor and evaluate, or provide for independent evaluations of, programs supported in whole or in part under this chapter to ensure that the provisions of this chapter, the bylaws of the Institute, and the applicable rules, regulations, and guidelines promulgated pursuant to this chapter, are carried out.

(f) Independent study of financial and technical assistance programs

The Institute shall provide for an independent study of the financial and technical assistance programs under this chapter.

(Pub. L. 98-620, title II, § 206, Nov. 8, 1984, 98 Stat. 3340.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10703 of this title.

§ 10706. Limitations on grants and contracts

(a) Duties of Institute

With respect to grants made and contracts or cooperative agreements entered into under this chapter, the Institute shall—

(1) ensure that no funds made available to recipients by the Institute shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation or constitutional amendment by the Congress of the United States, or by any State or local legislative body, or any State proposal by initiative petition, or of any referendum, unless a governmental agency, legislative body, a committee, or a member thereof—

(A) requests personnel of the recipients to testify, draft, or review measures or to make representations to such agency, body, committee, or member; or

(B) is considering a measure directly affecting the activities under this chapter of the recipient or the Institute;

(2) ensure all personnel engaged in grant, cooperative agreement or contract assistance activities supported in whole or part by the Institute refrain, while so engaged, from any partisan political activity; and

(3) ensure that each recipient that files with the Institute a timely application for refunding is provided interim funding necessary to maintain its current level of activities until—

(A) the application for refunding has been approved and funds pursuant thereto received; or

(B) the application for refunding has been finally denied in accordance with section 10708 [4] of this title.

(b) Use of funds for training programs for advocacy of nonjudicial public policies or encouraging nonjudicial political activities

No funds made available by the Institute under this chapter, either by grant, cooperative agreement, or contract, may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

(c) Authority coextensive with appropriation Acts

The authorization to enter into cooperative agreements, contracts or any other obligation under this chapter shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

(d) Prohibited uses of funds

To ensure that funds made available under this chapter are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used—

(1) to supplant State or local funds currently supporting a program or activity; or

(2) to construct court facilities or structures, except to remodel existing facilities to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program.

(Pub. L. 98-620, title II, § 207, Nov. 8, 1984, 98 Stat. 3342.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", except in subsec. (d) where it was in the original "this Act", meaning title II of Pub. L. 98-620, Nov. 8, 1984, 98 Stat. 336, known as the State Justice Institute Act of 1984, which enacted this chapter and amended section 620 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Short Title note set out under section 17101 of this title and Tables.

Section 10708 of this title, referred to in subsec. (a)(3)(B), was in the original "section 9 of this title", and was translated as if it had read "section 209 of this title" which is classified to section 10708 of this title, to reflect the probable intent of Congress.

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[4] See References in Text note below.

Section Referred to in Other Sections

This section is referred to in section 10712 of this title.

§ 10707. Restrictions on activities of the Institute

(a) Litigation; interference with independence of State judiciary; funding of State judicial system activities other than pursuant to this chapter; legislative lobbying

The Institute shall not—

(1) participate in litigation unless the Institute or a recipient of the Institute is a party, and shall not participate on behalf of any client other than itself;

(2) interfere with the independent nature of any State judicial system or allow financial assistance to be used for the funding of regular judicial and administrative activities of any State judicial system other than pursuant to the terms of any grant, cooperative agreement, or contract with the Institute, consistent with the requirements of this chapter; or

(3) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that personnel of the Institute may testify or make other appropriate communication—

(A) when formally requested to do so by a legislative body, committee, or a member thereof;

(B) in connection with legislation or appropriations directly affecting the activities of the Institute; or

(C) in connection with legislation or appropriations dealing with improvements in the State judiciary, consistent with the provisions of this chapter.

(b) Issuance of shares of stock; declaration of dividends; compensation for services; reimbursement for expenses; political activities

(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Institute shall enure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Institute nor any recipient shall contribute or make available Institute funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) The Institute shall not contribute or make available Institute funds or program personnel or equipment for use in advocating or opposing any ballot measure, initiative, or referendum.

(c) Identification of Institute with political activities

Officers and employees of the Institute or of recipients shall not at any time intentionally identify the Institute or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

(Pub. L. 98-620, title II, § 208, Nov. 8, 1984, 98 Stat. 3343.)

Section Referred to in Other Sections

This section is referred to in section 10712 of this title.

§ 10708. Special procedures

The Institute shall prescribe procedures to ensure that—

(1) financial assistance under this chapter shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this chapter has been given reasonable notice and opportunity to show cause why such actions should not be taken; and

(2) financial assistance under this chapter shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the recipient has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Institute to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Institute in accordance with procedures established in regulations promulgated by the Institute.

(Pub. L. 98-620, title II, § 209, Nov. 8, 1984, 98 Stat. 3344.)

Section Referred to in Other Sections

This section is referred to in section 10706 of this title.

§ 10709. Presidential coordination

The President may, to the extent not inconsistent with any other applicable law, direct that appropriate support functions of the Federal Government may be made available to the Institute in carrying out its functions under this chapter.

(Pub. L. 98-620, title II, § 210, Nov. 8, 1984, 98 Stat. 3344.)

§ 10710. Records and reports

(a) Reports

The Institute is authorized to require such reports as it deems necessary from any recipient with respect to activities carried out pursuant to this chapter.

(b) Records

The Institute is authorized to prescribe the keeping of records with respect to funds provided by any grant, cooperative agreement, or contract under this chapter and shall have access to such records at all reasonable times for the purpose of ensuring compliance with such grant, cooperative agreement, or contract or the terms and conditions upon which financial assistance was provided.

(c) Submission of copies of reports to recipients; maintenance in principal office of Institute; availability for public inspection; furnishing of copies to interested parties

Copies of all reports pertinent to the evaluation, inspection, or monitoring of any recipient shall be submitted on a timely basis to such recipient, and shall be maintained in the principal office of the Institute for a period of at least five years after such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish.

(d) Funds accounted for and reported as receipts and disbursements separate and distinct from Federal funds

Non-Federal funds received by the Institute, and funds received for projects funded in part by the Institute or by any recipient from a source other than the Institute, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

(Pub. L. 98-620, title II, § 211, Nov. 8, 1984, 98 Stat. 3344.)

§ 10711. Audits

(a) Time and place of audits; standards; availability of books, accounts, facilities, etc., to auditors; filing of report and availability for public inspection

(1) The accounts of the Institute shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Institute are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audits shall be made available to the person or persons conducting the audits. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Institute.

(b) Additional audits; requirements; reports and recommendations to Congress and Attorney General

(1) In addition to the annual audit, the financial transactions of the Institute for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Institute are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audit. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Institute shall remain in the possession and custody of the Institute throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, and other papers or property for a longer period under section 3523(c) of title 31.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the Attorney General, together with such recommendations with respect thereto as the Comptroller General deems advisable.

(c) Annual audits by Institute or recipients; reports; submission of copies to Comptroller General; inspection of books, accounts, etc.; availability of audit reports for public inspection

(1) The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Institute.

(2) The Institute shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, person, or entity, which relate to the disposition or use of funds received from the Institute. Such audit reports shall be available for public inspection during regular business hours, at the principal office of the Institute.

(Pub. L. 98-620, title II, § 212, Nov. 8, 1984, 98 Stat. 3345.)

§ 10712. Report by Attorney General

On October 1, 1987, the Attorney General, in consultation with the Federal Judicial Center, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the effectiveness of the Institute in carrying out the duties specified in section 10702(b) of this title. Such report shall include an assessment of the cost effectiveness of the program as a whole and, to the extent practicable, of individual grants, an assessment of whether the restrictions and limitations specified in sections 10706 and 10707 of this title have been respected, and such recommendations as the Attorney General, in consultation with the Federal Judicial Center, deems appropriate.

(Pub. L. 98-620, title II, § 213, Nov. 8, 1984, 98 Stat. 3346.)

§ 10713. Authorizations

There are authorized to be appropriated to carry out the purposes of this chapter, $13,000,000 for fiscal year 1986, $15,000,000 for fiscal year 1987, and $15,000,000 for fiscal year 1988.

(Pub. L. 98-620, title II, § 215, Nov. 8, 1984, 98 Stat. 3346.)